TOWN OF KILL DEVIL HILLS

Land Where Flight Began

NOTICE OF PUBLIC MEETING

NOTICE is hereby given that on Thursday, May 23, 2019, at 8:30 a.m., the Kill Devil Hills Community Appearance Commission (CAC) will hold a meeting in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road. The items to be discussed are listed below:

Call to Order
Agenda Approval
Approval of Minutes

1. February 28, 2019, meeting minutes

Public Comment – please adhere to a limit of 3 minutes per person or group
Response to Public Comment
Introductions
Old Business

1. Plastic Bag Campaign
2. Report from the Help KDH Kick Butt Subcommittee
3. Future Events
4. Public Service Announcements/Media Campaign
5. Trash Cans along US 158 Busy Intersections
6. Tree Preservation

New Business
Adjournment

Posted this 16th day of May 2019.

Rachel Tackett
Office Assistant

Copies to: Community Appearance Commission members in their meeting materials; Board of Commissioners; all department heads; all Town bulletin boards; Town Sunshine List, including all local news media; Town Electronic Distribution List; website, social media; file

Minutes of the Thursday, May 23, 2019, meeting of the Kill Devil Hills Community Appearance Commission (CAC) held at 8:30 a.m. in the Board of Commissioners Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Present: Chair Sue Kelly, Bambos Charalambous, Billy Dorn, Melinda Mogowski, Natalie Painter, Dave Rollins, Bob Schiffer, Commissioner John Windley

Members Absent: James Almoney

Others Present: Rachel Tackett, Office Assistant

Guests:

Call to Order

Chair Kelly called the Thursday, May 23, 2019, meeting of the Community Appearance Commission to order at 8:31 a.m.

Agenda Approval

Chair Kelly asked the group if they would like to add the topic of their budget to the agenda. Commissioner Windley stated that the Board of Commissioners had not yet approved the Town Manager's Recommended Budget and he suggested that the CAC wait and discuss the topic after the Board has approved it.

Bambos Charalambous made a motion to approve the agenda. Natalie Painter provided a second and the motion passed by a unanimous vote, 7-0.

Approval of Minutes

Ms. Painter had concerns with paragraph one, sentences two and three, on page five of the proposed minutes. She requested that the sentences which read: "The CAC also discussed suggesting an ordinance that would limit developers from removing trees on a lot. Several members voiced their concerns with the idea of an ordinance that would limit developers, as they said that lot sizes in Town are already a small size and can be complicated for developers to work with" be removed. The group decided they did not want this part of their discussion reflected in the minutes.

Upon a motion by Mr. Charalambous and a second by Ms. Painter, the minutes of the February 28, 2019, CAC meeting were approved, as amended, by a unanimous vote, 7-0.

Public Comment – please adhere to a limit of 3 minutes per person or group
Response to Public Comment
Introductions

Old Business

1. **Plastic Bag Campaign**

Melinda Mogowski entered the meeting at 8:46 a.m.

2. Report from the Help KDH Kick Butt Subcommittee

Chair Kelly mentioned the cigarette butt PSA video that the Town produced. The video aims to decrease the amount of cigarette butt litter throughout the area. She thanked videographer Benny Baldwin and the Town for producing the video.

Due to the Board of Commissioners potentially scheduling a budget worksession, the Help KDH Kick Butt Subcommittee does not have a meeting date set for the month of June. Chair Kelly will let the members know once a meeting has been scheduled.

3. Future Events

The group discussed how best to distribute the CAC's reusable bags.

Ms. Painter is going to get in contact with the event coordinator of the local beach clean ups to get additional information on how the CAC can become involved.

The group would like the bags to be available in the Board of Commissioners Meeting Room for members of the public to take.

Chair Kelly directed members of the group to continue passing out the reusable bags, as they deem appropriate. At the CAC's next meeting, the members will develop a list of where the reusable bags are being distributed.

4. Public Service Announcements/Media Campaign

The Administration Department sends out all public releases. If the CAC would like a release sent out on their behalf, they need to submit a draft/talking points to Town Clerk Mary Quidley.

5. Trash Cans along US 158 Busy Pedestrian Intersections

Commissioner Windley made a motion to send the recommended trashcan placement locations of Colington Road, Third Street, and Neptune Drive to Public Services Director Steve Albright and to determine the status of the project, as well as obtaining information on who will be paying for the installation and maintenance of the trashcans. Bob Schiffer provided a second. The motion carried by a unanimous vote of 8-0.

6. Tree Preservation

Chair Kelly made a motion to recommend to the Board of Commissioners an ordinance similar to the Town of Nags Head's policy on tree preservation. Ms. Painter provided a second and the motion carried by a unanimous vote of 8-0.

New Business

Other

The next CAC meeting will be on Thursday, June 27, 2019; at 8:30 a.m., Chair Kelly stated that due to another commitment, she would not be able to attend the June meeting.

