Minutes of the Monday, May 11, 2020 regular meeting of the Kill Devil Hills Board of Commissioners held remotely and electronically beginning at 6:00 p.m. using ZOOM software in order to maintain the safety of Town residents, Staff, and Board of Commissioners. There were several methods the public could use to participate in or view the meeting, which were detailed on the published and distributed meeting agenda.

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:

Commissioner Windley	Here
Commissioner McAvoy	Here
Commissioner Gray	Here
Commissioner Ingram	Here
Mayor Sproul	Here

There were five attendees representing members of the public, and ten 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

On motion by Commissioner Windley, seconded by Commissioner Gray, the agenda for this meeting was approved unanimously, 5-0, which was recorded by roll call vote:

ATTACHMENT CA-1A

Commissioner Windley	Yes
Commissioner McAvoy	Yes
Commissioner Gray	Yes
Commissioner Ingram	Yes
Mayor Sproul	Yes

Public Hearings

Mayor Sproul made a motion for the BOC to enter the public hearing and Commissioner McAvoy seconded the motion. Approval was unanimous, 5-0, by roll call vote:

Commissioner Windley	Yes
Commissioner McAvoy	Yes
Commissioner Gray	Yes
Commissioner Ingram	Yes
Mayor Sproul	Yes

Town Attorney Varnell and Mayor Sproul explained the new rules applicable to local government public hearings, which now require a twenty-four hour waiting time after a public hearing is held before a governing board can take action on any public hearing item. This new regulation became effective on May 4, 2020 in response to COVID-19 and applicable guidelines and regulations. No vote on any of the five public hearings will be taken by the Kill Devil Hills BOC during this meeting.

1. **Recommended amendments to Chapter 153, Zoning (Attached PH-1A, 1B, 1C, 1D, and 1E)**

At the direction of the BOC, Staff drafted the following amendments to Chapter 153, Zoning, for review and consideration by the Planning Board (PB). The BOC scheduled the public hearing for tonight's meeting at the April 22, 2020 meeting. The Town Attorney, who reviewed the proposed amendments and found them to be in compliance with applicable North Carolina law, stated that given that all amendments were for Chapter 153 it would be acceptable to open and close one public hearing for comments on all five amendments.

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

At its January 22, 2020, joint worksession, the BOC 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 PB. 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 PB for consideration. At its March 17, 2020, meeting, the PB voted to forward the amendment to the BOC, with a favorable recommendation.

If approved, this ordinance amendment will establish a seven-foot parking setback from the property line for single-family and duplex structures with 11 or more bedrooms; however, parking setbacks are reduced to five feet with a clearly marked access aisle designed open and unobstructed within 20 feet of the dwelling.

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 PB for consideration. At its March 17, 2020, meeting, the PB voted to forward the amendment to the BOC, with a favorable recommendation.

If approved, this ordinance amendment will establish an additional two-foot side yard setback for single-family and duplex structures with a total gross floor area greater than 6,000 square feet; however, such structures are exempt from the additional setback if they are equipped with a fire suppression system reviewed, approved, and inspected annually by the Fire Chief or his designee.

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 this amendment to create landscaping buffer requirements for large single-family and duplex development. Following review at its August 20, 2019, meeting, the PB 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 PB, the BOC directed Staff to reintroduce this amendment to the PB for review and recommendation. On February 11, 2020 the PB voted to forward this amendment to the BOC, with a favorable recommendation.

If approved, this ordinance amendment will require single-family and duplex structures with greater than 6,000 square feet of lot coverage to establish vegetative buffering and ornamental landscaping, which will provide spatial separation of land uses and promote the visual aesthetic and character of the Town.

Mayor Sproul reminded everyone that written or e-mailed public comment would continue to be accepted for 24 hours, through 8:00 p.m. on Tuesday, May 12, 2020, in accordance with new regulations for electronic/virtual public hearings stated in NCGS 166A-19.24.)

