




TOWN OF KILL DEVIL HILLS

MEMORANDUM

March 8, 2021

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager 

REF: New Business

1. Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue (Attached NB-1)

In December, the Town received an offer to purchase the property described above and depicted in the materials included with this memorandum. The offer from MPF Investment Company, L.P, in the total amount of \$1,505,000, including the required 5% bid deposit, was submitted in accordance with the *Upset bids* statute. The Town Attorney reviewed the offer and determined it to be submitted in compliance with North Carolina law.

At the October 12, 2020 meeting, Staff was directed that upon receipt of a valid bid for the property this matter was to return to the BOC for further consideration. Staff was also directed to obtain an up-to-date appraisal of the property, and that was provided to the BOC prior to development of this packet. The conditions outlined in the resolution match those established in the statute.

At this time, if the BOC chooses to move forward with the upset bid process and potential sale of the property detailed in this memorandum and the resolution, a motion will be in order to adopt the *Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue*, and Staff will proceed with advertisement and notification.

This matter will return to the BOC at such time that a 10-day period has passed without any qualifying upset bid having been received.



TOWN OF KILL DEVIL HILLS

Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue

WHEREAS, the Town of Kill Devil Hills (the "Town") owns certain property, identified as Dare County Tax Parcels:

- # 026186000;
- # 008351000;
- # 008350000;

and,

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of any offer for the property; and

WHEREAS, the Town has received an offer, including the required 5% bid deposit, from MPF Investment Company, LP ("LP"), of 102 West Airstrip Road, Kill Devil Hills, NC, to purchase the three parcels identified in the first paragraph, above; and

WHEREAS, these parcels contain a total of 43,500 square feet and are located along US 158/Croatan Highway, and East Eighth Street in Kill Devil Hills, described in instruments recorded in the Dare County Register of Deeds, as follows:

- # 026186000 – Book 1641: Page 0063
- # 008351000 – Book 1641: Page 0063
- # 008350000 – Book 1641: Page 0062

WHEREAS, LP, has paid the required 5% deposit with the offer;

NOW, THEREFORE, BE IT RESOLVED, that

1. The Board of Commissioners of the Town authorizes the sale of the property described above through the upset bid procedure of North Carolina General Statute §160A-269.

2. The Town Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms under which the offer may be upset.
3. Persons wishing to upset the offer that has been received shall submit a sealed bid and their offer to the Office of the Kill Devil Hills Finance Department within 10 days after the notice of the proposed sale is published. At the conclusion of the 10-day period, the Town Clerk shall open all bids received, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
4. If a qualifying higher bid is received, the Town Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Board of Commissioners.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check, or certified check. The Town will return the deposit of the final high bidder at closing.
7. The terms of the final sale are that:
 - A. The Board of Commissioners must approve the final high offer before the sale is closed, which it will do within 30 days after the final upset bid period has passed.
 - B. The buyer must pay with cash, cashier's check, or certified check at the time of closing.
 - C. Conveyance of the property will be by a Special Warranty Deed for the property in fee simple.
8. The Town reserves the right to withdraw the property from sale at any time before the final high bid is accepted, and also reserves the right to reject any and all bids at any time.

9. If no qualifying bid is received after the initial public notice, the offer is hereby accepted as to price, with the remainder of the contractual terms being subject to negotiation between the Town and the offeror. The appropriate officials of the Town are authorized to execute the instruments necessary to convey the property to LP, or his designee.

Adopted this _____ day of _____, 2021.

SEAL

Ben A. Sproul, Mayor, Town of Kill Devil Hills

ATTEST:

James Michael O'Dell, Deputy Town Clerk

DEPOSIT AGREEMENT

This Agreement is made this 10th day of December, 2020 by **Town of Kill Devil Hills**, (hereinafter "Town"), and **MPF Investment Company, L.P.**, (hereinafter "LP"), with regard to a proposed purchase of Town-owned property located at 2011 S. Croatan Highway (PIN: 02618600), 2032 Wrightsville Boulevard (PIN: 008351000), and 0 S. Croatan Highway, Kill Devil Hills, North Carolina (PIN: 008350000) (hereinafter "Property").

RECITALS

WHEREAS, Town is the owner of the Property referenced directly above; and

WHEREAS, LP desires to make an offer to purchase the Property, which offer, if accepted by the Kill Devil Hills Board of Commissioners, will be subject to an upset bid period pursuant to N.C.G.S. 160A-269; and

WHEREAS, the terms of the initial offer being made by LP will be limited solely to the purchase price of \$1,505,000.00 which offer will require a deposit of \$75,250.00 (the "Deposit") with the Town Clerk pursuant to statutory provisions governing the transaction; and

WHEREAS, in the event the Kill Devil Hills Board of Commissioners votes to accept the offer and initiate the requisite upset bid period, and said upset period results in LP becoming the high bidder for the purchase of the Property, LP desires to enter into negotiations with the Town concerning other various and specific terms associated with LP's purchase of the Property; and

WHEREAS, the Town is amenable to said negotiation efforts upon expiration of the upset period showing LP as the high bidder; and

WHEREAS, it is agreed by the parties hereto that the Deposit shall be fully refundable in the event LP is not the high bidder or in the event LP becomes the high bidder and is unable to reach an agreement on the additional terms of purchase with the Town; and

NOW THEREFORE, LP and the Town enter into this agreement to establish certain terms associated with LP's statutory deposit as it pertains to the circumstances described directly above.

