Minutes of the Wednesday, April 22, 2020 regular meeting of the Kill Devil Hills Board of Commissioners held remotely and electronically beginning at 6:00 p.m. using ZOOM software, its only regular meeting of the month. In order to maintain the safety of Town residents, Staff, and Board of Commissioners, the meeting was conducted electronically using Zoom software. There were several methods the public could use participate in or view the meeting.

Members Participating:	Mayor Ben Sproul; Commissioners B.J. McAvoy, Terry Gray, Ivy Ingram, and John Windley
Members Not Participating:	None
Others Participating:	Debora P. Diaz, Town Manager; Casey Varnell, Town Attorney; Director Meredith Guns and Assistant Director Cameron Ray, Planning Department; Mary E. Quidley, Town Clerk, and James Michael O'Dell, Deputy Town Clerk

Call to Order

At 6:00 p.m. Mayor Sproul called this meeting of the Kill Devil Hills Board of Commissioners (BOC) to order and welcomed all present via Zoom software. He conducted a roll call of members present and confirmed all five members were present. There were 11 attendees and 11 panelists, which included the BOC, Town Manager, Town Attorney, and representatives of the Planning Department, present and participating in this meeting. The meeting was managed by Deputy Town Clerk Michael O'Dell. Mayor Sproul reviewed the procedures the meeting would follow and explained to all, panelists and attendees, how they could participate and how they would be called upon to submit a verbal comment.

Pledge of Allegiance and Moment of Silence

Agenda Approval

Commissioner Gray made a motion to approve the agenda as submitted. Commissioner Windley seconded that motion and it was approved by roll call vote, unanimously, 5-0.

Public Comment

Mayor Sproul read aloud a submitted written comment, which was placed in the record of this meeting.

Ron and Cecile Saunders, 1009 West Sportsman Drive, Kill Devil Hills: The Saunders' are non-resident property owners whose cottage is for family use only. They explained that they work hard to maintain their cottage and its appearance; they have not been able to visit and

ATTACHMENT CA-1A

maintain their cottage since the COVID-19 virus response closed the Dare County Outer Banks to visitors and out-of-town property owners. The Saunders' encouraged "those in charge" here to "provide property owners with the access and consideration they need and deserve."

Mayor Sproul explained that the Saunders' e-mail, and the e-mail they sent responding to Mr. O'Dell's response to their initial request, has been forwarded to the Dare County information team for their attention.

Response to Public Comment

Old Business

1. Chapter 151, Flood Damage Prevention Ordinance – 2020 revision - schedule public hearing (Attached OB-1)

At the BOC's January 22, 2020, meeting, Planning Director Meredith Guns presented information on the updated FEMA flood maps, and a draft Flood Damage Prevention Ordinance. The new ordinance includes State mandates for changes and Staff recommendations for improved clarity and consistency. The maps and ordinance must be adopted by June 19, 2020, in order for the Town to remain in the National Flood Insurance Program (NFIP). On February 11, 2020, the Planning Board reviewed the revised ordinance, and forwarded it to the BOC with a favorable recommendation.

At the March 9, 2020 BOC meeting, Ms. Guns provided an overview of the substantive changes with the recommended amendment. Through consensus, the BOC directed the item to be placed on its March 25, 2020, meeting agenda for further discussion, which, along with the regular April 6th meeting, was not held due to COVID-19 safety precautions. Therefore, the ordinance appeared at this meeting for further discussion and action to set the public hearing. Staff will continue placing this item on future BOC agendas until its appearance for adoption.

Staff recommended the BOC schedule this public hearing for Monday, June 8, 2020.

There were no questions or comments from the BOC and Commissioner Ingram made a motion to set this item for public hearing on Monday, June 8, 2020 at 6:00 p.m. Commissioner Gray seconded that motion and Mayor Sproul verified that all BOC members voted in favor of the motion, 5-0, by calling on each member individually.

