

**Minutes of the Monday, May 13, 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, Ph.D.; Commissioners Terry Gray; Mike Hogan; Skip Jones; and John Windley

**Members Absent:** None

**Others Present:** Shawn Murphy, Assistant Town Manager; Meredith Guns, Planning Director; Casey Varnell, Town Attorney; Mary E. Quidley, Town Clerk

**Call to Order**

At 5:34 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 Jones, seconded by Commissioner Windley, the agenda for this meeting was approved as presented by unanimous vote, 5-0.

**Public Hearings**

**1. Public Hearings**

These items were scheduled for public hearing at this meeting by the Board of Commissioners at their April 24, 2019 meeting. Both amendments were reviewed by the Planning Board at their April 6, 2019 meeting, at which time they each were voted to be favorably recommended for public hearing.

Town Attorney Casey Varnell read aloud the rules of procedure that apply to each public hearing. At the conclusion, he proceeded to call the first public hearing to order.

- A. Proposed amendment to Chapter 153, Zoning - §153.080 Electrical and Communication Services – clarify *communication services* (Attached PH-1A)**

This proposed amendment to the Zoning Ordinance updates existing language by removing *telephone* and replacing that outdated term with *communication services*, which includes all types of communication – telephone, cell phone, and/or other devices.

There were no speakers for the public hearing and the public hearing was closed.

Commissioner Hogan made a motion for the Board of Commissioners to approve this amendment to Chapter 153, Zoning, and that the Board of Commissioners finds that the amendment to §153.080 Electrical and Communication Services – to clarify *communication services* is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it updates language to the current language used by communications services. Commissioner Windley seconded that motion and approval was unanimous, 5-0.

- **Small Wireless Facilities (5G):** In a related matter, Staff and the Town Attorney recently met to discuss applications for installation of small wireless (market term: 5G) towers and facilities in Kill Devil Hills on state roads and municipal streets rights of way. The purpose of these discussions was to determine Kill Devil Hills' authority, if any, to regulate 5G wireless facilities, which are typically collocated on existing electrical poles. Mr. Varnell prepared an opinion statement in April, which was previously provided to the Board of Commissioners; it is attached to the public hearing materials for PH-1A. Based on his findings, the Town has little control over the small wireless facilities and Mr. Varnell will specifically address the limitations of control if the Board desires and identify what little flexibility North Carolina municipalities may have in regulating wireless communications facilities.

The Board of Commissioners heard from the Town Attorney regarding the above issue pertaining to the smaller, 5G wireless communications facilities. The Town's options are limited in regulating such communications equipment.

**B. Proposed amendment to Chapter 153, Zoning - §153.075(C) Telecommunication Towers – Use Guidelines and Dimensional Requirements – to modify setbacks for *Monopole Towers* (Attached PH-1B)**

The second public hearing was called to order.

This proposed amendment also updates existing language and regulation in the Zoning Ordinance as it pertains to telecommunications towers, including the monopole tower the Town is constructing, which, when completed, will become the site of the communications arrays currently located on the existing elevated water tank; the new elevated tank will not have antennae on top of it.

The amendment provides greater incentives for co-location of services on a tower, and the use of a monopole; modifies the failure or collapse zone to include no building or structures and that it be certified by a NC-licensed design professional; and, the setbacks are modified to agree with the fall zone requirements, also certified by a NC-licensed design professional.

The modifications are consistent with current tower practices and will protect surrounding structures and properties in the event a tower were to fail.

There were also no speakers for this hearing and it was closed.

Commissioner Windley made a motion that the Board of Commissioners approve this amendment to Chapter 153, Zoning, and that the Board of Commissioners finds that the amendment to §153.075(C) Telecommunication Towers – Use Guidelines and Dimensional Requirements – to modify setbacks for *Monopole Towers* is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it provides incentives for co-location of services on a tower and the use of a monopole, and is modified to agree with fall-zone requirements. Commissioner Gray seconded that motion and approval was unanimous, 5-0.

### **Public Comment**

**Colleen Almoney, 900 Ninth Avenue, Kill Devil Hills:** Ms. Almoney is the coordinator for Kill Devil Hills' Neighborhood Watch Group, which, she explained, is continuing with its plan to reach out to the community to explain the concept, find volunteer members, and to describe how people can help and participate. The neighborhoods behind Food Lion have almost completely been visited. At the next meeting, Chris Turner of North Carolina's Wildlife Division will make a presentation on coyotes and answer questions from the audience.

**Sue Kelly, 211 Sea Village Lane, Kill Devil Hills:** The next meeting of the Community Appearance Commission is Thursday, May 23, 2019 at 8:30 a.m. Ms. Kelly chairs the CAC..

Ms. Kelly also thanked the Town for the new video on cigarette butts, which featured members of the CAC's Kick Butt Subcommittee and others.

