



## TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

### NOTICE OF PUBLIC MEETING

NOTICE is hereby given that on Monday, December 12, 2016 at 5:30 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 Hearings

1. Proposed historic designations
  - A. 2306 North Virginia Dare Trail – Smith Cottage
  - B. 418 West Hayman Boulevard – Hayman House

Public Comment

Response to Public Comment

Introductions and Presentations

Old Business

1. Second Vote – Proposed Amendment to Beach Nourishment Municipal Service District
2. Options for dogs on the beach

New Business

1. Appointments
  - A. Personnel Board
  - B. Board of Adjustment
2. Recommended Amendment to Town Code to Replace Chapter 110. *Business Licensing*
3. Proposed amendment to Chapter 50.32 *Garbage Service – Bulk Trash Collections*

Commissioners' Agenda

Mayor's Agenda

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

Adjourn

Posted this 7th day of December 2016.

Harriet B. Banner  
Deputy 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; website; file*

**Minutes of the Monday, December 12, 2016 meeting of the Kill Devil Hills Board of Commissioners held at 5:30 p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.**

**Members Present:** Mayor Sheila F. Davies; Commissioners Travis Appleman, Mike Hogan, Michael Midgette, and Brandi Rheubottom

**Members Absent:** None

**Others Present:** Debora P. Díaz, Town Manager; Casey C. Varnell, Town Attorney; Bryan Brightbill, Assistant Planning Director; and Harriet Banner, Deputy Town Clerk

**Call to Order**

At 5:30 p.m., Mayor Davies called this meeting of the Kill Devil Hills Board of Commissioners to order and welcomed all present.

**Pledge of Allegiance and Moment of Silence**

**Agenda Approval**

On motion by Commissioner Appleman, seconded by Commissioner Rheubottom, the agenda for this meeting was approved as presented, by unanimous vote, 5-0.

**Public Hearings**

Town Attorney Casey Varnell explained the rules of procedure to be applied for each hearing.

**1. Proposed historic designations**

The Historic Landmarks Commission (HLC) forwarded the two ordinances recommending the designation of the corresponding properties as Local Historic Landmarks after its public hearings. The Board of Commissioners set its required public hearings on these two properties at their November 14, 2016 to be held during this meeting.

Designation reports on each of the properties were sent to the N.C. Department of Cultural Resources, Division of Archives and History for non-binding comments. In turn, the HLC reviewed those comments, the designation reports including historical significance, photographs, and held its own public hearings on each. All comments were positive for the properties' designation.

The owners of each property support the designations. If adopted, the ordinances will be filed with the Dare County Register of Deeds and the regulations outlined in Chapter 31 of the Town Code will be applicable.

**A. 2306 North Virginia Dare Trail – Smith Cottage (Attached PH-1A)**

Mr. Varnell called this public hearing to order. No one wished to speak on this matter, and the public hearing was closed.

Commissioner Appleman made a motion to approve the designation ordinance for this property. Commissioner Midgette seconded that motion, and the vote was 5-0.

**B. 418 West Hayman Boulevard – Hayman House (Attached PH-1B)**

Mr. Varnell called this public hearing to order.

Commissioner Hogan questioned some of the comments from the State agency, which seemed to not support the designation. Assistant Planning Director Bryan Brightbill explained that the comments from the State were only part of the designation process and they were advisory and non-binding. There being no other speakers, Mr. Varnell closed the public hearing.

Commissioner Midgette made a motion to approve the designation ordinance for this property. Commissioner Rheubottom seconded that motion, and the vote was 5-0.

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

**Ron Curtis, 1817 Bay Drive, Kill Devil Hills** – Mr. Curtis explained that he was present at this meeting on behalf of the N.C. Lions Club Visually Impaired Fishing Tournament. He continued that several years ago, the local visually impaired fishing tournament board created a plaque to appreciate and honor people who are very special to them. This year, that special person met with them on several occasions and made recommendations that have resulted in receipt of two grants. The grants allowed them to replace their computer equipment and software programs that are used to plan and conduct their tournament. This year was successful with around 300 participants and allowed them to have an experience that is not in their normal lives. On behalf of the N.C. Lions Visually Impaired Fishing tournament, Mr. Curtis presented Mayor Davies with the Lacy and Esther Presnell VIP Ambassador Award for her efforts.

Mayor Davies thanked Mr. Curtis and said that this event was absolutely amazing and everyone should watch the video on their website that highlights it. She said that this event captured her heart with such a worthwhile cause.

**Howard Kimble, 803 Sportsman Drive, Kill Devil Hills** – Mr. Kimble said he could not understand why so many residents want our beach to “go to the dogs.” He said he has no problem with responsible dog owners, but not all dog owners are responsible. Mr. Kimble said he had witnessed dogs defecating on the beach and the owner kicking sand over it instead of picking it up. At that time, Mr. Kimble was not inclined to get into a confrontation with that person. He pointed out that dog owners could go to Nags Head or Kitty Hawk if they want to let

their dogs to run wild. Mr. Kimble said he thought our beaches should be for people first – they are the ones who support our local businesses. He believes that Kill Devil Hills is unique in having a beach where visitors and citizens can go without being bothered by dogs running wild. If the Board of Commissioners wants to open the beaches year-round to dogs, then Mr. Kimble recommended that the Town hire two enforcement officers for the summer to enforce the leash law. That is the time when there seems to be the most problems.