New Business

1. Site plan review (Attached NB-1A)

A. Harris Teeter Fuel Center— 2006 South Croatan Highway in the Commercial Zone – proposed seven manual dispenser fuel pumps, 540 square foot walk-in kiosk, canopy, two underground storage tanks, and nine parking spaces

The Planning Board reviewed this site plan for a fuel center, kiosk, canopy, storage tanks and parking places at its April 16, 2020 meeting and voted to recommend its approval subject to the comments by the Planning Department, Town Engineer, and Public Services Department:

Planning

Commercial building exterior – per §153.186(B)(1) *Architectural Variation* shall be provided for the proposed canopy.

Engineering

1. Our previous comment was misunderstood. It read: "We suggest eliminating the invert drop at structure 11-CB. Keeping it full depth will preserve options for any future southward extension of this system." To maximize the usefulness of this little system, especially if NC-DOT deepens its roadside swale, it needs to be flatter and the 0.2' drops at structures eliminated. The flared end section (FES) may be tilted up to a steep grade so that, for now, its invert matches the existing swale grade. If the swale is deepened later, the flared end section can be loosened and reset to match. To clarify, we request the following grades, or similar:

i.	Outfall:	7.00
ii.	10-CB:	7.02
iii.	11-CB:	7.10
iv.	FES:	8.50

2. Otherwise, our comments have been satisfactorily resolved, except that we await the results of the applicant's discussions with the adjacent property owner regarding access improvements.

Public Services

1. The engineer has noted in correspondence that the owner will procure a private hauler for solid waste services. The procurement of a private hauler for solid waste services needs to be noted on the site plan, preferably in the notes or in text next to the proposed dumpster.

2. Provide the appropriate NC-DOT standard drop inlet and grate details for the catch basin that is converted to a drop inlet in the US 158 right of way.

Commissioner Windley, pointing out that there are several businesses located on property adjacent to the fuel station property, or within the near vicinity of the proposed fuel station, asked if a deceleration lane would be appropriate to access this site by south-bound traffic and Mr. Ray explained that the North Carolina Department of Transportation declined to approve a deceleration lane as the site did not fit on this property nor did it meet the criteria for such an access. Mr. Ray also pointed out that the property the Harris Teeter grocery store sits on is not owned by the Harris Teeter corporation.

Commissioner Gray asked about signage for the facility. The allowed square footage for a free-standing sign is 64 square feet and the site is proposing 57 square feet. Sign square footage allowed on the sides of buildings is calculated by a formula found within Chapter 153, Zoning. The lighted signs are using LED technology, and are permitted under the Town Code.

Mr. Ray noted, however, that scrolling LED signage is not permitted in the Town of Kill Devil Hills.

Commissioner Ingram made a motion for the BOC to approve the site plan for the Harris Teeter Fuel Center – 2006 South Croatan Highway subject to resolution of the comments included in the packet memorandum. Commissioner Gray seconded that motion and the motion was approved unanimously, 5-0, which was verified by Mayor Sproul using a roll call vote.

Committee Reports

Outer Banks Tourism Board

Commissioner Ingram reported on the April 16, 2020 meeting of the Tourism Board. She is the Town's representative on the Tourism Board. The meeting included several marketing initiatives that are being proposed by the Board for the summer of 2020, which will be promoted as the Summer of Love on the Outer Banks. The Tourism Board has developed a site on the Internet primarily for local small businesses that gives insight and tips on the COVID-19 coronavirus: https://www.outerbanks.org/COVID-19/.

Commissioners Agenda

Commissioner Gray

Commissioner Gray congratulated the Town Manager and Staff for the excellent work that has been done to keep operations flowing and to keep the BOC and public informed during the COVID-19 crisis. He recognized it has required adjustments and scheduling changes, and acknowledged that Staff is to be commended for meeting the challenges well.

Commissioner McAvoy

Commissioner McAvoy also expressed his appreciation and supported Commissioner Gray's comments regarding the Town's response and the impressive teamwork and cooperation exhibited during the COVID-19 crisis. He also commended Mayor Sproul for his service on the Dare County Control Group and recognized that the decision-making process is not easy, nor is the path clear but the Control Group has done a fantastic job looking out for the citizens of Dare County.