Chair Kelly asked that the Community Appearance Awards be placed on the June agenda

Adjournment

There being no other business before the Community Appearance Commission at this time, Mr. Charalambous made the motion to adjourn, which Commissioner Windley seconded. The motion carried by a unanimous vote of 8-0. It was 9:28 a.m.

Submitted by:

Rachel Tackett
Office Assistant

These minutes were approved at the June 27, 2019, meeting of the Community Appearance Commission.

Natalie Painter
Vice-Chair

Minutes of the Thursday, February 28, 2019, meeting of the Kill Devil Hills Community Appearance Commission (CAC) held at 8:30 a.m. in the Board of Commissioners Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Present:	Chair Sue Kelly, Bambos Charalambous, Billy Dorn, Melinda Mogowski, Natalie Painter, Dave Rollins, Bob Schiffer, Commissioner John Windley, and James Almoney
Members Absent:	
Others Present:	Steve Albright, Public Services Director; James Michael O'Dell, Deputy Town Clerk; and Rachel Tackett, Office Assistant
Guests:	Amanda Hooper, Colington Harbour resident

Call to Order

Chair Kelly called the Thursday, February 28, 2019, meeting of the Community Appearance Commission to order at 8:31 a.m.

Agenda Approval

There were several requested items to be added to the agenda: Chair Kelly added New Business 3- Attendance at Meetings, Melinda Mogowski added New Business 4- Email from Concerned Citizen, and Bob Schiffer added New Business 5- Bay Drive. Ms. Mogowski made a motion to amend the agenda to include the above additions. Bambos Charalambous provided a second and the motion passed by a unanimous vote, 8-0.

Approval of Minutes

Upon a motion by Mr. Charalambous and a second by Natalie Painter, the minutes of the December 13, 2018, CAC meeting were approved by a unanimous vote, 8-0.

Public Comment – please adhere to a limit of 3 minutes per person or group

Response to Public Comment

Introductions

Chair Kelly introduced newly appointed member Billy Dorn, and the group welcomed him. She also welcomed guest, Amanda Hooper.

Old Business

1. **Plastic Bag Campaign**

Commissioner Windley informed the group that Publix was willing to work with the Community Appearance Commission by purchasing 1,000 reusable bags; however, the bags

would only have the Publix logos on them. Commissioner Windley said if the group decided to collaborate with Publix on this project, it would be a good cost saving opportunity for the Commission. Several CAC members shared their concerns with the bags only having Publix logos, stating that defeated the purpose of the CAC's Bag Smarter Campaign. Commissioner Windley offered to approach Publix management again, to discuss including the CAC's artwork on the tote bags.

Natalie Painter expressed the importance of having reusable bags that were easily accessible, for out of town visitors, who do not typically consider packing reusable bags when traveling. She said if the group decided to use the artwork with the Wright Brothers Monument, it would appeal to the visitors.

The CAC would like to proceed with ordering 1,000 bags. A motion was made by Ms. Painter for Staff to place an order purchasing 1,000 reusable bags. Mr. Schiffer provided a second and the motion passed by a unanimous vote, 8-0. A second motion was made by Commissioner Windley to order black bags. Ms. Painter provided a second and the motion passed, with a vote of 7-1, with Ms. Mogowski opposing. A third motion was made by Ms. Mogowski to use the Wright Brother's Monument with the recycling symbol, as the artwork for the bags and to have the artwork printed in white. Bambos Charalambous provided a second and the motion passed by a unanimous vote, 8-0.

Ms. Painter urged the group to keep track of where the bags were going (which events and how many were being given away), so they could use that data to assess the impact of the reusable bags, in our community. It was determined by consensuses; the reusable bags will be given away, not sold.

Amanda Hooper suggested that the CAC look into implementing a program similar to Boomerang Bags. (Clerk's note: Ms. Hooper shared this concept with the Board of Commissioners at their October 25, 2017 meeting). Boomerang Bags are reusable bags supporting an organization that was developed in Australia. Volunteers create upcycled bags that have been sewn from reused shirts and linens. The bags could be placed in crates at the front of retail stores, free for anyone to use. When finished with the bags, the person could then drop bags off the next time shopping, for others to use. Some CAC members questioned how sanitary those bags would be. Chair Kelly said that she was curious on the statistics of the program: how many bags came back, how many were being created and donated. She said that she would do some research, into the program.

