

Minutes of the Wednesday, September 11, 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, Mike Hogan, Nelson "Skip" Jones, and John Windley

Members Absent: none

Others Present: Debora P. Díaz, Town Manager; Cameron Ray, Assistant Planning Director; 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

Mayor Davies led those assembled in an observance of the 9/11 tragedy on this Patriots Day, and asked everyone to keep the victims and first responders in their prayers.

Agenda Approval

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

Public Hearings

Mr. Varnell read aloud the rules for public hearings and opened the first public hearing.

1. Recommended amendments to Chapter 153, Zoning

The Planning Board reviewed these recommended amendments to Chapter 153, Zoning, at its July 16, 2019 meeting, and voted to forward them to the Board of Commissioners, with favorable recommendations. The Board of Commissioners scheduled the public hearings for tonight's meeting at the August 12, 2019 meeting.

A. Chapter 153, Zoning, §153.072 Sewage Disposal— Update Sewage Disposal Regulatory Agencies (Attached PH-1A)

Mr. Varnell noted, that if approved, this ordinance amendment will clarify outdated language under Sewage Disposal, updating the regulatory agencies.

There was no public comment on the item, and Mr. Varnell closed the public hearing.

Commissioner Hogan moved the Board of Commissioners finds that the amendment to Chapter 153, Zoning, Update Sewage Disposal Regulatory Agencies 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Devil Hills that are applicable and that the amendment is reasonable in the public interest because it will clarify outdated language in Chapter 153 regarding sewage disposal. Commissioner Windley provided a second and the motion passed with a unanimous 5-0 vote.

Mr. Varnell opened the second public hearing.

B. Chapter 153, Zoning, §153.070 Stormwater Management— Clarify Commercial and One and Two-Family Dwelling Requirements and Create Maintenance Requirements (Attached PH-1B)

If approved, this ordinance amendment will require all commercial (new and substantial improvements) and one- and two-family dwellings that exceed 6,000 square feet in lot coverage (new and substantial improvements) to submit a drainage plan and to maintain drainage improvements.

Beth O’Leary, 1219 B South Virginia Dare Trail, Kill Devil Hills – Ms. O’Leary inquired whether this amendment would affect large single-family dwellings. Mayor Davies stated that the proposed amendment would address all single-family dwellings that exceed 6,000 square feet, and address a stormwater management issue. Ms. O’Leary inquired if this amendment is approved, what properties would be affected. Mayor Davies replied that if the amendment became effective, any new commercial structures or single-family dwellings that exceed 6,000 square feet would be required to submit a stormwater management plan. Structures with substantial improvements would also be required to submit a plan.

Rodney Bunch, 1207 Memorial Boulevard, Kill Devil Hills – Mr. Bunch requested a summation of the changes the requested amendment will address.

Mr. Ray stated the original stormwater ordinance was somewhat unclear, with a threshold of 3,000 square feet of coverage or gross floor area. This requested amendment would clarify the ordinance. If a structure is over 6,000 square feet of total lot coverage, a stormwater management plan is required to be submitted. Mayor Davies stated that all development requires stormwater management, but if it is over 6,000 square feet, a maintenance plan is required.

Mr. Varnell then closed the second public hearing.

Commissioner Windley inquired that if someone has an existing single-family dwelling, with a plan to construct an accessory structure that would surpass the 6,000 square foot threshold, would a stormwater plan be required? Mr. Ray replied that it would take a substantial improvement to the property, which would be greater than 50% of the structural valuation of the current building. If over 50%, the site would have to be brought into compliance for stormwater management. Mr. Ray added that with average lot sizes of 6,000-8,000 square feet in Kill Devil Hills, it would be difficult for most structures to exceed the 6,000 square foot threshold.

Commissioner Gray inquired about how many lots would be made non-conforming. Mr. Ray replied that most of the sites affected would be ones on the oceanfront. He noted that there were approximately 12 lots, but since many are using pervious pavement, they could likely be brought into compliance. Most of the oceanfront lots have been developed to their highest capacity and could not implement a substantial improvement that would be more than 50% of their current value. Commissioner Jones inquired whether there are pervious pavement maintenance firms in the area. Mr. Ray stated there were several in the area.

Commissioner Hogan moved that Board of Commissioners finds that the amendment to §153.070 Stormwater Management— Clarify Commercial and One- and Two-Family Dwelling Requirements and Create Maintenance Requirements – 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 requires owners of referenced properties to submit comprehensive plans for the proper drainage and maintenance of surface water to systems on and off the property. Commissioner Jones seconded the motion, which was approved by a unanimous, 5-0 vote.