Commissioner Windley

Commissioner Windley said that there have been many different ways people and local businesses have stepped forward to meet the challenges the COVID-19 virus has imposed on our community. There are so many instances of people helping each other and Staff has done a phenomenal job during this difficult time that it is impossible to mention them all. The Town

itself has operated smoothly and information has been widely available for the public. Seeing Kill Devil Hills come together has made him very proud to serve on the Town's BOC.

Commissioner Windley also recognized Mayor Sproul and the members of the Dare County Control Group for the enormous time commitment and responsibilities taken on by the members, and he congratulated them on doing their jobs well.

Commissioner Ingram

Commissioner Ingram thanked the other members of the BOC for their comments above and echoed the sentiments already expressed.

Mayor's Agenda

Mayor Sproul added his appreciation and recognition to the comments previously made, including his gratitude for the excellent communications with the BOC and public coordinated by Public Information Officer Rachel Tackett.

He also touched on Currituck County's recent decision to allow non-resident property owners to access their properties on the Currituck Outer Banks, which can only be entered through Dare County. Dare County's entry schedule does not mirror Currituck's. Mayor Sproul explained that he had received a number of supportive e-mails supporting Dare County's decision. There are many steps that must be taken, many aspects of the situation that must be considered, for the Control Group to be comfortable that decisions made are fair and responsive, and made in the best interests of all involved.

Mayor Sproul offered a shout out to Kill Devil Hills' restaurant, Rooster's, for serving 1,000 meals twice-per-week, at no charge, and with enormous efforts and responsible measures taken to assure chefs and servers meet stringent sanitary procedures and guidelines. The restaurant has been serving meals twice each week and has been a model for other food services businesses to follow. Their actions have truly been above and beyond regular services.

He offered his sincere appreciation to BOC, and to the Town Manager for her knowledge, experience, guidance and assistance during recent weeks. She has been a great town manager for Kill Devil Hills for many years and her counsel has been very beneficial during this time.

Town Attorney's Agenda

1. Portion of Bay Drive abandonment (Attached TA-1)

The Town recently received a request for public hearing to clarify a petition of abandonment for a portion of Bay Drive at its intersection with the NC-DOT Stormwater conveyance in the vicinity of West First Street. The matter was researched by Staff and the Town Attorney consulted for his opinion on whether or not a second public hearing would be necessary to accomplish the requested clarification.

When the abandonment was approved and the necessary deed filed in the Register of Deeds Office, the exhibit survey and correlating description was not identical to the survey

approved by the BOC in 1993; a small portion of Bay Drive had been left off, although it had actually been abandoned. Resolving the deed/exhibit exclusion was the purpose of requesting a second public hearing.

Mr. Varnell's position on the matter, which is stated in full in the packet memorandum, is that the survey used during the original public hearing, which was approved by the BOC, is the controlling survey. That survey included the above-referenced small portion of Bay Drive. Mr. Varnell's research included the 1993 minutes, the original application for abandonment, and confirmation with a title company that recording a corrective document which contains the appropriate survey will suffice to resolve any issues related to title to the abandoned portion of Bay Drive.

Another aspect of the original request was that the Town received a separate lot and a drainage easement across the noted portion of Bay Drive from the applicant in exchange for approval of the abandonment. It was determined at that time that the land exchange was of great benefit to the Town's utility structure.

At the conclusion of his comments, Mr. Varnell asked the BOC for direction on whether they would prefer to entertain the requested public hearing on the recent petition to abandon a portion of Bay Drive; or, elect not to hold the public hearing based on the legal concept that the applicant's purpose for requesting the hearing has already been achieved by the 1993 BOC's approval of the original abandonment, and the fact that any perceived title issues can be absolved in the recording of a corrective document at the Register of Deeds Office.

Commissioner McAvoy initiated comments from the BOC and explained that he felt the intent to abandon the small portion of Bay Drive was clear, but that he would favor holding the second public hearing just to record final action so there is no future question.

Mayor Sproul called on Mr. Varnell to address what issue if any, existed with conducting a public hearing on this issue. Mr. Varnell explained that the BOC would reopening a past decision to scrutiny: a public hearing was conducted in 1993 and a previous BOC had made its determination. A public hearing held now on this issue could have the possibility of undoing original decision, which could establish a precedent for review of other decisions. There is no harm to the applicant in this case because the issue can be addressed with a corrective document recorded at the Register of Deeds Office. Mayor Sproul noted that it was simply a clerical error that can be corrected clerically. Mr. Varnell concurred with Mayor Sproul's assessment.

