

Minutes of the Wednesday, February 20, 2019, 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, Nelson “Skip” Jones, Mike Hogan, and John Windley

Members Absent: None

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 Davies opened this meeting of the Kill Devil Hills Board of Commissioners and welcomed all present.

Pledge of Allegiance and Moment of Silence

Agenda Approval

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

Public Hearing

The Town Attorney presented instructions for the public hearing and called it to order.

1. Public Hearing

1. Requested amendment to Chapter 153, Zoning

A. Lake Drive Corporation (Joe Lamb) - § 153.082 (B)(2)(g) Exceptions – request to allow seven-foot high chain link fences on unimproved property in the Light Industrial One Zone (Attached PH-1A)

This public hearing was originally scheduled at the October 8, 2018 Board of Commissioners meeting. The proposed zoning amendment was submitted by Lake Drive

Corporation to permit chain link fences not to exceed seven feet high on unimproved property in the Light Industrial One Zone (LI-1).

The Planning Board reviewed the proposed amendment on October 2, 2018, and voted to forward it and its accompanying consistency statement, to the Board of Commissioners recommending denial, by a 4-1 vote. The proposed amendment was then tabled by the Board of Commissioners at its November 14, 2018, meeting and was rescheduled for further consideration at this February 20, 2019, public hearing.

The following spoke at the hearing:

Colleen Almoney, 900 Ninth Avenue, Kill Devil Hills – Ms. Almoney provided a written statement that she had previously emailed the Board, which has been included with the minutes. She stated her opposition to the proposed amendment, noting that there were no unimproved properties in the Light Industrial One Zone with a six-foot fence. She added that such a fence is not consistent with the area or the Town's Land Use Plan. She stated there are other fencing options available under the current ordinances that would achieve the same result.

Sue Kelly, 211 Sea Village Lane, Kill Devil Hills – Ms. Kelly shared her concern about the inclusion of barbed wire being permissible on the fence, noting that Kill Devil Hills was not a "barbed wire community" and the negative connotations of barbed wire.

Dan Hardy, representing the applicant Mr. Hardy stated that the proposal would be modified to a six-foot chain link fence without barbed wire if the Board of Commissioners agreed. He shared that the initial installation of the fencing on the unimproved lot without a permit was in error and was a miscommunication between the property owner and a contractor. Mr. Hardy stated that the existing fence is consistent with other fences within the zone and in character with the area. He referenced several other properties in the zone which had similar fencing. It is a completely industrial area, and the proposed amendment is limited only to the LI-1 Zone. In mitigating concerns about animals being trapped on the parcel, there is an unlocked gate planned on the east end of the property. He stated that the fence will not have detrimental impacts on the area.

With no further speakers, Mr. Varnell closed the public hearing.

Commissioner Gray stated he originally shared his support for the fence, noting that there are similar fences in the zone, including an unimproved property with a chain link fence. After examining the proposed ordinance, he recommended lot setback requirements similar to developed parcels.

Commissioner Jones inquired about the proposed allowable fence height. He stated that with the current language, a seven-foot fence would be permitted. He had initially understood it to be a seven-foot fence, including the barbed wire. He noted that by removing the barbed wire, per the applicant's recommendation, that would result in a six-foot chain link fence. The applicant concurred with the analysis.

Commissioner Windley supported the removal of the barbed wire, along with the decrease to the six-foot fence height and improved property setbacks.

Commissioner Hogan referenced the Fresh Pond property fence, which is a federal requirement to protect a water source. He had spoken with the Planning Department Staff, which considered the option of a four-foot chain link fence congruent with the split rail or post and rope fence currently permitted. He stated that had the developer had applied for a permit to erect the fence, this situation would not have developed. The applicant should not get an advantage by beginning the process this way. There are alternatives in addressing any issues with the property, including trash and junked vehicles. He supported a four-foot chain link fence for unimproved properties in this zone.

Mayor Davies stated she was on the Board when the fencing on unimproved properties was established in the Town. A four-foot chain link fence would be a reasonable change and would accomplish the same goal, halting trespassing and garbage. It would be consistent with the Land Use Plan and existing fencing options.