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 PB, 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 PB voted to forward this amendment to the BOC with a favorable recommendation. If approved, this ordinance amendment will decrease the minimum lot width requirement for Cottage Courts and Cluster Homes abutting NC 12 from 100 to 75 feet.

There was a general question from Ms. Elizabeth Brothers, submitted in the Zoom chatbox, which asked if any of the amendments under consideration during this public hearing would be applicable to projects already under construction. Planning Director Meredith Guns explained that action would not be taken on any public hearing item until the May 27, 2020 meeting. If approved none of the amendments would apply to projects for which permits have been issued or are already under review.

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

At its April 16, 2020, meeting, the PB reviewed this recommended amendment and voted to forward it to the BOC for consideration, with a favorable recommendation.

If approved, this ordinance amendment to the Zoning Ordinance will establish a process for administrative approval of commercial site plans which meet the permitted uses requirements. These permitted uses, or "uses by right," are listed within each zoning district in Chapter 153, Zoning. Each district has a different list of permitted land uses, which refer to a use consistent in the district where the property is located. In these instances, if a commercial site plan meets all requirements of the Town Code, and the use is permitted within its zoning district, then a municipality has no basis on which to deny approval of the site plan.

This review process will decrease the time and financial burden for commercial site developers, with administrative approval within approximately 10 – 20 days from submission, subject to the presentation of a complete, compliant, site plan and the complexity of the development.

Public Hearing Comments

Due to a technical error, real-time comments were not able to be received on the public hearing items. This was explained and several written comments, which were submitted prior to the public hearings and on Tuesday, May 12, 2020, are summarized below. The complete statements are hereby attached to and made a part of the minutes of this meeting.

Jeff Fabrikant, 1907 S. Virginia Dare Trail, 2009 S. Virginia Dare Trail, 1102 Clam Shell Drive: Larger houses contribute construction jobs, vendors, and taxes to the Outer Banks. They are constructed under the same provisions of the North Carolina Building Code as smaller homes, and could be safer than the older homes due to progress in the quality of building materials. Mr. Fabrikant stated that because of COVID-19 there is a new reality since the PB considered Item 1A in February, which includes the early stages of an economic depression due to the virus. He cited potential economic downturns that could affect this geographic area, as well as the country: record unemployment; retailers, restaurants and retailers are struggling; the full impact of lower occupancy tourism on the beach is not yet known.

He asked several questions, including: why would the Board want to take action to discourage a major source of positive economic growth and development during an economic "predicament;" what is the anticipated budget shortfall for Kill Devil Hills in 2020, and how will that shortfall be covered; what is the anticipated impact on real estate taxes for non-oceanfront property owners following the passage of these amendments, further restrictions will diminish oceanfront property values; has an engineer drawn up any examples of site plans with an oceanfront home subject to the proposed new restrictions?

Mr. Fabrikant suggested that reducing the building potential of oceanfront lots would 1) reduce the value of all oceanfront lots and 2) increase real estate taxes for non-oceanfront property owners in Kill Devil Hills. He asked the Board to consider adopting architectural standards to ensure houses about a certain size/bedrooms conform with and better fit the "feel" of the Outer Banks; consider landscaping buffers rather than fencing. The large houses are popular, generate occupancy taxes and real estate taxes but put little burden on public services or schools, Mr. Fabrikant said. The free market will correct any large oceanfront houses supply/demand imbalances; the Town should not punish all oceanfront owners with more restructure zoning changes.

Mr. Fabrikant asked the BOC to vote against the ordinance amendment or consider delaying a vote until all economic implications are understood, including what the amendments could mean to the Town's ad valorem taxes. He also invited the Board to take a tour of one of the larger homes in question.