Going from member to member, Mayor Sproul determined that Commissioners Gray, Ingram and Windley were in favor of not holding an additional public hearing and that they recognized it was an inadvertent clerical error.

Commissioner Ingram made a motion for the BOC to not hold an additional public hearing on the Bay Drive abandonment matter as requested, based on legal opinion that the request of the applicant for abandonment of the small portion of Bay Drive has already been achieved by the 1993 BOC. Commissioner Windley seconded that motion and approval was by majority vote, 4-1 with Commissioner McAvoy voting against the motion.

Mayor's Agenda

Returning to the Mayor's Agenda, the following item was reviewed:

1. **North Carolina General Statutes Chapter 159I - Solid Waste Management Loan Program and Local Government Special Obligation Bonds**

In June 2019 the General Assembly repealed Chapter 159I of the General Statutes by adopting SB 381. Chapter 159I allowed local governments the use of Special Obligation Bonds (LGSOB's) to finance projects such as beach nourishment and maintenance of beach nourishment. Dare County used LGSOB's for short-term borrowing approximately five years ago to help fund beach nourishment.

The repeal of Chapter 159I erroneously stated *"Administration of the program was given to the CWMTF [Clean Water Management Trust Fund] in 2011. This program has never been used or funded."*

KDH BOC approval for the Mayor to write a letter in support of reinstating the authority for local governments to borrow using Special Obligation Bonds is requested. Without this borrowing capability the upcoming beach nourishment projects could be in jeopardy.

All members of the BOC agreed by consensus for the letter to be written, and it will be sent to our State representatives and the Dare County local governments requesting support.

As an update, the Town Manager added that news from the General Assembly indicates that this matter is on schedule to be corrected.

The Town Manager thanked the BOC for their support and kind comments about Staff and operations of the Town during the COVID-19 situation. She expressed gratitude to Staff for going the extra distance during the past few weeks as changes have been implemented to ensure employee and public health and safety. Ms. Diaz also extended her appreciation to Mayor Sproul for his guidance and leadership, and she recognized the difficulties the Dare County Control Group has faced while acting in the best interest of our citizens. The responses and updates Mayor Sproul has given to citizens and non-resident property owners, she added, have been thoughtful and informative.

Consent Agenda

Prior to her review the Town Manager verified that there was no item any member wanted to remove from the Consent Agenda; there was no item any BOC member desired to remove.

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

   A. March 9, 2020

2. **Monthly report (Attached CA-2A)**

   A. February 2020

3. Schedule public hearings for recommended amendments to Chapter 153, Zoning, of the Town Code (Attached CA-3A, 3B, 3C, 3D, 3E)

The Town Attorney has reviewed the recommended amendments and found them to be in compliance with applicable North Carolina law. All are recommended for public hearing on Monday, May 11, 2020.

A. § 153.076 Off Street Parking and Loading— marked access aisle (No Parking) for structures with 11 or more bedrooms

At its January 22, 2020, joint worksession, the BOC, with the Planning Board, directed Staff to re-draft an amendment to address large single-family dwelling off-street parking issues, and to present it for review prior to submission to the Planning Board. Four draft options were highlighted at the March 9, 2020 meeting, each of which would propose adding a third category for single-family and duplex structures with eleven required parking spaces or more.

Through consensus, the BOC directed Staff to submit an amendment that combined the second and third options to the Planning Board for consideration. At its March 17, 2020, meeting, the Planning Board voted to forward the amendment to the BOC, with a favorable recommendation.

B. §153 Setbacks in each Zoning District – additional two feet of side yard setback for single-family and duplex dwellings greater than 6,000 square feet with exception for fire suppression systems

At its January 22, 2020, joint worksession, the BOC directed Staff to develop an amendment to address safety issues, with the potential of fire suppression system incentives for large single-family and duplex dwellings. After reviewing the proposed amendment on March 9th, through consensus approval the BOC directed Staff to forward the amendment to the Planning Board for consideration. At its March 17, 2020, meeting, the Planning Board voted to forward the amendment to the BOC, with a favorable recommendation.