### **Response to Public Comment**

### **Introductions and Presentations**

### **Old Business**

#### **1. Chapter 111: Special Events – Charitable Events (Attached OB-1)**

Planning Director Meredith Guns presented the Board with a memorandum that included recommendations for accommodating special events itinerant vendors based on discussions from the April 9, 2019 Board meeting. The proposed amendments to Chapter 111:

- Allow businesses to use 10% of the required parking for a special event while remaining open for regular business;
- Allow businesses to have outdoor sales, selling their own merchandise, (much like yard sales), with Town approval during other community events (bike week, car shows,

marathons, etc.). Allow use of 10% of the required parking, for businesses that meet parking requirements of the Town Code, without disruption to regular business hours. This could be charitable or non-charitable. Limit a business location to four times per year (currently the adopted language), no more than five consecutive days (the current language is three consecutive days); and,

- Modify the application and instructions for simplicity; adding “if applicable” to each line item.

These recommendations would not allow non-charitable events except as approved by the Board of Commissioners. Itinerant vendors are not generally allowed in Kill Devil Hills; however, they are sanctioned under the umbrella of a permit-issued special event of which they are a part. Ms. Guns explained that the Town’s regulations on itinerant vendors and peddlers have always protected permanent businesses.

The final recommendation in Ms. Guns’ memorandum pertained to itinerant vendors – food trucks, t-shirt sales, hot dog stands, etc. - outside of an approved event. No provision has been made for these types of independent business ventures and if the Board of Commissioners wanted to address them, Staff recommended a new chapter of the Town Code be developed. The Planning Department also prepared summaries of special events held in KDH in 2018, and to-date in 2019. Ms. Guns stated that in the past three years Staff could not identify a charitable event application for which approval had been denied; a charitable special event is one in which a portion or all of the revenues raised are donated to an official 501(C) charity. The Planning Department, she stated, is committed to helping applicants figure out how an event may be permitted.

Commissioner Windley asked if the proposed 10% parking allowance, and four sales events per year limitation, could be flexible during off-season months. He pointed out that business owners were in better positions to know what their specific site/business could accommodate, and what their business wanted or needed, than the Town.

Commissioner Jones spoke to a member of the audience who owns/operates a business establishment in Kill Devil Hills and asked if the proposed language would benefit his business, which has twelve parking spaces. It was clarified that establishments with noncompliant parking would need to be reviewed to see what, if any, adjustments could be made to accommodate an outdoor sale.

Another point of conversation was, events that could be approved by Staff at the administrative level, and recommended types of events for which approval should remain with the Board of Commissioners. It was explained that small, pop-up events, such as a tent taking up a parking space for itinerant sales purposes, would be an event proposed for Staff approval. Large, non-charitable, events, with potential to affect the Town’s business community, would be the type of event proposed for Board approval as there would be a benefit to publicly considering and discussing such an event.

Commissioner Gray also explained that, for him, if a restaurant or business desires to obtain a permit for a special event, whether or not an event is charitable or non-charitable is not of real concern; the property owner making the application is going to approve what goes into their parking lot. Also, he agreed with the 5-day length of time limitation per event, but questioned the need to

limit the number of times (four) per year for commercial, pop-up events. Commissioner Gray agreed with the second bullet, above.

It was pointed out that four commercial, pop-up events would actually be in addition to an unlimited number of charitable special events that might be held in conjunction with an established business, or as part of a larger, multi-location, more involved event. For example, the SPCA may hold four events in Kill Devil Hills, the Outer Banks Hotline may hold four events, the Interfaith Community Outreach could also do four, and each business in Town could also hold four pop-up events.

At the conclusion of their review and consideration, the Board of Commissioners generally agreed that the proposals submitted by the Planning Director were satisfactory and a good start to accommodating the desires of the Town's business community. Staff pointed out that a charitable organization could have up to four pop-up-type events per year, however businesses were not limited in the number of charitable events that could be held at their establishment. Additionally, a business could sell their own merchandise with approval from Staff four times a year (charitable requirements exempted) similar to the residential yard sale.

Staff will return in June 2019 with a new ordinance for Board consideration.

## **New Business**

### **1. Site plan review**

#### **A. First Flight Hotel, LLC – proposed oceanfront amenity area – 2029 South Virginia Dare Trail (Attached NB-1A)**

First Flight Hotel has submitted a revised site plan for its oceanfront property that will include a swimming pool with snack bar and covered deck, pool storage, restrooms, elevated dune decks, beach walkover, and associated site improvements at 2029 South Virginia Dare Trail. The original site plan for this parcel was considered and approved by the Board of Commissioners on November 14<sup>th</sup>. Engineer Mike Robinson represented the developer.