**Deborah Mennicucci, 206 Clamshell Drive, Kill Devil Hills** – Ms. Mennicucci spoke at the last meeting concerning her displeasure with noise coming from the Outer Banks Pro Wash. She reported at that time that the noise coming from this car wash was too loud. Although Mr. Hatchell, the owner of the business, had turned down the volume of the speaker, Ms. Mennicucci reported that she could still hear it at her home, which is located four properties away. She was speaking again at this meeting to report that she can still hear the beeping and directions to move forward every time a car goes through. Although it is quieter, Ms. Mennicucci said that what she wanted was silence. When she bought her home 15 years ago, the car wash provided directions by a digital readout so noise was not a problem. About three years ago, Mr. Hatchell installed a speaker system to give directions. Ms. Mennicucci complained to the Police Department at that time and was told that the decibel readings coming from the carwash were within an acceptable level. She said Mr. Hatchell had taken some measures including putting up plastic strips and turning the volume down, but it is still too loud. She asked the Board to intervene and require Mr. Hatchell to install an FM transmitter.

**Rose Hudgins, 208 West Third Street, Kill Devil Hills** – Ms. Hudgins said she lives behind the carwash, and she also owns property directly behind it on Clamshell Drive that is rental property. The tax value is decreasing because of the noise generated from the carwash; she doubted that she could even sell her property. The noise is constant and her tenant on Clamshell wrote on behalf of the residents on Dolly Street that he had found the noise from the carwash disrupted his daily activities from not being able to enjoy an open window to the constant noise all through the night. Ms. Hudgins said there was a house on Clamshell decorated for Christmas, and an FM transmitter allows a certain station to pipe the music in a passerby's car. She believed the same type of device could be used at the carwash.

**Everett McCoy Harbeson, 304 St. Louis Street, Kill Devil Hills** – Mr. Harbeson said he likes little animals but was opposed to any being on the beach in Kill Devil Hills. If a dog bites a person, it is unknown if the dog is current on his rabies vaccinations. He continued that the owner might not admit in such a case that the dog was his. That situation would make the Town of Kill Devil Hills responsible and might be sued. Mr. Harbeson said he did not want to see more work for the lifeguards or the Police Department. The lifeguards are there to watch after people rather than a dog possibly biting or scratching someone. Mr. Harbeson said that dogs leave a mess on the beach and the owners probably will not clean up after them properly. Dogs can also smell food and there is a danger that they might try to get the food, possibly knocking down small children or those with mobility problems. For hygiene purposes, he thinks dogs should never be on the beach.

**Reese Stecher, 1816 Seminole Street, Kill Devil Hills** – Mr. Stecker read aloud two letters, both of which are attached to these minutes. He imitated the sounds that were heard coming from the carwash all day long every day. After a storm when cars are muddied, the speakers are continuous. Mr. Stecker said his wife had written Mr. Hatchell a letter on October 6 explaining that for the sixteen years she has lived at her residence, the neighborhood has mostly been quiet. In the past year, a beeping from the carwash has occurred that is quite noticeable. It is loud and amplified, even over the traffic noise from the bypass. Mr. Stecker noted that Chapter 130 prohibits noise that disturbs a reasonable person, the sounds emanating from the carwash fall not this category. He expressed doubt that Mr. Hatchell would want to live in the vicinity of the noise himself, and he was certain that a realtor trying to sell a house in the neighborhood would be unsuccessful if a potential customer heard it. He asked that either the carwash turn the speakers down more or install an FM transmitter.

**Patti Armistead, 106 Wood Duck Court, Kill Devil Hills** – Ms. Armistead provided the second of two petitions she had initiated including over 100 signatures from residents of Kill Devil Hills supporting allowing dogs on the beach at all times. She said while gathering the signatures, she was shocked about how many people were unaware of the restrictions. When Ms. Armistead met with the mayor in May, and at the September meeting, the Board seemed confused about why the restrictions were in place. She thanked the town clerk personally for patiently providing so much background information to her inquiries. With so much confusion among members of the community, Ms. Armistead doubted how visitors could not have a bad experience coming to a pet friendly hotel to be told their dogs had restriction to being on the beach. She commented that tourism drives the Town's economic engine and it seemed unwise to her not to lift the ban. She noted that other towns in the area did not restrict dogs. Ms. Armistead said that education of dog owners about proper handling were key to allowing dogs on the beach. She asked that the Board rescind the restrictions.

**JoAnn Fraser** – Ms. Fraser said that her dog is part of her family, and that she and her neighbors went to other beaches so they could bring their dogs. She had never been witness to irresponsible behavior of dogs at the beach, and she noted that she did see tourists litter without subsequent reprimand. She agreed with Ms. Armistead that the ban definitely hurt the economy.