C. §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 BOC, Staff drafted an amendment which creates landscaping buffer requirements for large single-family and duplex development. Following review at its August 20, 2019, meeting, the Planning Board forwarded it to the BOC, with a favorable recommendation. At its October 16, 2019, meeting, the BOC denied the amendment by a vote of 3-2, following a public hearing.

At the January 22, 2020, joint worksession between the BOC and Planning Board, Staff was directed to reintroduce this amendment to the Planning Board for review and

recommendation. On February 11, 2020 the Planning Board voted to forward this amendment to the BOC, with a favorable recommendation.

D. §153.310 Cottage Court(s) and §153.311 Cluster Homes – modify cottage court(s) and cluster homes minimum lot dimensions abutting NC 12

At the BOC's January 22, 2020, joint worksession with the Planning Board, the BOC directed Staff to draft an amendment to change minimum lot dimension requirements for cottage courts and cluster homes that abut NC 12, in order to provide more opportunities for the development of Cottage Courts and Cluster Homes. At its February 11, 2020, meeting, the Planning Board voted to forward this amendment to the BOC with a favorable recommendation.

At the March 9, 2020, meeting the BOC scheduled Items 3C and 3D, above, for public hearings; however, each had to be rescheduled since the March 25 meeting was cancelled.

E. §153.355, §153.357, §153.359, §153.361 – modify approval process for permitted commercial uses to administrative approval process

Permitted uses, or use by right, are listed within each zoning district in Chapter 153, Zoning. Each district has a different list of land uses that are "permitted" or are "uses by right." These terms refer to an owner's land use in a manner consistent with that which is listed as permissible in the zoning district within which the property is located. In these instances, if a commercial site plan meets all requirements of the Town Code, and the use is permitted, then a municipality has no basis on which to deny approval of the site plan.

This proposed amendment to the Zoning Ordinance establishes a process for administrative approval of commercial site plans which meet the requirements of the preceding paragraph. Developers of commercial sites would be spared the time and financial burden of obtaining Planning Board and BOC approval, which is inherent in the current process, and instead be able to obtain site plan approval within approximately 10 – 20 days, subject to presentation of a complete, compliant site plan, and the complexity of the development.

The Planning Board reviewed this proposed amendment on April 16th, and Planning Director Meredith Guns' attached memorandum and the recommended ordinance amendment provide additional information. The Consistency Statement approved by the Planning Board will be executed by Chair Buchanan and sent to the BOC via e-mail, and posted on the Town's website with the April 22nd meeting materials.

Approval of the Consent Agenda will schedule public hearings on the five proposed ordinance amendments listed above for Monday, May 11, 2020 at 6:00 p.m.

4. Recommendation for 2019/2020 lease purchase agreement (Attached CA-4)

The Finance Department has researched available interest rates for the lease/purchase of equipment and vehicles. The total amount to be financed is $1,235,726.65. BB&T submitted the

most favorable financing proposal at an annual interest rate not to exceed 2.43%; to be paid in eight semiannual payments. The loan may is pre-payable at any time without penalty.

Approval of the Consent Agenda will record approval of the attached budget amendment, #19 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.

5. Budget amendments (Attached CA-5A and B)

A. #20 - to record sale/trade-in of the surplus excavator; proceeds will be applied to the purchase of a new excavator; this unit was a hand-down to Buildings and Grounds from the Streets Division.

B. #21 – to record FY 2019/2020 lease payment for new excavator.

Staff recommended approval of the Consent Agenda as presented.

Commissioner Gray made a motion for the BOC to approve the Consent Agenda as submitted and Commissioner McAvoy seconded that motion. Members were polled individually and approval was unanimous, 5-0.

Public Comment

There was a brief comment from a non-resident property who attended this meeting electronically and complimented the BOC for conducting this meeting and taking care of the business of the Town.

Response to Public Comment

Adjourn

There being no further business before the BOC at this time, Commissioner Windley made the motion to adjourn and Commissioner Ingram seconded that motion. Approval was unanimous, 5-0, by roll call vote.

It was 6:49 p.m.