Commissioner Jones inquired whether the Fire, Police and other Town departments had a distinguishable issue between a four-foot and a six-foot fence. Planning Director Meredith Guns stated there was no height limit on fences on improved properties. She stated the original intent was to delineate property lines on unimproved property with a four-foot fence, either post and rope or split rail. Commissioner Windley inquired whether the applicant would approve a four-foot chain link fence, but the applicant objected. Mr. Hardy stated that a six-foot chain link fence with no barbed wire and perimeter landscape buffer requirements would be acceptable.

Commissioner Hogan stated that if approved, it could lead to exceptions in other zones, like the Light Industrial Two Zone. Commissioner Jones inquired about the status of a fence if the combined parcels were divided. Mr. Varnell stated that fencing would need to be removed unless the lots were combined into one lot through public recordation or through legal agreement. Ms. Guns stated that if a parcel was divided into smaller lots, any structures like fencing would need to be removed prior to dividing lots as the fences could not be contiguous and cross property lines. Mayor Davies expressed concerns about future implications if the amendment is approved. She suggested that if this were approved, someone purchasing an unimproved property with a chain link fence with the intention of developing it would be required to remove the fence prior to any development. She noted there is a more substantive investment in installing or removing a chain link fence than the currently permitted split rail or post and rope fence.

Commissioner Hogan inquired what options were available to the Board. Mr. Varnell stated the Board could approve, deny, or suggest alterations if the applicant agrees. Since the Planning Board originally denied the proposed amendment, any change to the amendment would return to the Planning Board, even if the applicant agrees. Mr. Varnell stated that if the Board denied the request, it could direct that a second amendment be developed under Board guidance. The applicant could then apply for a permit if it met the terms of the amendment.

Commissioner Windley moved to allow the applicant to resubmit the amendment request, to include specific direction from the Board of Commissioners, as follows:

- Six-foot fence height, with no barbed wire.
- Fence shall comply with perimeter landscape buffer requirements.

Commissioner Gray provided a second, and the motion passed by a 3-2 vote, with Mayor Davies and Commissioner Hogan voting against. Mayor Davies asked Staff to assist the applicant with the correct language for the amendment.

Public Comment

Susan Merrill, representing the Dare County League of Women Voters – Ms. Merrill presented the League of Women Voters of Dare County 2019 Citizens Guide to the Board. She noted that 7,000 copies of the guide have been printed in both English and Spanish. She thanked the Town for its annual partnership amount, which helps to get these guides printed.

Willo Kelly, CEO of Outer Banks Association of Realtors – Ms. Kelly highlighted her recent League of Women Voters presentation about the proposed homeowners insurance increase filing by the N.C. Rate Bureau. If approved, it would lead to a 30% rate increase for area homeowners. She encouraged all Kill Devil Hills property owners to email the N.C. Department of Insurance at 2018homeowners@ncdoi.gov by the February 27, 2019, public comment deadline, requesting denial by the N.C. Insurance Commissioner. She also encouraged the Board to adopt a resolution against the proposed insurance rate increase.

Response to Public Comment

Mayor Davies thanked Ms. Merrill and expressed appreciation to the League of Women Voters of Dare County for the 2019 Citizens Guides. She also thanked Ms. Kelly for her remarks about the proposed increase, and noted the Board would be considering a resolution opposing the insurance rate increase at this meeting.

Introductions and Presentations

1. Ken Willson – APTIM Coastal Planning & Engineering of NC - 2018 Beach Nourishment Annual Monitoring Report (Attached IP-1)

Ken Willson, APTIM Coastal Planning & Engineering, presented an update on the beach nourishment and monitoring analysis. He highlighted the 2018 annual beach profile survey results, which monitored the beach nourishment project and reported on sand loss/gain. His presentation has been included with the meeting materials.

Mr. Willson reported that the project performed very well and the state of the beach was strong. Following the Town's 2017 beach nourishment project, annual monitoring analysis is conducted to assess the project results. He provided analysis of beach profile surveys, indicating how much volume was added in the nourishment program. In addition, a shore parallel survey was conducted in October 2018. Additional surveys planned for 2019 will assist in determining renourishment timelines.