**Jim Scarborough** – Mr. Scarborough explained that he is the maintenance manager of the carwash. He offered to answer any question the Board might have and also present to explain the efforts taken to lessen the noise at the carwash. The back wall has been closed in, and the speaker has been turned down 10 decibels, resulting in a level of 60-61 decibels as measured by the police officer. He said he knew a lot of people were upset about the noise, but many people cannot follow directions. The speaker system does a wonderful job of getting people through the carwash successfully. Mr. Scarborough said that he had spoken to the district maintenance manager to inquire about the FM transmitter, and he had never heard of this device and did not know how to proceed to hook one up to the carwash. The speaker has been operating for 3½ years and has been turned down as much as possible. Mr. Scarborough had spoken to Mr. Hatchell today on the phone, and he offered to install a shadowbox fence across the back of the

carwash that would muffle the sound. He reiterated that it was not a reasonable option to turn off the speaker, although it could possibly be a compromise to do so at night.

**Eddie Goodrich** – Mr. Goodrich said that he was present along with Mike Robinson representing the developer of the proposed Marriott Town Suites. He asked the Board to revisit the fee structure that includes the water impact fees. He said that the fee is \$4,000 per unit, which is the same cost for a single-family home. The fees being charged for the new hotel would be equivalent to a developer constructing a subdivision with 152 houses. Mr. Goodrich said that this type of hotel was new to Kill Devil Hills in that it was an extended stay hotel with kitchenettes, a breakfast room, and there will be a restaurant on the oceanfront. He thought if water usage was examined that it does not fit into the ordinance properly. Mr. Robinson said that the crux of the matter was budget item #2, which outlines the impact fees for hotels. For hotels, one initial hookup is required per habitable room or one hookup fee for three habitable rooms. He asked the Board to interpret what the trigger was for “or” in this case. Mr. Patel, the developer, requested that Mr. Goodrich and Mr. Robinson approach the Board to request examination of the fees being estimated for the new hotel. He continued that the fees associated with impact fees in other jurisdictions were as follows: Dare County, Kitty Hawk and Duck – \$625 per unit; Nags Head – \$1,500 per unit. Based on Kill Devil Hills’ fee structure, the impact fee will be \$608,000.

### **Response to Public Comment**

Mayor Davies said that dogs on the beach would be addressed under Old Business item #2.

Concerning the carwash, Mayor Davies said the noise emitted by the speaker was obviously incredibly stressful to those living nearby, and despite any efforts to lessen it, it was still a problem. She asked Mr. Scarborough if the carwash became aware of how the FM transmitter functioned would they be willing to use it. Mr. Scarborough said such a device would have to tie in to their computer system. He offered to explore if only the beeping sound could be turned off. Mayor Davies requested that Mr. Scarborough provide his contact information in order to arrange a meeting to explore other options, get guidance from the Town Attorney, and those who spoke would be provided with an update.

Mayor Davies responded to Mr. Goodrich’s concern about the Town’s fee structure and indicated that the Board would need to have more information on the matter before taking any action.

### **Old Business**

#### **1. Second Vote – Proposed Amendment to Beach Nourishment Municipal Service District (Attached OB-1)**

A public hearing to reduce the Town’s Beach Erosion Control and Flood and Hurricane Works Municipal Service District (MSD) and first required vote was held on November 14,

2016. The second vote is required at a consecutive meeting, and therefore must be held at tonight's meeting.

The vote will include the removal of thirteen properties from the MSD, all of which are within or adjacent to the southern-most 1,000 feet of the area and designated to receive lesser amounts of nourishing sand than other areas to the north. By consent judgment, 24 properties were removed as of July 1, 2016 from this southern section and the Town has identified these additional properties as being in like-kind.

The Board of Commissioners' second vote on the attached ordinance, *An Ordinance Reducing the Town of Kill Devil Hills, North Carolina Beach Erosion Control and Flood and Hurricane Works Municipal Service District*, including four exhibits: A – properties removed as a result of Consent Judgments; B – properties to be removed by adoption of the ordinance; C – map depiction of all properties; and D – map depiction of the revised MSD.

Commissioner Hogan made a motion to approve the proposed amendment to the Municipal Service District at its second reading as presented. Commissioner Appleman seconded that motion. All votes supported the motion, 5-0.

## 2. Options for dogs on the beach (Attached OB-2)

During the spring and summer of 2016, the Board of Commissioners discussed and received public input on the possibility of amending the existing Town Code's restrictions on the time limits that dogs may be on the Town's beaches. In July, the Board opted to take no action on the issue and directed it return to public meeting in the fall. The last meeting on November 14, 2016 included the semi-annual Public Forum, and a request was heard with a petition presented supporting the request, to amend the schedule, preferably to allow dogs on the beach at all times during the year, but with an offer to accept a compromise that would reduce the restrictions to only Memorial Day through Labor Day. The existing Town Code language follows:

### § 96.06 ANIMALS ON THE BEACH.

*Time.* Between May 1 and September 30 of each year, no dogs shall be permitted on the public beach between the hours of 9:00 a.m. and 6:00 p.m. unless being used to aid a handicapped person. At all other times, no dogs shall be permitted on the public beaches except upon a leash and under the control of owner or handler. (Ord. 15-1, passed 6-8-15)

At the conclusion of discussions at the November meeting, the Board of Commissioners directed Staff to provide three options they might consider in resolving this matter. These options were to include:

1. Lift the ban;
2. A middle ground; or
3. Make no change.

Three draft ordinance amendments were presented for the Board's consideration, which if any were adopted would accomplish the first two options. If no change in the existing ordinance is desired, no action needed to be taken.