Beth O'Leary, 1219 B and Martha Vaughan, 1217C South Virginia Dare Trail: Ms. O'Leary and Ms. Vaughn, representing *Develop Smarter, KDH Against Mini-Hotels*, also desired to submit a verbal comment; however, since the audio was not working Ms. O'Leary indicated she would submit an e-mail comment on Tuesday, May 12th. Following is a summary

of their written comments, which are hereby attached to and made a part of the minutes of this meeting:

They began by recognizing Town leaders, emergency response personnel and first responders for the non-stop commitment made to the Town and community during the COVID-19 crisis, and included former Mayor Dr. Sheila Davies, Director of the Dare County Health and Human Services Department, for keeping Dare County residents and non-residents so well informed.

Ms. O'Leary and Ms. Vaughan stated that the amendments under consideration at this public hearing are positive steps to address potential safety and/or aesthetic concerns. They do not address that redevelopment of lots with large oceanfront houses has saturated the market and they felt continuing with this construction trend to be short-sighted. At the last public forum, Ms. O'Leary stated, she had explained how likely events potentially are that could destroy large event homes/the wedding destination industry in Kill Devil Hills, such as a strong hurricane or a downturn in the economy. At this time, this area and the world are facing a worse problem – a virus that caused limitations on the sizes of gatherings and an economy.

They asked the BOC to reconsider the original proposal to amend the Town Code to limit square footage of a single-family dwelling from 6,000 to 10,000 [sic]. There are few possible properties left available for redevelopment, and a compromise is possible. Their remarks concluded with a plea for the Board to not miss an opportunity to "do the right thing." There are so many unknowns facing the future of the economy and recovery, they said, maybe the future of development should be more affordable rentals with small carbon footprints.

Joan Brothers and Robert E. Vinson, 1211A South Virginia Dare Trail: Ms. Brothers and Mr. Vinson submitted a written statement that is hereby attached to and made a part of the minutes of this meeting. Their statement is summarized as follows:

Their written statement was critical of the large oceanfront dwellings, some of which are near and adjacent to their family cottage. There are three large houses that could bring more than 100 people to their section of the beach, each week. That means beach crowds, additional traffic on heavily traveled roads, and extra flooding along Route 12 due to increased concrete for parking and structure foundations.

They asked how such structures came to be allowed and interpreted state law to place the responsibility on local governments to limit the size of structures. They acknowledged fiscal advantages to the Town in areas of tourism revenues, construction jobs, real estate transactions, retail sales, etc. They also acknowledged the responsibility of property owners to be aware of local regulations and activities.

Ms. Brothers and Mr. Vinson asked the BOC to consider the loss of pleasure and being with families each year on the Outer Banks that large oceanfront dwellings have caused, and provide for future generations to enjoy our area as it used to be by restricting the size of structures that can be built in Kill Devil Hills.

(Town Clerk's note: The BOC was provided with copies of all three written comments on Tuesday, May 12, 2020.)

There being no other comments or questions, Mayor Sproul made a motion for the BOC to close the public hearing and enter regular session. Commissioner Gray seconded that motion which was approved by unanimous, roll call vote, 5-0.

Commissioner Windley	Yes
Commissioner McAvoy	Yes
Commissioner Gray	Yes
Commissioner Ingram	Yes
Mayor Sproul	Yes

The public hearing ordinances will appear on the May 27, 2020 BOC meeting agenda for action.

Public Comment

Response to Public Comment

Introductions and Presentations

Old Business

1. Chapter 151, Flood Damage Prevention Ordinance – 2020 revision

This item appears on the agenda for additional public input and comment opportunity. The public hearing is scheduled for Monday, June 8, 2020 at 6:00 p.m. The draft ordinance and relative maps appear on the Town's website, have been referenced for anyone interested on the Facebook page; many messages have gone out and steps have been taken to assure public awareness of the new ordinance and maps.

Ms. Guns provided a brief review of this new, higher regulatory standard ordinance. No Dare County local government is proposing adoption of a new flood ordinance that is substantially different from any other. Kill Devil Hills is proposing an eight-foot elevation, at least one other Dare County municipality is proposing a higher elevation, but for Kill Devil Hills based on history and research, the eight-foot elevation is fair and appropriate. Ms. Guns asked for any questions or comments from any members of the BOC, and for public input which could be submitted in writing, by e-mail, or by telephone.