2. Tim Sweeney, Dean of Dare Campus, College of The Albemarle and Jed Dixon, Deputy Director, North Carolina Ferry Division – presentation on Dual Enrollment and Workforce Development programs offered through COA Dare Campus

Dean Tim Sweeney, College of The Albemarle (COA) – Dare Campus and Jed Dixon, Deputy Director, North Carolina Ferry Division, presented on the Dual Enrollment opportunities for area high school students, along with certification pathways in Workforce Development Programs that can be obtained through COA's Dare Campus in Manteo. His PowerPoint presentation has been included with the meeting materials. Dean Sweeney stated that 246 Dare County students are enrolled in dual enrollment programs, which provide college course credit to area high school students. Mr. Dixon presented an overview of the COA welding technology course, which places students into internships with the N.C. Ferry Division.

Old Business

New Business

1. Shoreline Access – Permanent Restroom Facilities Feasibility (Attached NB-1)

At the January 14, 2019, meeting, Staff was asked to provide the Board with an inventory of facilities at the Town's beach accesses, and to continue its research on providing permanent restrooms. Individual research came together in a team approach, which was summarized in Ms. Guns' memorandum, and has been included with the meeting materials.

Ms. Díaz stated Staff was in agreement with a long-term approach that will result in a more comprehensive study of the accesses to determine the most appropriate site(s) for new facilities. Continual funding of the Shoreline Access Capital Reserve Fund will minimize use of the undesignated fund balance, and a long-term approach will allow Kill Devil Hills to apply for grant funding to offset the costs of an improvement project. Staff recommended the Board of Commissioners move this matter forward as follows:

- Update the Shoreline Access Plan, in-house
 - Update existing accesses and features to the Board of Commissioners in March/April;
 - Staff will identify accesses that may be able to accommodate permanent restroom facilities with little to no loss of parking;
 - Board of Commissioners to prioritize the accesses for improvement in April/May
 - Present final plan to the Board in May.
- Board of Commissioners begin funding the Shoreline Access Capital Reserve Fund in the 2019/2020 Fiscal Year budget, and continue annual funding.

Commissioner Gray liked the fact that there was the consideration of parking balanced with facility upgrades with the plan. Through consensus, the Board directed Staff to follow the recommendations as presented.

2. Boards and committees vacancies (Attached NB-2)

Two vacancies were created when Commissioner Jones resigned from the Planning Board and Community Appearance Commission after his appointment to the Board of Commissioners.

All applications on file from persons interested in serving in either capacity have previously been copied to the Board. Sandie Markland's and Natalie Painter's appointments histories were provided.

A. Planning Board

Commissioner Windley moved to appoint Mark Evans to the Planning Board, for the remainder of a three-year term that will expire in February 2020. Commissioner Jones seconded the motion, which passed by a unanimous, 5-0 vote.

B. Community Appearance Commission

Commissioner Windley moved to appoint Mark Evans to the Community Appearance Commission, for the remainder of a three-year term that will expire in October 2021. Following a discussion about potential appointments to the Planning Board, he withdrew his motion.

Commissioner Gray moved to appoint Billy Dorn to the Community Appearance Commission, for the remainder of a three-year term that will expire in October 2021. Commissioner Jones seconded the motion, which passed by a unanimous, 5-0 vote.

Commissioner Jones inquired about the addition of a Planning Board alternate position, noting that having a knowledgeable person available could assist the group. Mayor Davies stated the Planning Board used to have alternate members, but only had five total members. The ordinance was changed, resulting in a seven member Planning Board and eliminated the alternate positions. She stated that it was a lot to ask an alternate to be ready and attend every meeting, with only the possibility that they may be needed. With a seven member board, there is a continuity of membership. Commissioner Gray inquired about the funding aspect. Ms. Díaz stated that funding could be included in a budget. Through consensus, the Board directed alternate Planning Board membership to be discussed at the March 11, 2019, meeting.

3. Subscription type residential curbside recycling rate increase and extension request (Attached NB-3)

Ms. Díaz provided an overview of the franchise extension, and noted that Public Services Director Steve Albright's accompanying memorandum provided a history of the Town's relationship with Bay Disposal as its franchisee for the subscription-type curbside recycling

service which is available to our citizens. The existing agreement provides for two, five-year extensions of the agreement subject to approval by all parties. Bay Disposal submitted its request in writing to extend the franchise agreement for the first five-year period, which will begin in 2019, with a proposed rate increase, and a language adjustment.