Mayor Davies explained that while considering amending the ordinance in July, there were many opinions on both sides. After reviewing the minutes from that meeting, she recalled that the Board concluded that discussion because there was no overwhelming majority for or against amending the ordinance. The matter first came about when she met with Ms. Armistead, but Mayor Davies was not anticipating the level of opposition to making a change at the July meeting. At the conclusion of the meeting, the Board stated that they would revisit this item but specifically considering the timeline for the restriction of dogs on the beach as there was no support from any of the Commissioners to allow dogs on the beach all day long during the summer season.

Mayor Davies continued that since then, the Board had held a public forum and received email correspondence, both providing input for and against amending the ordinance. After review of the first petition that Ms. Armistead provided, many of the signatures came from individuals residing outside of Kill Devil Hills. Mayor Davies stated that the Board's biggest obligation was to the taxpayers in this town.

After much discussion, the Board concluded that the best resolution was a compromise to shorten the dates in which dogs were restricted on the beach.

Commissioner Appleman made a motion to amend § 96.06 *ANIMALS ON THE BEACH* by changing the dates of the special hours for dogs on the beach to read from Memorial Day to Labor Day. Commissioner Midgette seconded that motion, and it was approved unanimously, 5-0.

## **New Business**

### **1. Appointments (Attached NB-1)**

A history of the incumbents was included in the packet materials for this meeting.

#### **A. Personnel Board**

Sue Kelly's term on the Personnel Board will expire in January 2017. She has expressed interest in being reappointed to serve another term. There are no other applications on file at this time referencing interest in serving on this board.

Commissioner Hogan made a motion to reappoint Sue Kelly to the Personnel Board for a term to expire in January 2020. Commissioner Appleman seconded that motion. The motion carried by a 5-0 vote.

## B. Board of Adjustment

A regular term vacancy on the Board of Adjustment occurred following Chairman Richard Baer's death. Alternate members Kevin Cox and Ronald J. Seidman, II both indicated interest in being appointed to fill the seat as a regular member. One application has also been submitted for consideration by Jason Self. Mr. Self previously served on the Historic Landmarks Commission from 2005-2009.

Commissioner Hogan noted that Mr. Cox was the senior member and made a motion to appoint him to fill the unexpired regular term on the Board of Adjustment ending May 2017. Commissioner Appleman seconded that motion, and the vote was a unanimous 5-0.

With this action by the Board, an alternate seat was now available. Commissioner Hogan then made a motion to appoint Jason Self as an alternate member on the Board of Adjustment for a term to expire December 2019. Commissioner Appleman provided a second, and the vote was 5-0.

### 2. Recommended Amendment to Town Code to Replace Chapter 110. *Business Licensing* (Attached NB-2)

The N.C. General Assembly repealed the authority for municipalities to collect privilege license taxes effective May 29, 2014 except for beer and wine taxes authorized by G.S. 105-113.77 and G.S. 105-113.78. After July 1, 2015, however, a municipality may "regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience." (G.S. 160A-194) Further, a local unit may charge a reasonable regulatory fee to obtain the license.

To reflect these changes, an ordinance amendment was proposed that completely repeals Chapter 110. *Business Licensing* to be replaced with Chapter 110. *Business Registration*.

Commissioner Hogan made a motion to approve the new Chapter 110. *Business Registration* as presented. Commissioner Rheubottom seconded that motion, and the vote was 5-0.

### 3. Proposed amendment to Chapter 50.32 *Garbage Service – Bulk Trash Collections* (Attached NB-3)

Public Services Director Steve Albright explained in his attached memorandum that some minor revisions have been identified in the Town Code that should be changed to more accurately reflect current practices. Some of the language has also been clarified to provide more precise guidance to those participating in the bulk trash pick-up. Ms. Díaz said that the amended version is more easily understood.

Commissioner Hogan said that before meeting, a constituent questioned the section that read that recyclable materials are prohibited including cardboard and paper, yet yard waste is routinely placed in paper bags. Mr. Albright was present at the meeting and he explained that

those bags are biodegradable and if yard waste is placed in plastic bags, staff must open and empty the bags. The biodegradable bags can directly through the mulching process.

Commissioner Hogan made a motion to adopt the proposed amendment to Chapter 50.32 *Garbage Service – Bulk Trash Collections* as presented. Commissioner Rheubottom seconded that motion. The motion carried by a 5-0 unanimous vote.

## **Commissioners' Agenda**

### **Mayor's Agenda**

#### **1. Proposed 2017 Board of Commissioners meeting calendar**

In December of every year, the Board adopts 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 for 5:30 p.m.

Two open comment public forums are scheduled: the first on April 26 and the second on October 25.

The proposed schedule is as follows:

Monday, January 9	Wednesday, June 28
<del>Wednesday, Tuesday, January 25</del> 24	Monday, July 10
Monday, February 13	Monday, August 14
Monday, March 13	Monday, September 11
Monday, April 10	Monday, October 9
Wednesday, April 26 (Public Forum)	Wednesday, October 25 (Public Forum)
Monday, May 8	Wednesday, November 15
Wednesday, May 24	Monday, December 11
Monday, June 12	

(Clerk's Note: The January 25, 2017 meeting was later rescheduled for Tuesday, January 24.)