2. Report from the Help KDH Kick Butt Subcommittee

With permission given from Scott Lawrence of the Surfrider Foundation, the Kill Devil Hills' Buildings and Grounds Department repainted the donated cigarette butt receptacles a dark blue. After its last meeting, the Help KDH Kick Butt Subcommittee approached the Town about ordering stickers and signage to accompany the receptacles. The Buildings and Grounds Staff created signage, in-house, for the receptacles, using recycled material. (*Clerk's note: The material that was used to create the signs will be deducted from the CAC's budget*). It was determined that the stickers would not withstand the elements, as well as the signs. In addition, since the 26 receptacles are different lengths and diameters, it would not be efficient to measure each receptacle and make different stickers for all of the receptacles. The receptacles are attached to posts at the beach accesses, using zip ties. This was another factor that was considered when determining to place the signs at the top of the post, as the placement is most effective. An

example of an improved receptacle was presented to the CAC at the meeting. The members complimented the Buildings and Grounds Department and stated that it was cost effective, simple, and appealing. Commissioner Windley asked Chair Kelly if she would present the receptacle to the Mayor and Commissioners at their next Board meeting and she agreed. The CAC plans to conduct a media campaign about the receptacles.

The group discussed the possibility of having more than one receptacle at the larger, busier beach accesses. Chair Kelly said that she would bring that idea up and encourage discussion at the next meeting of the Help KDH Kick Butt Subcommittee.

3. Future Events

The CAC discussed possible upcoming events, in which they could participate by distributing information about the Bag Smarter Campaign and the Help KDH Kick Butt Campaign. Billy Dorn mentioned an upcoming car show (in March) that is coordinated by the First Flight Cruisers and hosted the First Flight High School. He stated that may be a good event for the CAC to join, as it is well attended. Chair Kelly stated that she would try to find the person to contact about the CAC having a presence at the event. Ms. Mogowski mentioned the CAC joining the Neighborhood Watch Group, as they walked around the neighborhoods, interacting with members of the public. The CAC discussed the possibility of handing out reusable bags and personal pocket ashtrays during the Neighborhood Watch Group's walk arounds. Chip Almoney said that his wife (Chairperson of the Neighborhood Watch) liked the idea of the CAC joining them and she would bring it up for discussion at their next meeting.

4. Public Service Announcements/Media Campaign

Chair Kelly said that the Help KDH Kick Butt Subcommittee has plans to conduct a media campaign with local press at the Ocean Bay Beach Access in April. She told the CAC members that the Help KDH Kick Butt Subcommittee would draft some campaign ideas, at its next meeting and she will bring those ideas back to the CAC for their consideration, at their March meeting. Ms. Painter recommended using the information that was on the Help KDH Kick Butt stickers, as starting points.

Chair Kelly also informed the group that Town Clerk Mary Quidley would send out information to the Town's distribution lists and various other channels, on behalf of the CAC.

5. Trash Cans along US 158 Busy Intersections

The CAC did not review the packet materials that Public Services Director Steve Albright submitted and as a result, the members said it would be better to make any discussions on the subject until they had a chance to review the documents. Mr. Albright provided the members with a summary of their recent request. He explained to the group the difference in servicing trashcans on a busy highway versus servicing trashcans in a downtown area, where the speed limit is not 50 miles per hour. Mr. Albright said if trash cans were placed along US 158, at busy intersections, his Department's refuse trucks would have to go onto private property to access the cans to service them, as it would be extremely unsafe for his Staff to do so, from the US 158 bypass. Mr. Albright said permission would have to be granted from the property

owners, to allow the Public Services crews and refuse trucks access onto their property. Once the CAC has determined specific locations for the trashcans, additional specifics can be obtained from North Carolina Department of Transportation and Public Services. The group decided to select 4-5 possible locations to place trashcans and they will bring location ideas to share, at the March meeting.

The CAC requested that Staff provide them with a list of pedestrian crosswalks (East to West) in Town and make note of any businesses that are near the crosswalks. (*Clerk's note: following the CAC's meeting, it was determined that before Staff proceeded with additional research, the concept needed to be presented to the Board of Commissioners*).

New Business

1. **Election of Chairperson and Vice-Chairperson**

Ms. Mogowski nominated Sue Kelly as Chairperson and Natalie Painter as Vice Chairperson. Mr. Charalambous provided a second. The motion carried by a vote of 8-0.

2. **Trash Attack!**

Chair Kelly encouraged group members to spread the word about the Trash Attack! event which is set for Saturday, April 6, 2019, from 9 – 12:30 p.m., at Aviation Park.

3. **Attendance at Meetings**

Chair Kelly informed the group that she and Commissioner Windley had been discussing members' attendance and the possibility of revising the Town Code to address membership attendance. Staff provided Chair Kelly a copy of the Town Code that pertains to the CAC and attendance (Section 31.20 E), which reads: *Faithful attendance at the meetings of the Commission is considered a prerequisite for the continuation of membership on the Commission. A majority of the Commission members may recommend to the Board of Commissioners, for action, the removal of any member who misses more than one-third of the meetings during any 12-month period.* Chair Kelly stated that since the Town Code addressed members' attendance, she did not feel as the group needed to continue discussing the topic, at this time.