There has been no rate increase in the service since 2011, at which time residential rates increased from \$7.45 to \$7.82. The new rate, effective 2019, will be \$12.45 per cart, per month. Bay Disposal outlined a number of factors affecting the rate, including: lower costs for marketing recovered materials; higher industry requirements for recovered materials; a change in the company's infrastructure; and the sale of Bay Disposal to Waste Connections in early 2018.

Staff recommended the Board of Commissioners continue the subscription type residential curbside recycling program with Bay Disposal, with:

- Extension of the initial term of the franchise agreement for an additional five years, with a second five-year extension available for negotiation in 2024;
- Approval of the rate increase to \$12.45 per cart, per month;
- Approve minor modifications to the franchise agreement relating to purchase of Bay Disposal by Waste Connections, which have been approved by the Town Attorney.

Commissioner Hogan moved to continue the subscription type resident curbside recycling program with Bay Disposal, with the Staff recommendations, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0 vote.

Committee Reports

Trash Attack! Meeting Commissioner Gray recently attended the Trash Attack! meeting, and reported that this year's event would be held Saturday, April 6, 2019, at Aviation Park, from 9:00 a.m. to 1:00 p.m.

Stormwater Meeting Commissioner Gray shared that Mayor Davies had set up a meeting with other local mayors to identify stormwater issues throughout the area and determine whether multiple governments and agency coordination could more effectively address them. He stated the next meeting is March 14, 2019, at 8:30 a.m. and that Town Staff will be available for that meeting. The group will stress its continued partnership with the N.C. Department of Transportation. Mayor Davies added that the local governments would examine the commonality of issues, and prioritize a listing of potential projects.

Community Watch Commissioner Gray noted the next Community Watch meeting would be at 6:30 p.m. on February 21, 2019, at Town Hall. Commissioner Windley participated in the group's recent community walkabout on February 11, 2019. He estimated that 40 – 50 houses were visited, and noted that people were pleasantly surprised and the reception was good. The next walkabout is scheduled for Saturday, February 23.

Commissioner Windley highlighted multiple upcoming meetings of various boards and committees, with opportunities for the public to get involved.

Commissioners' Agenda

Commissioner Gray

Recreational Facilities Commissioner Gray stated he and Town Clerk Mary Quidley were compiling an inventory of Town recreational facilities with recommendations, which will be presented at an upcoming meeting. He also took a tour of the Disc Golf Course with Town Staff. Commissioner Gray recommended that any liability issues be examined as part of any recreational facilities plan.

Commissioner Jones

Inaccessible Lots on Paper Roads Commissioner Jones said the Town should consider developing a plan to address unimproved lots on paper streets that cannot be currently accessed and developed. Although not an immediate issue, it would be a good idea. Commissioner Windley concurred, and noted it was an issue to address in the future.

Commissioner Hogan

Town Beach Access Parking Commissioner Hogan stated that on a recent trip to Florida, he saw that public parking at beach accesses is typically \$5.00 per hour. He stated that he really appreciated the free parking and access at the Town's beaches.

Members of the Board noted the recent television news segment that highlighted the service of Police Sergeant Rodney Rawls, who also serves as a firefighter and also with Dare County E.M.S. They expressed their appreciation to Sgt. Rawls for his service to the Town and said he was an example of the many dedicated staff members in Kill Devil Hills.

Mayor's Agenda

1. Proclamation – March 2019 as Multiple Sclerosis Awareness Month in Kill Devil Hills (Attached MA-1)

Mayor Davies said this proclamation calls for increased awareness of multiple sclerosis, an immune-mediated disorder which affects the central nervous system in over two million people globally.

Commissioner Hogan moved to adopt the proclamation marking March 2019 as Multiple Sclerosis Awareness Month in Kill Devil Hills. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0 vote.

2. Resolution – Expressing Support of Continued Funding for the North Carolina Active Routes to School Program (Attached MA-2)

She noted the resolution expresses support for the Active Routes to School program and continued funding for the project partnership between the N.C. Department of Transportation and the N.C. Division of Public Health.