Commissioner Rheubottom motioned to adopt the proposed meeting schedule for calendar year 2017, and Commissioner Appleman provided a second to her motion. The vote was unanimous, 5-0.

#### **2. Board/Committee Members Appreciation Reception**

For the past several years, the Board of Commissioners has held a reception to express appreciation to our board and committee members. By consensus, the Board scheduled this event for Tuesday, February 28, 2017.

### 3. **Commissioner Hogan's Birthday**

Mayor Davies recognized that Commissioner Hogan's birthday was on this day and the group sang to wish him happiness.

### 4. **Santa at Town Hall Event**

Mayor Davies expressed her pleasure at attending the previous Saturday's *Santa at Town Hall* festivities. She said that staff had done an amazing job transforming the Meeting Room into a winter wonderland. Pictures were taken of the children with Santa Claus, treats were served, and sleigh rides around the Frog Pond were given. Mayor Davies was appreciative of all of staff's efforts for such a fun event and noted the community's positive feedback as well.

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

Ms. Díaz directed the group's attention to the back of the room where part of the Town's *Operation Santa Paws* collection was displayed. A huge amount of pet food and supplies had been collected to help the animals at the SPCA shelter. There was also a *Toys for Tots* drive, which was also very successful. She thanked everyone who had contributed and staff who had worked hard to coordinate the collections.

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

Mr. Varnell reported that on a beach nourishment matter, the Town moved forward and filed legal action against the owners who had not voluntarily provided easements to their property. Word has been received from three of the four relinquishing easements. He said that there is only one sliver of oceanfront remaining without the easement. It seems that it will be a non-contested issue.

### **Consent Agenda**

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

A. November 14, 2016

#### 2. **In-kind Services Agreement – disc golf course (Attached CA-2)**

The Board of Commissioners was notified on November 16, 2016 that on behalf of the Town, Assistant Town Manager Shawn Murphy had executed an In-Kind Services Agreement with Advanced Tree Service, Inc. for a retail value of \$15,000 in tree removal services for the right to sponsor the parking lot at the Town's disc golf course.

Approval of the consent agenda will record the terms of the in-kind services agreement.

### 3. **Interfaith Community Outreach, Inc. – Property Tax Exemption**

This non-profit organization has applied for and been approved for a property tax exemption by the Dare County Board of Commissioners for release of the 2016 tax bill and subsequent years.

Approval of the consent agenda will record Kill Devil Hills' approval of the exemption as well.

Commissioner Rheubottom made a motion to approve the consent agenda as presented. Commissioner Appleman seconded that motion, and approval was by 5-0 vote.

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

A gentleman from the audience asked if it would help the affected individuals to get a realtor to assist while researching the carwash complaint. Mr. Varnell said that he would provide an opinion from a legal standpoint concerning the Town Code and exploring a remedy to the noise complaint.

#### **Response to Public Comment**

#### **Adjourn**

There being no further business before the Board of Commissioners at this time, Commissioner Rheubottom made a motion to adjourn, seconded by Commissioner Appleman. The motion carried, 5-0.

It was 7:06 p.m.

Submitted by:

*Harriet B. Banner*

Harriet B. Banner  
Deputy Town Clerk

These minutes were approved at the January 9, 2017 meeting of the Board of Commissioners.



*Sheila F. Davies*

Sheila F. Davies, PhD  
Mayor



## TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

MEMORANDUM

December 12, 2016

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager

REF: Old Business

**1. Second Vote – Proposed Amendment to Beach Nourishment Municipal Service District (Attached OB-1)**

A public hearing to reduce the Town's Beach Erosion Control and Flood and Hurricane Works Municipal Service District (MSD) and first required vote was held on November 14, 2016. The second vote is required at a consecutive meeting, and therefore must be held at tonight's meeting. Two separate votes must be taken on matters that affect the taxation of the public.

The vote will include the removal of thirteen properties from the MSD, all of which are within or adjacent to the southern-most 1,000 feet of the area and designated to receive lesser amounts of nourishing sand than other areas to the north. By consent judgment, 24 properties were removed as of July 1, 2016 from this southern section and the Town has identified these additional properties as being in like-kind.

The Board of Commissioners' second vote on the attached ordinance, *An Ordinance Reducing the Town of Kill Devil Hills, North Carolina Beach Erosion Control and Flood and Hurricane Works Municipal Service District*, including four exhibits: A – properties removed as a result of Consent Judgments; B – properties to be removed by adoption of the ordinance; C – map depiction of all properties; and D – map depiction of the revised MSD, will be appropriate, and motion would be in order.