Ms. Guns verified for the Board that the new flood maps and the new ordinance have been posted on the Town's website for quite some time,

In accordance with the new public hearing standards for electronic meetings, the public hearing on the flood ordinance will be held on June 8th and Staff proposes that meeting be recessed until at least the following 24-hour period is concluded, and re-open the meeting to take a vote on the new ordinance and maps prior to the June 18, 2020 deadline for adoption.

New Business

1.

Subscription type residential curbside recycling rate increase request (Attached NB-1)

Public Services Director Steve Albright's accompanying memorandum highlighted the request by Bay Disposal for a subscription increase to $12.76 per cart, per month. Although this is a 2.49% increase, it is only the third rate increase since the company entered into a franchise agreement with the Town in 2008. The last increase was in 2019, and like this request, is based on increased operating costs.

Bay Disposal has been responsive and cooperative with Town Staff and its Kill Devil Hills customers over the past 12-year relationship. The service is convenient to those who want it, without being imposed on those who opt to not use it.

Staff recommended the BOC approve the rate increase to $12.76 per cart, per month for the subscription-type residential curbside recycling program.

Mayor Sproul asked for comments or action from the BOC and Commissioner Gray made a motion for the BOC to approve the curbside recycling rate increase for $12.76 per month, as requested by Bay Disposal. Commissioner Windley seconded that motion and approval was unanimous, 5-0, by roll call vote, as follows:

Commissioner Windley	Yes
Commissioner McAvoy	Yes
Commissioner Gray	Yes
Commissioner Ingram	Yes
Mayor Sproul	Yes

Committee Reports

Commissioner Gray

- Since the West Side Recreation Group has not met due to the restrictions in place because of the COVID-19 emergency, there was nothing to report at this time.
- Regarding the Government Access Channel, Commissioner Gray explained that a huge amount of work has been on-going to produce daily/near daily update videos on COVID-19 in Dare County. Work has also been conducted by Dare County and channel participants to develop a comprehensive video on COVID-19. That video will be released soon. The GAC budget looks good and all appears good for the future.
- Commissioner Gray, who is a member of the First Flight Society's Board of Directors explained that the association is conducting a membership drive. Interested persons can visit the society's website, www.firstflight.org, https://firstflight.org/our-new-membership-program-starts-march-1st-2020/ for additional information.

Commissioners Agenda

Commissioner Windley

- Commissioner Windley asked about getting the BOC's previously mentioned, and arranged, retreat rescheduled. It was derailed due to the COVID-19 precautions. Mayor Sproul will look into this and report back to the BOC. Governor Cooper is scheduled to update the State of North Carolina on May 22nd on COVID-19 response stages, precautions, restrictions, etc., and, it's possible that more information on crowd-gathering which could be relative to the BOC's retreat, will be available at that time.

Commissioner Gray

- Commissioner Gray congratulated all graduating seniors in Dare County and especially First Flight High School graduates.
- Environment North Carolina asked members of the BOC to participate in a public information campaign against off-shore oil drilling. Kill Devil Hills has taken a number of actions against off-shore drilling over the past several decades. Commissioner Gray asked if any member of the Board intended to respond. Mayor Sproul said he would via a short video.

Mayor's Agenda

1. Proclamation Designating May 15, 2020 as Peace Officers Memorial Day and May 10-16, 2020 as Police Week

Peace Officers Memorial Day was established when Congress asked the President to designate May 15 each year to honor law enforcement officers. President John F. Kennedy signed the bill into law on October 1, 1962. The annual designation of May 15 as Peace Officers Day and the corresponding calendar week as National Police Week has continued since. According to the National Law Enforcement Officers Memorial Fund, 135 officers were killed in the line of duty in 2019, with 1,627 deaths in the past 10 years. Their families and co-workers are left to cope with the tragic loss.