Public Comment

Meredith Crockett, 308 Ocean Acres Drive, Kill Devil Hills – Ms. Crockett shared her concerns about speeding motorists on Ocean Acres. She had previously requested STOP signs at the four-way intersections at Harrington Avenue and Ocean Acres Drive, and Bell Avenue and Ocean Acres Drive. She stated she received very short notice that the Street Improvement and Special Projects Committee (SISPC) was meeting to consider her request; later, she received a follow-up notice that her request for STOP signs were denied. She requested the Town revisit her STOP signs request for those intersections.

Martha Vaughan, 1217 C South Virginia Dare Trail, Kill Devil Hills – Ms. Vaughan stated she represented a group of citizens concerned about the development of large single-family dwellings, or “event homes,” and who are supporting a 6,000 square foot limit for those structures. She shared she was following up about letters she recently sent to state agencies, with their responses, which have been included in the meeting materials. She stated her group was organizing opposition these large structures, and shared a “No Mini-Hotels” yard sign. Ms. Vaughan inquired about the permit status of 1213 South Virginia Dare Trail. Mr. Ray replied that the property owner had applied for a demolition permit, but it was not approved as additional documentation was required

about an asbestos report. The demolition permit must be issued and demolition completed prior to the issuance of a permit for any new construction.

John Woolard, Sr., 1229 South Virginia Dare Trail, Kill Devil Hills – Mr. Woolard expressed his concerns about large single-family homes, or “event homes.” He stated he had opened his historic landmark home to the community annually, but noted these event homes are not part of the historic character of the town.

Eddie Goodrich, 801 Bermuda Bay Drive, Kill Devil Hills – Mr. Goodrich expressed concern about the proposed public hearing for October 16, 2019. He stated that at its August 12, 2019, meeting, the Board gave direction to Staff to develop an ordinance amendment and the outcome of the planned public hearing on Off-Street Parking and Loading in October will result in sweeping changes. He stated changes were occurring too quickly.

Brandon Jenkins, 306 Ocean Acres, Kill Devil Hills – Mr. Jenkins shared his concern over speeding and distracted drivers in his neighborhood. He expressed support for four-way STOP signs at intersections within Ocean Acres Drive.

Susan Furlough, 1208 South Virginia Dare Trail, Kill Devil Hills – She expressed her concern about recent flooding at her property following a rainstorm. She noted that seven hours following the storm, 12-15 inches of rain were still standing in her carport. Ms. Furlough shared that the area needed an additional storm drain. She also expressed concern about a large single-family dwelling being built near her property that would add to the drainage problems in the neighborhood.

Rodney Bunch, 1207 Memorial Drive, Kill Devil Hills – Mr. Bunch stated that his property abuts Ms. Furlough’s property, and asked the Board to resolve drainage issues in their neighborhood.

One written comment was submitted to the Board of Commissioners for the Public Comment and the full text of the comments have been included with the meeting materials:

T. Dillon Heikens, 1103 Clamshell Drive, Kill Devil Hills – Mr. Heikens expressed his appreciation for the Mayor, Board of Commissioners, and Staff following Hurricane Dorian. He also inquired whether the Town could improve stormwater infrastructure within the limitations of the current budget. Additionally, he inquired how the Town planned to address the affordable housing issue.

Response to Public Comment

Mayor Davies thanked the speakers for their comments. Commissioner Jones stated he lived near First Street and Landing Drive, and those areas experience a similar

situation with speeding motorists. Serving on the SISPC, he stated that it was a complex situation and that the area would not benefit from the STOP signs. Additionally, speed bumps are not a realistic alternative.

Commissioner Jones noted that the Town had worked for five years towards promoting cluster homes and similar structures; however, he also stated that he was a property rights supporter, noting that property owners want to develop their land to its highest potential.

He stated that Kill Devil Hills is one of the only local municipalities that has drainage infrastructure integrated within its annual streets improvements projects.

Public Services Director Steve Albright stated that the recent rainstorm could not be characterized as a regular storm; Hurricane Dorian's rainfall had already saturated the ground, and the additional storm dropped 4 inches or more of rainfall in 1½ hours. The three ocean outfalls in town are maintained by NCDOT, but were installed in the 1960s and are undersized for today's standards.