At their April 16<sup>th</sup> meeting the Planning Board voted to approve this site plan with several conditions, of which most have been addressed. The following condition remains:

1. Lighting: all sides of the east building, including covered deck and snack bar, shall be lighted on all sides for security purposes.

Staff recommended approval of this site plan for the First Flight Hotel, LLC, with the condition stated above to be met prior to permitting.

Commissioner Jones pointed out that the site plan that was originally approved for the hotel; however, the balconies have since been removed. He was concerned about what other things might be approved, perhaps with this request, that may end up being removed without further review by the Planning Board/Board of Commissioners.

Ms. Guns explained that the balconies had actually been on the site plan when it was originally presented to the Planning Board. By the time the site plan was presented to the Board of Commissioners, the balconies had been removed; they were a feature not required for site plan approval and it was within the developer’s discretion to remove them as doing so did not affect the footprint of the structure.

Commissioner Hogan made a motion for the Board of Commissioners to approve the site plan amendment for the *First Flight Hotel, LLC – proposed oceanfront amenity area – 2029 South Virginia Dare Trail* as presented, with the inclusion of the condition recommended by the Planning Board, which is stated above. Commissioner Windley seconded that motion and approval was unanimous, 5-0.

**2. Boards and committees vacancy**

**A. Board of Adjustment (Attached NB-2A)**

Commissioner Hogan made a motion for the Board of Commissioners to appoint Jason Self to the regular position on the Board of Adjustment for the remainder of the three-year term, which will expire in October 2019. Commissioner Windley seconded that motion and approval was unanimous, 5-0. Mr. Self currently fills the alternate position on the Board of Adjustment.

To fill the alternate position vacancy left by Mr. Self’s appointment, Commissioner Jones made a motion for the Board of Commissioners to appoint Dillon Heikens to fill the unexpired term as an alternate on the Board of Adjustment, which also expires in October 2019. Commissioner Hogan seconded that motion and approval was unanimous, 5-0.

Name	Appointment History
Self, Jason	<p><b>Zoning Board of Adjustment</b>– Appointed in December 2016 as an Alternate Member for a three-year term that expires in October 2019.</p> <p><b>Historic Landmarks Commission</b> – Appointed in April 2005 and reappointed in August 2006 for a three-year term that concluded in August 2009.</p>

**3. Selection of procedure to move forward with establishing the west-side recreation committee (Attached NB-3)**

At the April 24<sup>th</sup> meeting the Board of Commissioners agreed to establish an ad hoc committee for the purpose of reviewing existing recreational sites located west of US 158/Croatan Highway. The review would include submitting general and site-specific recommendations on a variety of issues, such as best-use strategies, alternative promotion/commercial marketing, identifying infrastructure needs, and potential public/private partnerships. The committee would also be identifying, discussing and making recommendations on policy issues pertaining to recreation facilities.

A draft application, scope of purpose for what Staff called the West-side Recreation Group (WRG), and a draft set of rules of procedure, which were modeled after the Baum Tract Site Study Committee, but tweaked to cover unique features of the purpose of the WRG, were included in the packet materials.

- The size of the committee (5, 7, 9 – an odd number of voting members prevents tie situations) needs to be determined, and whether or not the group will be chaired by someone selected by WRG from its own membership, or if some other person will be the chair, perhaps a member of the Board of Commissioners.
- Direct Staff to advertise and publicize establishment of this committee, with all applications to be submitted to the Board of Commissioners by Friday, June 14, 2019 for potential action at the July meeting, or some other dates to be selected by the Board.
- Selection process
  - Each Board member could be responsible for nominating one candidate to the WRG, and the committee could be established by one vote by naming its formation with those five members.
  - All applications could be placed up for consideration and discussed until five members have been agreed and acted upon either by individual or group vote.
  - Another alternative might be to forego the application process and have each Board member name someone to the WRG at a future meeting, with action taken to establish the committee at that time.

The Board generally leaned toward a 7-member group; however, they desired to review the applications prior to deciding on the number of members that would be in the group. The Board will determine the selection process at the time applications are presented for appointment. Staff was directed to proceed with advertising for applicants and to schedule this matter at such time that it appeared the application process was complete.

#### **4. Presentation of Town Manager's Recommended Budget Fiscal Year 2019/2020**

Mayor Davies made a motion for the Board of Commissioners to hold a budget worksession on Monday, May 20, 2019 at 8:30 a.m., and the required public hearing on the Town Manager's Recommended Budget for Fiscal Year 2019/2020 on Monday June 10, 2019 at 5:30 p.m., both of which will be held in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road. Commissioner Gray seconded that motion, and approval was unanimous, 5-0.