Commissioner Gray moved to adopt the resolution Expressing Support of Continued Funding for the North Carolina Active Routes to School Program. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0 vote.

3. Resolution – Opposing the Proposed Increase for Homeowners Insurance (Attached MA-3)

A recent proposal by the N.C. Rate Bureau recommended a homeowners' insurance increase that could unfairly target coastal communities with rate adjustments of 25% - 30% to the N.C. Department of Insurance.

Mayor Davies moved to adopt a Resolution Opposing the Proposed Increase for Homeowners Insurance. Commissioner Hogan seconded the motion, which was approved by a unanimous, 5-0 vote. She encouraged the public to contact the N.C. Department of Insurance to share opposition to the proposed increase.

Mayor Davies also shared the following information:

Offshore Drilling Opposition Mayor Davies noted that a Surfrider Foundation meeting was being held this evening to highlight opposition to offshore drilling. Mayor Davies will be traveling to Washington, D.C., on February 28, 2019, to meet with federal officials and departments about continued opposition to seismic testing and offshore oil drilling. The event is part of the national Surfrider Foundation advocacy program.

Beach Nourishment Dare County and local municipal government representatives will meet on February 27, 2019, for preliminary discussions on beach nourishment.

Congratulations Mayor Davies congratulated the Finance Department's Margaret Clark and retired Deputy Fire Chief Craig Clark, who have become grandparents a second time. Calvin William King was born on February 17, 2019. He joins his cousin Aydan Javier Gomez-Clark, recently born on December 4, 2018. She also congratulated KDH Firefighter Devin Clark, who is a doting uncle to both.

She also congratulated Firefighter Sammy Barnes and his wife, Ariana, on the birth of Navah Neal Barnes, who was born on February 11, 2019.

Intern Mayor Davies introduced and welcomed Natalia Madison, a senior at First Flight High School, who is serving in an internship with the Town this spring.

Trash Attack! Poster Contest She reminded everyone that the Trash Attack! poster contest is open to all Dare County K-12 students and the deadline to submit them is Monday, March 18, 2019, at 4:00 p.m.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. January 14, 2019

2. Monthly Report (Attached CA-2A)

A. December 2018

3. Record consensus approval of the following resolutions

A. A Resolution Requesting Herbert C. Bonner be Retained as the Name of the Remaining Portions of the First Bridge Across Oregon Inlet

B. A Resolution Recommending the Replacement for the Herbert C. Bonner Bridge be Named in Honor of Marc Basnight

4. Budget amendments

A. #16 – to recognize contributions for disc golf received in January 2019 and a donation for the disc golf grand opening

B. #17 – to provide funds from the sale of brass to replace Water Plant generator fuel tank

5. Schedule public hearing – conditional use site plan – Outer Banks Brewing Station – Outdoor Dining Activity Area and Associated Site Improvements (Attached CA-5)

At its January 15, 2019 meeting, the Planning Board reviewed this conditional use site plan for an outdoor dining activity area, and addition which includes an open air bar, restroom, and storage. At the conclusion of its review, the Planning Board voted to forward it to the Board of Commissioners with a favorable recommendation. Approval of the Consent Agenda will schedule the public hearing on Monday, March 11, 2019 at 5:30 p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive.

6. Recommendation for 2018/2019 lease purchase agreement (Attached CA-6)

The Finance Department has researched available interest rates for the lease/purchase of equipment and vehicles. The total amount to be financed is \$828,480.87. PNC submitted the lowest overall financing cost:

- \$828,480.87 at an annual interest rate not to exceed 2.81%; to be paid in eight semiannual payments.

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

Ms. Díaz presented the Consent Agenda and recommended approval as presented. Commissioner Windley moved to approve the Consent Agenda. Commissioner Gray provided a second, and the motion passed with a unanimous, 5-0 vote.

Public Comment

Response to Public Comment

Adjournment

There being no further business appearing before the Board of Commissioners at this time, Commissioner Gray moved to adjourn the meeting. Commissioner Windley seconded the motion and approval was by a unanimous, 5-0 vote. It was 8:30 p.m.

Submitted by:

James Michael O'Dell
Deputy Town Clerk