He noted that the Town had organized the other local municipalities to address stormwater management with NCDOT in April 2019, and the undersized outfalls were brought up by Kill Devil Hills representatives. Mr. Albright noted the storm's massive rain accumulation had brought flooding in the Martin Street area, but the Town's stormwater infrastructure continued to transport water away, and that water levels were contained to the drains on Tuesday morning. Mayor Davies noted that storm drainage capacity is limited, and when the town is inundated with rain, it can take time for all of the water to drain through the system. The outfalls were identified in the 2011 Stormwater Plan as areas to be upgraded. Mr. Albright stated that the Town is continually upgrading drainage pipes and systems, including replacement of decaying pipes. Mr. Albright noted that with the water table so high, established streets that have never flooded were covered by water during the Monday storm.

Mayor Davies noted that three meetings had been held with NCDOT officials. She stated that apart from emergency repairs, nothing had been addressed by NCDOT. The Board of Commissioners expressed its appreciation to the Public Services Department for its diligent work before, during, and after the storm.

Commissioner Jones noted that the Town was trying to make improvements throughout town. Commissioner Gray added that the improvements to the Town's drainage infrastructure were paying dividends, citing the recent Whispering Pines improvement benefits and decreased flooding in that neighborhood.

Commissioner Hogan cited the NCDOT acknowledgement of the need for a US 158 / Lake Drive intersection signal light, but that NCDOT did not have the funds to implement it. Members of the Board noted that the Town was using its limited funding to make improvements to streets and drainage infrastructure, but was hesitant to offer to take on maintaining or improving NCDOT infrastructure.

Through consensus, the Board approved the sending of a request to NCDOT officials for an agency update to Town concerns.

Mayor Davies stated that the Town was not hastily making decisions on large single-family dwellings. The Board members expressed appreciation for the efforts of Ms. Vaughan and her group.

Introductions and Presentations

Old Business

New Business

1. Appointments

A. Zoning Board of Adjustment

a. Member

b. Alternate Member

Jason Self's term (regular member) and T. Dillon Heikens' term (alternate member) on the Board of Adjustment expire in October and both have expressed a desire to be considered for reappointment to another three-year term. Albert Petera has also expressed interest in filling one of these seats. No new applications have been received since they were last copied to the Board.

Commissioner Hogan moved to reappoint Jason Self as a regular member and T. Dillon Heikens as an alternate member, each to a three-year appointment to the Zoning Board of Adjustment, for terms that will expire in October 2022. Commissioner Gray provided a second and the motion passed by a unanimous, 5-0 vote.

2. Authorization to Submit Grant Application for Baum Street Sidewalk Project

Mr. Ray noted that after reviewing several options, Town Staff has identified installation of a sidewalk on Baum Street to Fox Street and Fox Street to Hillside Drive for the 2019/2020 Fiscal Year. Completion of this portion of the sidewalk will complete the Centennial Path loop, which will provide a safe path through a busy area of town, and could make the project eligible for grant assistance.

Staff recommended applying for a Dare County Tourism Impact Grant by September 30, 2019, which could fund up to 75% of the estimated \$122,150 project cost; the remainder would be from the sidewalk fund.

Commissioner Jones moved to authorize Staff to submit an application for a Tourism Impact Grant for the Baum Street Sidewalk Project. Commissioner Windley provided a second and the motion passed by a unanimous, 5-0 vote.

Committee Reports

West-side Recreation Group (WRG) – Commissioner Gray noted WRG would meet on September 23 at 6:00 p.m. Its area topic will be about Hayman Park, and the group will be

reviewing the citizen survey results; the survey is available for completion on the Town's website through September 16, 2019.

Community Appearance Commission (CAC) – Sue Kelly, chairperson, highlighted the work of the CAC, including cigarette butt receptacles at the Town's beach accesses. The biennial Community Appearance Awards process has begun for Kill Devil Hill businesses. The public is encouraged to share examples of businesses that maintain positive appearances on their lots. Commissioner Jones inquired about the cigarette receptacles' use. Ms. Kelly replied that the units have not had a great deal of use at this point.

Neighborhood Watch Colleen Almoney, chairperson, stated that the group will be canvassing neighborhoods in October, and said the group will be at the Ice Cream Social and Halloween Parade.

Commissioners' Agenda

Commissioner Gray

Hurricane Dorian Relief Efforts Commissioner Gray stated he was contacted by a Kill Devil Hills citizen about extra bottled water on hand. Through conversations with Mayor Davies and coordination with Staff, drop-off points for bottled water and supplies were established at the Fire Station. He commended Officer Rodney Rawls, who donated the use of his vehicle and trailer. Commissioner Gray said the outpouring of support by the community was phenomenal. Multiple trailers transported numerous pallets of supplies to Hatteras and Frisco Villages. Mayor Davies will be sending letters of appreciation to those who assisted with the efforts.