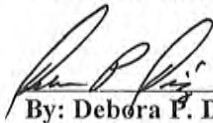
TERMS

1. The parties to this agreement acknowledge the accuracy of the mutual recitals above and consider the same valuable consideration for this Agreement, said recitals being incorporated herein by reference.
2. The parties acknowledge and agree that LP is making an offer to purchase the Property in the amount of \$1,505,000.00, and that pursuant to N.C.G.S. 160A-269, the Deposit must be made by LP with the Town Clerk upon submittal of said offer.
3. The parties acknowledge and agree that LP's offer to purchase shall be subject to a statutory upset bid period of ten (10) days from the date that notice of LP's offer to purchase the Property is posted by the Town Clerk.

4. The parties acknowledge and agree that if LP does not become the high bidder, and LP makes no further bids on the Property, the Deposit will be returned in full to LP by the Town.
5. The parties acknowledge and agree that if LP becomes the high bidder, then further negotiations on other various and specific terms of the Property purchase, including, but not limited to, an appropriate period for LP to examine the Property, conduct due diligence, and seek zoning entitlements, all to be embodied in a definitive purchase agreement, shall ensue between the Town and LP.
6. The parties acknowledge and agree that in the event the Town and LP are unable to agree on a definitive purchase agreement within forty-five (45) days from the date upon which LP becomes the high bidder, then the Deposit shall be fully refundable to LP and contractual obligations associated with the Property purchase shall cease to exist between the parties hereto.
7. The parties acknowledge that this agreement shall be binding upon the executors, heirs, devisees, and any successors in interests to LP.

THIS AGREEMENT HAS BEEN EXECUTED as an agreement between the parties hereto, this the 10th day of December, 2020.

TOWN OF KILL DEVIL HILLS



By: Debra P. Diaz, Town



MPF INVESTMENT COMPANY, L.P.



(SEAL)

By: Jeff Fabrikant, General Partner

MPF INVESTMENT COMPANY LP
OPERATING ACCOUNT
PO BOX 71125
BETHESDA MD 20813

001
68-994/514

PAY TO THE
ORDER OF

Town of Kill Devil Hills

DATE

12/10/20

\$ 75,250.00

DOLLARS

Seventy-five thousand & no hundred & fifty

 TOWNE BANK



MEMO EMD / 2011 S. Creation

⑈ 001

2. Procedure for disposition of real property and review of offer to purchase 2011 South Croatan Highway and 0 South Croatan Highway adjacent thereto, and 2032 Wrightsville Avenue (Attached NB-2)

Town Manager Debora Díaz shared that at the recent BOC retreat, Staff was asked to provide information on the disposition of real property. She noted that if a municipality desires to sell real property, three main competitive sales options are available, which were outlined in the packet materials for this item.

The Town has received a written preliminary offer to purchase several parcels of property at the northeast corner of East Eighth Street, properties which were originally the planned site for a joint Kill Devil Hills / Nags Head fire station, which was never constructed. MPF Investment Company, LP has offered \$1,505,000 for all three pieces.

Staff recommended the BOC:

- Authorize and direct the Town Manager and Town Attorney to investigate the proposal for compliance with North Carolina law; and,
- To negotiate the terms of the offer with MPF Investment Company, LP, as may be necessary; and,
- That upon completion of negotiations and receipt of a valid bid, this matter is to return to the BOC for further consideration, along with a *Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue*, including acceptance of the offer and authorizing the upset bid process.

Mayor Sproul highlighted the upset bid process, and noted at the conclusion of the process, the Town has the option to reject the final offer.

Commissioner Gray moved to authorize and direct the Town Manager and Town Attorney to investigate the proposal for compliance with North Carolina law; to negotiate the terms of the offer with MPF Investment Company, LP, as may be necessary; and, that upon completion of negotiations and receipt of a valid bid, this matter is to return to the Board of Commissioners for further consideration, along with a *Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue*, including acceptance of the offer and authorizing the upset bid process.

Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

Committee Reports

Community Appearance Commission (CAC) Commissioner Windley shared that the CAC had recently met, and had scheduled two small, informal beach clean-ups in November, with tentative dates of November 14 and Nov 28, 2020. He stated that the events were still in the planning stage. Volunteers can begin at a designated beach access