**AN ORDINANCE REDUCING THE  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
BEACH EROSION CONTROL AND  
FLOOD AND HURRICANE WORKS MUNICIPAL SERVICE DISTRICT**

WHEREAS, Chapter 160A, Article 23 of the North Carolina General Statutes sets forth the rules and procedures with which municipalities within the State of North Carolina must comply in order to establish a municipal service district; and

WHEREAS, the statutes provide that the town may define a service district for the purpose of beach erosion control and flood and hurricane protection works; and

WHEREAS, in response to a need for action in order to protect structures of historic significance, maintain tax and economic base, protect town infrastructure including facilities for public recreational access the Board of Commissioners of the Town of Kill Devil Hills formally defined and adopted a municipal service district by resolution at the conclusion of a public hearing held during a regular meeting on Monday, April 13, 2015; and

WHEREAS, the beach erosion control and flood and hurricane protection works project, overall, entails dredging and placement of approximately 911,600 cubic yards of sand along 2.6 miles of Kill Devil Hills' northern beaches, with a tapering of the amount of sand to occur in the southern-most area approximately 1,000 feet ending just north of Prospect Avenue, commonly known as "The Taper" portion of the project; and

WHEREAS, owners, in legal actions, separately and together, of 24 (twenty-four) properties, which are identified in Exhibit A, hereby attached to and made a part of this ordinance, which are located within or adjacent to The Taper, disputed the need and the benefit associated with the sand to be placed on their properties; and

WHEREAS, in compromise settlement of the disputed claims, and directed by court order, those 24 properties were removed from the service district on the 2<sup>nd</sup> day of June 2016; and

WHEREAS, there remain 13 (thirteen) properties, for a total of 37 parcels lying on 30 pieces of land within the original approximately 1,000 feet of The Taper, which are identified in Exhibit B, hereby attached to and made a part of this ordinance; and

WHEREAS, the Board of Commissioners of the Town of Kill Devil Hills acknowledges that when the municipal service district was established properties within The Taper were designated to receive lesser amounts of nourishing sand than the properties within the district to the north, and outside of The Taper, yet were also to be taxed at the same rate as properties within the district receiving the full benefit of sand placement; and,

WHEREAS, in response to the removal of the 24 properties as shown on Exhibit A and in order to promote and preserve a uniform application of the tax associated with the heretofore named municipal service district, the Board of Commissioners of the Town of Kill Devil Hills has determined that it is necessary to remove the 13 properties as shown on Exhibit B from the initially established municipal service district; and,

WHEREAS, subsequent to the adoption of this ordinance, the 13 properties as shown on Exhibit B shall no longer be subject to the tax associated with the heretofore named municipal service district for the tax year 2017 and moving forward; and,

WHEREAS, the Town of Kill Devil Hills has taken all measures mandated by Chapter 160A-538.1, Article 23 of the North Carolina General Statutes as it relates to reducing service districts.

NOW THEREFORE, for this reason, and also in order to create one contiguous tract that includes all properties located within or adjacent to the original approximately 1,000 feet of The Taper in accordance with the findings stated above, and designated by Exhibits A and B and a map delineating the inclusive tract which is a total of 37 parcels lying on 30 properties identified as Exhibit C, hereby attached to and made a part of this ordinance, the Board of Commissioners hereby ordains and adopts:

AN ORDINANCE AMENDING THE TOWN OF  
KILL DEVIL HILLS, NORTH CAROLINA  
BEACH EROSION CONTROL AND FLOOD AND  
HURRICANE WORKS MUNICIPAL SERVICE DISTRICT

Table of Special Ordinances.

Table III. Beach Erosion Control and Flood and Hurricane Works Municipal Service District [Beach Nourishment] amendment.

Section One.

To amend the Town of Kill Devil Hills' Municipal Service District for the purpose and in the manner so stated above by removing 13 properties from The Taper, designated in Exhibit B; to adopt a map, Exhibit C, which represents and

Ordinance Amending the  
Beach Nourishment Municipal Service District  
November 14, 2016 and December 12, 2016

illustrates the total 37 parcels, 24 identified in Exhibit A (removed from the Municipal Service District previously by court order), and, 13 identified in Exhibit B (to be removed by adoption of this ordinance); and, to adopt a new map, Town of Kill Devil Hills Beach and Erosion Control and Flood and Hurricane Protection Works Municipal Service District Amended 2016, Exhibit D, which is hereby attached to and made a part of this ordinance.

This amendment to the Town of Kill Devil Hills Town Code shall be in full force and effect from and after the 12th day of December, 2016. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills by two separate votes at two consecutive public meetings held on the 14th day of November, 2016 by a vote of 5 in favor and 0 opposed; and, the 12th day of December, 2016 by a vote of 5 in favor and 0 opposed.



ATTEST:

Harriet B. Banner  
Harriet Banner, Deputy Town Clerk

APPROVED AS TO FORM:

[Signature]  
Casey C. Varnell, Town Attorney

Sheila F. Davies  
Sheila F. Davies, Ph.D.  
Mayor

The undersigned hereby certifies that the foregoing official ordinance designated AN ORDINANCE AMENDING THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA BEACH EROSION CONTROL AND FLOOD AND HURRICANE WORKS MUNICIPAL SERVICE DISTRICT was placed in the Kill Devil Hills Town Code Book on the 13<sup>th</sup> day of December, 2016 at 12:47p.m.