Commissioner Windley

Commissioner Windley thanked Mayor Davies and other members of the Control Group for their leadership during Hurricane Dorian.

Commissioner Hogan

Dare County Tourism Board Commissioner Hogan provided a video highlight of the August 15, 2019, Tourism Board Meeting. An OBX Rod and Custom Car event is scheduled on May 1-2, 2020. The June occupancy rates experienced an 8% growth rate, and a meals increase of 4%. A consultant presented a feasibility study for the Nags Head Event Site, and the Board dedicated the site's use as an event site for an indefinite term. An advisory committee was established to study a mixed-use facility for the site. Additionally, the Board voted to begin planning and designing a soundside boardwalk for the Event Site. The group voted to consider the concept of purchasing additional property adjoining the property. The grants committee has distributed \$195,000 in local grants in its September and February meetings.

The Board members expressed their appreciation to Town Staff for their work getting the Town back up and running following Hurricane Dorian.

Mayor's Agenda

1. Proclamations

- A. Proclamation – October 6-12, 2019 as Fire Prevention Week (Attached MA-1A)**
- B. Proclamation – September 17-23, 2019, as Constitution Week (Attached MA-1B)**
- C. Proclamation –September 2019 as Suicide Prevention Awareness Month (Attached MA-1C)**

Mayor Davies stated these proclamations honor and observe the issues important to our community and to society. Upon the Board of Commissioners' adoption, they will be shared with our citizens, employees, and other local governments, and posted on our website and social media.

Mayor Davies moved to approve the Proclamation designating October 6-12, 2019, as Fire Prevention Week. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0 vote.

Mayor Davies moved to approve the Proclamation designating September 17-23, 2019 as Constitution Week. Commissioner Hogan seconded the motion, which was approved by a unanimous, 5-0 vote.

Mayor Davies moved to approve the Proclamation designating September 2019 as Suicide Prevention Awareness Month. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0 vote.

As a part of the "Chalk Talk" Initiative, she invited the Commissioners and the public to share messages of support and encouragement with chalk in front of the meeting room following the meeting.

2. Change in October meeting schedule

Due to a scheduling conflict, some members of the Board of Commissioners will be unavailable for the October 14, 2019, meeting and public forum.

Commissioner Gray moved to change the date of the Board's October 14 meeting to October 16, to permit the availability of all members to attend the meeting and public forum and hear from our community. Commissioner Jones seconded the motion, which passed with a unanimous, 5-0 vote.

Mayor Davies also shared the following information:

Ice Cream Social She shared that the Town's annual Ice Cream Social was scheduled for Wednesday, September 18, 2019, from 4:30 – 7:00 p.m. at Aviation Park, and that the public was invited to this community event.

Hurricane Dorian Debris Collection Mayor Davies stated that Hurricane Dorian debris collection would begin soon, so citizens can begin placing items in the right-of-way. Collection information will be provided on the Town's website and social media. She announced that Paws Park and the Casey R. Logan Disc Golf Course have reopened following the storm.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. August 12, 2019

2. Monthly report (Attached CA-2A)

A. July 2019

3. Budget amendments (Attached CA-3A and 3B)

A. #5 – To appropriate funds received for recreational facilities for the disc golf course

B. #6 – To record encumbrances outstanding at June 30, 2019

4. Recommended Amendments to Town Code and Personnel Policy

The Town Attorney has reviewed and approved each of the following amendments. No public hearings are required in order for the Board to take action on these changes.

A. Complete revision of Chapter 33. Civil Emergencies. (Attached CA-4A)

This new Chapter 33, entitled: *Emergency Management*, replaces our old ordinance, which, with only minor changes, has been in effect since 1988; it was last changed in 1994. As proposed, it closely mirrors Dare County's ordinance, considering the differences in county and municipal charges and responsibilities.

The new document updates some language, and maintains the same policy-making responsibilities of the Mayor and Board of Commissioners (such as, declaring a state of emergency, establishing a curfew, implementing restrictions on sale of alcohol, etc.). However,

at the operations level the ordinance establishes the Fire Department as the coordinating entity for all activity in connection with emergency management, including preparation, response and recovery. The Fire Chief shall act as the Emergency Management Director for the Town, and will inform and work with the Town Manager to assure policy decisions of the Board of Commissioners are accomplished. A full outline of duties is specified in the body of the ordinance.