#### **Committee Reports**

#### **Commissioners Agenda**

### Commissioner Jones

Commissioner Jones discussed the new Water Oak Subdivision and how concerning it is that there is a great deal of misinformation being discussed about the development. He wondered if there is anything that can be done to correct this. He had suggested to those that spoke to him that they come to meetings of the Board of Commissioners and make themselves heard, that they get involved. Involvement combats misinformation and ignorance.

### Commissioner Windley

Commissioner Windley expressed pleasure at all the positive comments being made about the Town of Kill Devil Hills on Facebook. In particular, the Ocean Bay Boulevard bathhouse has been a big source of positive comments.

He also spoke about the Nags Head Woods 5K Run and what a great success it was. A whole bus load of students came to run the race from Ocracoke.

### Commissioner Hogan

Commissioner Hogan commented on the great program conducted this morning to dedicate the fully accessible improvements at the Ocean Bay Boulevard Bathhouse in honor of former Commissioner Bill Pitt.

### **Mayor's Agenda**

#### **1. Resolutions and proclamations**

##### **A. Peace Officer Memorial Day May 15, 2019 and National Police Week May 12-18, 2019 (Attached MA-1A)**

The idea of a Peace Officers Memorial Day was born on October 1, 1961, when Congress asked the president to designate May 15 to honor law enforcement officers. President John F. Kennedy signed the bill into law on October 1, 1962. Designating May 15 as Peace Officers Memorial Day and the corresponding calendar week of each year as Police Week is a practice that has continued ever since.

According to Concerns of Police Survivors (COPS), about 140-160 officers are killed in the line of duty each year and their families and co-workers are left to cope with tragic losses. Calling on our citizens to observe Peace Officers Memorial Day and Police Week helps increase awareness of the important, vital roles law enforcement fills in our society.

Mayor Davies made a motion for the Board of Commissioners to adopt the proclamation for *National Police Week May 12-18, 2019 and Police Officer Memorial Day May 15, 2019* and the motion was seconded by Commissioner Gray. Approval was unanimous, 5-0.

## 2. Meeting schedule change

There will be a runoff in the Republican primary to succeed the late US Representative Walter Jones, Jr. The Dare County Board of Elections will need the use of our Meeting Room on Tuesday, July 9, 2019 for the runoff election, which necessitates a date change for the July meeting of the Board of Commissioners.

Mayor Davies made a motion for the Board of Commissioners to hold its only regular meeting in July on Wednesday, July 10, 2019 at 5:30 p.m. Commissioner Gray seconded that motion and approval was unanimous, 5-0.

### Town Manager's Agenda

### Town Attorney's Agenda

### Consent Agenda

#### 1. Minutes

- A. April 24, 2019 Board of Commissioners meeting (Attached CA-1A)

#### 2. Monthly report

- A. March 2019

#### 3. Sponsorship agreement for in-kind donations at the disc golf course

- A. Daryl Davies

This agreement is for construction and sponsorship of a bench at the disc golf course at a value of \$500.

Approval of the Consent Agenda recorded the terms of this in-kind services agreement.

Staff recommended approval of the Consent Agenda as presented.

Commissioner Gray made a motion to approve the Consent Agenda as presented and Commissioner Windley seconded that motion and approval was unanimous, 5-0.

### Public Comment

**Colleen Almoney, 900 Ninth Avenue, Kill Devil Hills:** Regarding continued negative comments about the Water Oak Subdivision, Ms. Almoney suggested the Board of Commissioners “go to” those property owners around the new subdivision, and, those who are making the comments, and work with them to help them understand, to find out what the real issues are, etc.

## Response to Public Comment

Mayor Davies thanked Ms. Almoney for her suggestion, and she pointed out that a big difference in going to the citizens with concerns about the Water Oak Subdivision and the Lowe's store development of some years ago, is that with Lowe's the then-governing board knew who the concerned citizens were. Those opposed to development of the site had made themselves known; they were primarily those who lived immediately in back of the proposed development and the residents on Porthole Court. That is not necessarily the case in this matter; many comments, today, are submitted anonymously about Water Oak Subdivision.

Ms. Guns volunteered that the Planning Department Staff would go on-site to meet with anyone who has questions or concerns about Water Oak Subdivision. Arrangements may be made just by calling the department.

Commissioner Hogan explained that he had also lived in an area that was developed prior to an adjacent large tract of land. The Town acquired the Baum St. Clair tract in a mostly pristine state, while most of the other surrounding area had been built with residential houses. It took patience and confidence in Town to

## Adjourn

There being no further business before the Board of Commissioners at this time, Commissioner Gray made a motion to adjourn this meeting. Commissioner Hogan seconded that motion and approval was unanimous, 5-0.

It was 6:41 p.m.



Submitted by:

Mary E. Quidley  
Town Clerk

These minutes were approved at the June 10, 2019 meeting of the Board of Commissioners.

Sheila F. Davies, Ph.D.  
Mayor  
Town of Kill Devil Hills