Harriet B. Banner  
Harriet Banner, Deputy Town Clerk

## EXHIBIT A

PIN	PARCEL	No.	UNIT No.	STREET	OWNER	Ownership	
988415645827	004050000	1315	N	VA DARE TRL	MORRISON FARM ASSOC LIMITED PARTNERSHIP	95%	NORTH
988415645827	004050000	1315	N	VA DARE TRL	MORRISON FARM ASSOC II LTD PARTNERSHIP	5%	
988415645772	004054001	1309	N	VA DARE TRL	MORRISON FARM ASSOC LIMITED PARTNERSHIP	95%	
988415645772	004054001	1309	N	VA DARE TRL	MORRISON FARM ASSOC II LTD PARTNERSHIP	5%	
988415645698	004054000	1305	N	VA DARE TRL	MORRISON FARM ASSOC LIMITED PARTNERSHIP	95%	
988415645698	004054000	1305	N	VA DARE TRL	MORRISON FARM ASSOC II LTD PARTNERSHIP	5%	
988415646556	004055000	1303	N	VA DARE TRL	MORRISON FARM ASSOC II LTD PARTNERSHIP	95%	
988415646556	004055000	1303	N	VA DARE TRL	MORRISON FARM ASSOC II LTD PARTNERSHIP	5%	
988415649477	004076000	1215		WINDSONG WAY	STEPHENSON, FAYE E.	100%	
988415740403	004077000	1213		WINDSONG WAY	TIME OUT 25, LLC	100%	
988415648304	004078000	1211		WINDSONG WAY	KOTCHEY, IRENE N CO-TRUSTEES & KENNETH C	100%	
988415648206	004057001	1203	N	VA DARE TRL	BUONTEMPO, RICHARD A & MARGARET M	100%	
988415648212	004057000	1201	N	VA DARE TRL	SEAGARD PROPERTIES, LLC	100%	
988415649035	003711000	1111	N	VA DARE TRL	LAMBODERA HOLDING	100%	
988415639968	003710000	1109	N	VA DARE TRL	6/5 DEFENSE, LLC & EURE FAMILY, LLC	100%	
988415639994	009156000	1105	N	VA DARE TRL	OH WELL LLC	100%	
988415730827	003709000	1103	N	VA DARE TRL	GASTON INVESTMENTS, INC	100%	
988415730851	003708000	1101	N	VA DARE TRL	RMW INVESTMENTS LLC	100%	
988415732739	008078000	1023C	N	VA DARE TRL	FOUR ROSES, LLC	100%	
988415730628	008077000	1023B	N	VA DARE TRL	JACKSON, GEORGE S & BLAIR F	100%	
988415639633	008076000	1023A	N	VA DARE TRL	TEMPLE, MARY LOU KIMBALL TRUSTEE	100%	
98841573165201	003707102	1019	102 N	VA DARE TRL	MOST, CHARLES J JR CO-TRUSTEES & TINA MARIE	100%	
98841573165202	003707103	1019	103 N	VA DARE TRL	BERTTULA, RAYMOND EUGENE & SCHADE, CYNTHIA B	100%	
98841573165203	003707100	1019	100 N	VA DARE TRL	HOBBS, LINDA A TRUSTEE of the LINDA HOBBS TURST U/A 9/17/04	100%	
98841573165205	003707300	1019	300 N	VA DARE TRL	HAMILTON, JENIFER A	100%	
98841573165206	003707101	1019	101 N	VA DARE TRL	BOHON, WILLIAM R SR & DONNA	100%	
98841573165207	003707201	1019	201 N	VA DARE TRL	CHESSMAN, RANDOLPH M & BETSY R	50%	
98841573165207	003707201	1019	201 N	VA DARE TRL	SARFIELD, DEREK R & AUDREY C	50%	
98841573165208	003707301	1019	301 N	VA DARE TRL	WOODSON, THOMAS L & PATRICIA M	100%	SOUTH