President Obama stated in observance in 2013, "*We can never repay our debt to these officers and their families, but we must do what we can, with all that we have, to live our lives in a way that pays tribute to their memory.*"

The proclamation calls on Kill Devil Hills citizens to observe Peace Officers Memorial Day and National Police Week to help increase awareness of the vital role that law enforcement fills in our society.

Mayor Sproul made a motion for the BOC to adopt the *Proclamation Designating May 15, 2020, as Peace Officers Memorial Day and May 10-16, 2020, as Police Week* and Commissioner McAvoy seconded that motion. Approval was unanimous, 5-0, by roll call vote:

Commissioner Windley	Yes
Commissioner McAvoy	Yes
Commissioner Gray	Yes
Commissioner Ingram	Yes
Mayor Sproul	Yes

Temporary Food Service Waivers

Mayor Sproul explained that he had been working on ways the Town might be able to support restaurants and restaurant workers during this challenging time, which is due to COVID-19 restrictions. Moving forward there will be restrictions on restaurants and food-service establishments which will likely include having only a portion of dining rooms open and other restrictions not yet identified, by Governor Cooper. He added that individual discussions with members of the BOC have been had about putting together an executive order tied to the Town's State of Emergency Order, issued on March 16, 2020, that would allow restaurants to be able to use their parking areas or green space outside their restaurants, or decks, porches, etc., for outdoor dining, at such time as restaurants are allowed to open. As envisioned, up to 25% of a restaurant's designated parking could be used for outside dining area. Mobile food trucks could also be allowed with restrictions.

Along with the BOC, restaurant owners in Kill Devil Hills and the President of the Outer Banks Restaurant Association have been consulted.

Mayor Sproul stated that this is one of the few things the Town can do to really help in a tough situation, and help with everyone trying to find a bit of normalcy during a difficult time.

Lighting Issue

Commissioner Gray reminded Mayor Sproul that there is a lighting issue brought to the Board's attention on what is and isn't allowed in the way of lighting and commercial structures. Mayor Sproul thanked Commissioner Gray for the reminder. At this time, there is a specific violation at a specific location for which enforcement measures may already be underway. This will be placed on the agenda for the next meeting.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. April 22, 2020

2. Budget amendments (Attached CA-2A, 2B, 2C, 2D and 2E)

A. #22 – to appropriate funds from the unauthorized substance tax (drug forfeiture funds) to purchase police equipment needed for three vehicles
B. #23 – Hurricane Florence repair – beach nourishment area sand fence and sprigging
C. #24 – Hurricane Dorian Category B – Expenses reimbursable from FEMA
D. #25 – Hurricane Dorian Category A – Expenses reimbursable from FEMA
E. #26 – Hurricane Dorian Category E – Expenses reimbursable from FEMA

3. Partnership organizations annual reports (Attached CA-3A and 3B)

A. Community Care Clinic of Dare
B. Interfaith Community Outreach

Approval of the Consent Agenda will record these two partnership reports. Reports from the YMCA and Nags Head Woods were presented to the BOC earlier this year.

Staff recommended approval of the Consent Agenda as presented.

Commissioner Windley made the motion to approve the Consent Agenda as presented and that motion was seconded by Commissioner Ingram. A roll call vote was taken and the motion was approved, unanimously, 5-0.

Commissioner Windley	Yes
Commissioner McAvoy	Yes
Commissioner Gray	Yes
Commissioner Ingram	Yes
Mayor Sproul	Yes

Public Comment

Response to Public Comment

Adjourn

There being no further business before the BOC at this time, Mayor Sproul called for a motion to adjourn this meeting, which was made by Commissioner Windley, seconded by Commissioner McAvoy, and approved unanimously by roll call vote:

Commissioner Windley	Yes
Commissioner McAvoy	Yes
Commissioner Gray	Yes
Commissioner Ingram	Yes
Mayor Sproul	Yes

It was 6:55 p.m.