Emergency management and operations has become extremely specialized. Many local governments are utilizing their fire departments, which are training to always be ready for emergency response. The knowledge, coordination and communication skills, and the ability to achieve objectives through team work, are all in place in the Town's Fire Department.

Included with the ordinance is a resolution affirming the Town's adherence to National Incident Management System (NIMS) protocols for emergency management. Approval of the Consent Agenda will approve both the new ordinance and the resolution.

B. Chapter 130. General Offenses. – to establish regulations prohibiting open alcoholic beverage at the disc golf course (Attached CA-4B)

Section 130.11 of the Town Code, under General Offenses, lists a number of specific outdoor sites, and all town buildings, where open alcoholic beverages are not permitted. This amendment will add the Casey R. Logan Disc Golf Course to the established list. The language had previously been approved by consensus of the Board so that Staff could proceed with developing the regulations signage for the site. Approval of the Consent Agenda will record the Board's consensus approval, and adopt the attached ordinance amendment.

C. Amendment to the Personnel Policy regarding employee compensation and potential FEMA reimbursement (Attached CA-4C)

This proposed change to Section 12. Fair Labor Standards Act and Overtime Pay Provisions of the Town's Personnel Policy establishes that during named storms or emergency situations "requiring long and continuous hours of work, exempt employees will be compensated at a rate of time and one-half and/or be granted time off with pay for rest and recuperation to ensure safe working conditions for the duration of the named storm or emergency period." In the document, underlined language will be adopted and the ~~stricken language~~ removed from the section.

FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on an applicant's personnel policy. According to a representative from the North Carolina Department of Public Safety, who reviewed our current policy, the proposed language meets the requirements because:

- It does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

The Board of Commissioners previously approved this language by consensus, and approval of the Consent Agenda will record that approval in the minutes of this meeting.

5. Schedule Public Hearings for Amendments to the Town Code (Attached CA-5A and CA-5B)

The Town Attorney has reviewed the recommended amendments and has found them to be in compliance with applicable North Carolina law:

A. Recommended Zoning Amendment—§ 153.073 Landscaping Requirements – Modify Landscaping Requirements to Include Single-Family and Duplex Dwellings with Greater Than 6,000 Square Feet Lot Coverage

At the direction of the Board of Commissioners, Staff drafted an amendment which creates landscaping buffer requirements for large single-family and duplex development. At its August 20, 2019, meeting, the Planning Board reviewed the requested amendment, and voted to forward it to the Board of Commissioners, with a favorable recommendation.

B. Recommended Zoning Amendment – § 153.076 Off-Street Parking and Loading – Modify Parking Requirements for Single-Family and Duplex Dwellings with Eleven Bedrooms or More

At the direction of the Board of Commissioners, Staff also drafted an amendment which creates increased off-street parking requirements for large single-family and duplex dwellings, including increased setbacks for parking areas, access aisle, and limit stacked parking. At its August 20, 2019, meeting, the Planning Board reviewed the requested amendment, and voted to forward it to the Board of Commissioners, with a favorable recommendation.

Approval of the Consent Agenda will schedule Public Hearings for Consent Agenda items 5A and 5B on Wednesday, October 16, 2019, at 5:30 p.m.

6. Waiver of building permit fees related to damage caused by Hurricane Dorian

Approval of the Consent Agenda will record the Board's approval to waive building permit fees for construction and repairs necessary due to damage from Hurricane Dorian through Monday, October 14, 2019.

Ms. Díaz presented the Consent Agenda and recommended approval as presented.

Commissioner Hogan moved to approve the Consent Agenda. Commissioner Jones provided a second, and the motion passed with a unanimous, 5-0 vote.

Public Comment

Charity Toy Run Assistant Police Chief Dana Harris announced that the Dare County Motorsport Charity Group Toy Run would be traveling through Kill Devil Hills on September 28, 2019. He stated that about 150 cyclists would be taking part of the annual event, which benefits underprivileged children in the community.

Stormwater Drainage Infrastructure Commissioner Gray noted that when the Town is considering improvements to the stormwater drainage infrastructure, the Town should promote clean water discharges.

Disc Golf Course Commissioners Hogan and Windley commented on the large numbers of people using the disc golf course.

Response to Public Comment

Adjournment

There being no further business appearing before the Board of Commissioners at this time, Commissioner Jones moved to adjourn the meeting. Commissioner Windley seconded the motion and approval was by a unanimous, 5-0 vote. It was 7:12 p.m.

Submitted by:

James Michael O'Dell
Deputy Town Clerk