Spring 2016

Exhibit A

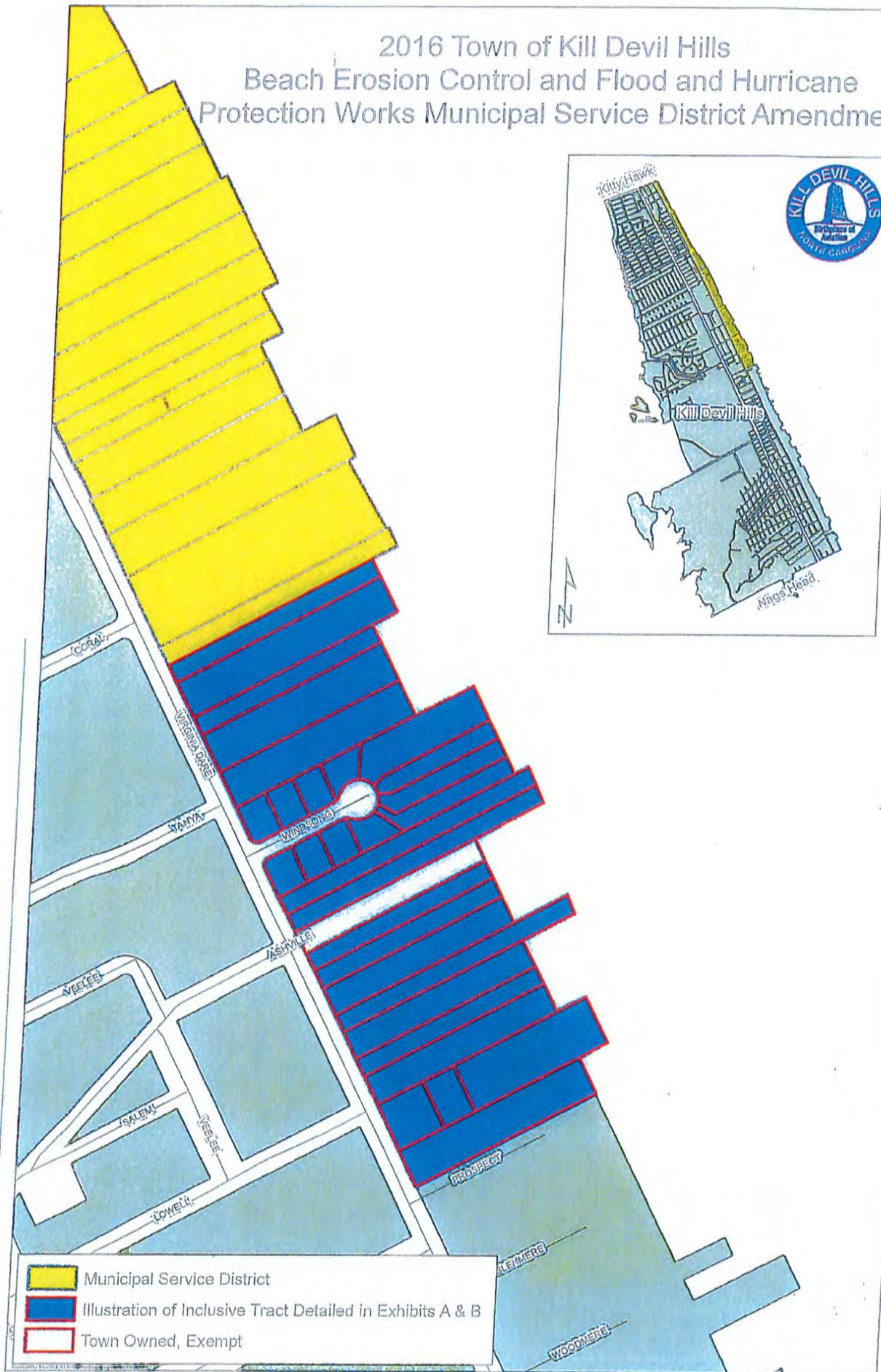
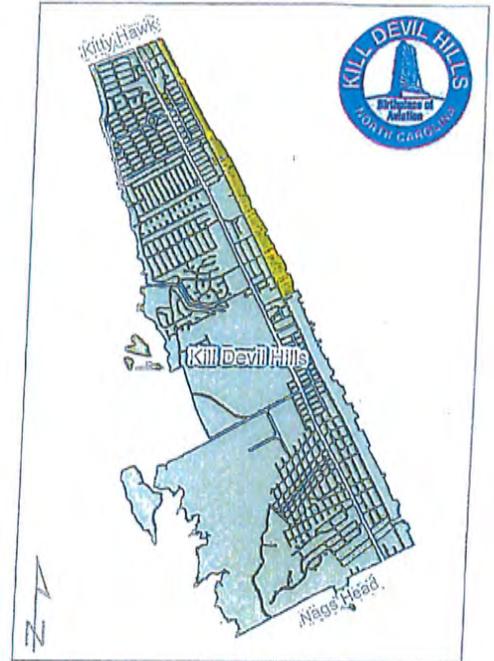
## EXHIBIT B

PIN	PARCEL	No.	UNIT No.	STREET	OWNER	Ownership
988415645861	004052000	1311	N	VA DARE TRL	BRADLEY, NANCY WEYL	100%
988415645317	004070000	1229		WINDSONG WAY	KING, TODD WHITE	100%
988415645481	004071000	1227		WINDSONG WAY	MCGINN, MICHAEL J & GAIL J	100%
988415646444	004072000	1225		WINDSONG WAY	FERGUSON, JANET ANDREWS	100%
988415647419	004073000	1223		WINDSONG WAY	WINTON, JOSEPH E & DOROTHY A	100%
988415649536	004074000	1219		WINDSONG WAY	KILL DEVIL HILLS, LLC	100%
988415649542	004075000	1217		WINDSONG WAY	JAMISON, BERNARD F TRUSTEES & STEIGER, JAMES G	100%
988415647321	004079000	1209		WINDSONG WAY	DREAM TIME OBX LLC	100%
988415646257	004080000	1207		WINDSONG WAY	BIRDSONG, WILLIAM MCLEMORE & ELIZABETH CARROLL	100%
988415645284	004081000	1205		WINDSONG WAY	WRIGHT, GARY & LINDA M	100%
988415648184	003712000	1115	N	VA DARE TRL	OMPG1, LLC	100%
988415648098	003711007	1113	N	VA DARE TRL	BIAANU OMMG LLC	100%
98841573165204	003707200	1019	200 N	VA DARE TRL	KELLY, MAUREEN T	100%

Fall 2016

Exhibit B

2016 Town of Kill Devil Hills  
 Beach Erosion Control and Flood and Hurricane  
 Protection Works Municipal Service District Amendment



- Municipal Service District
- Illustration of Inclusive Tract Detailed in Exhibits A & B
- Town Owned, Exempt

Exhibit C