Bob Schiffer left the meeting at 9: 37 a.m.

4. **Email from Concerned Citizen**

Ms. Mogowski read an email to the group, that she received from Robin Holton, a Kill Devil Hills' resident. In her email, Ms. Holton expressed her concern about the clear cutting of trees in Town, for new construction. She specifically noted the clear cutting occurring in the areas between the Wright Brothers National Park lands, Landing Drive, and First Street. Ms. Holton stated the removal of so many trees is negatively affecting local wildlife, leaving them with no habitat and destroying the natural beauty of our area. She encouraged the CAC to address the issue and work towards preserving trees. *(Ms. Holton's email has been included with the official record of this meeting).*

The CAC discussed proposing an ordinance that would designate an official Town tree. The CAC also discussed suggesting an ordinance that would limit developers from removing trees on a lot. Several members voiced their concerns with the idea of an ordinance that would limit developers, as they said that lot sizes in Town are already a small size and can be complicated for developers to work with.

The group has previously looked into the topic of tree preservation. The CAC asked Staff to re-email them the ordinances that neighboring Towns have in place, regarding the preservation of trees. Chair Kelly stated that more research needed to be conducted, and following the research, a recommendation from the CAC could be offered to the Board of Commissioners for their consideration.

5. Bay Drive

Mr. Schiffer requested that this topic be added to the meeting agenda and since he left the meeting early, there was no discussion.

Other

The next CAC meeting will be on Tuesday, March 26, 2019, at 8:30 a.m.

Adjournment

There being no other business before the Community Appearance Commission at this time, Mr. Charalambous made the motion to adjourn, which Ms. Painter seconded. The motion carried by a unanimous vote of 7-0. It was 9:56 a.m.

Submitted by:

Rachel Tackett
Office Assistant

These minutes were approved at the March 26, 2019, meeting of the Community Appearance Commission.

Susanne D. Kelly
Chair

Ms. Mogowski recommended changing the minutes to state, that Nags Head's ordinance was the preference or a portion of their ordinance is preferred by the CAC. Ms. Markland made a motion to rephrase the parenthesized statement to say that the CAC prefers a portion of Nags Head's adopted ordinance on tree preservation. Mr. Marik provided a second. The motion passed by a vote of 7-0.

Chair Kelly said that the topic of tree preservation is placed later on the agenda and the group could talk about the memorandum and other specifics, once they got to that point.

Public Comment – please adhere to a limit of 3 minutes per person or group
Response to Public Comment
Introductions:
Old Business

1. **Town Attorney**

The Town Attorney, Casey Varnell, has provided a letter for the Town in regard to the Town's position on abatement issues. Mr. Varnell researched this topic and his letter was formed, after talking with the North Carolina School of Government. (The letter is included with the packet materials). The letter describes chronic violators and nuisance violators. Mr. Varnell also recommends in his letter that the Town Code be revised to adequately specify requirements of the Town, in abatement/inspection situations.

Mr. Ray informed the CAC that an amendment to the Town Code was currently being worked on and it would be presented to the BOC for further review. Chair Kelly stated that the CAC never got to take action on this issue before taking an amended ordinance to the BOC. Ms. Markland commented saying that the Town is handling the situation by revising the current ordinance and actively working on it, which is appropriate. Mr. Ray said that the BOC directed staff to work on revising the ordinance. Mr. Ray said that the revised ordinance will make the language more clear on how the Town can address chronic and non-chronic violators.

James Almoney said that a burned down house doesn't seem like a judgement call for the Town, as it is unsafe for the public. He wanted to see unsecured structures boarded in a timely manner, a month at the most. Ms. Markland asked if the insurance companies could do anything about unsecured structures; they cannot. Mr. Almoney said that he would wait and see what the revised ordinance looks like from the Town before further discussion.

2. **Tree Preservation**

Along with the amendment to the March 23, 2017 CAC meeting minutes, the CAC requested that the memo (included with the packet) to the BOC be revised, to remove any mention of Nags Head's tree preservation ordinance. Ms. Mogowski said that the memo should be phrased to state that the CAC supports many elements of Nags Head's ordinance. She recalls the decision to mention Nags Head to the BOC was to provide them with a framework on proceeding with this matter.

Mr. Marik stated that he is against telling people what they should do with trees on their property.

Chair Kelly asked if live oaks (Nags Head's official tree) are an endangered species and Ms. Markland informed her that they are not. Ms. Markland mentioned that something to keep in mind, with regard to live oaks, is how massive their roots grow; which can be detrimental to properties. While she agrees with Mr. Marik's statement about not telling people what should be done with trees on their property, she said that she does like the idea of declaring an official tree for the Town.

Mr. Jones commented by saying that he was "in the middle" with his decision. He said that he is not sure an ordinance is needed; although, it would be nice to encourage tree preservation in Kill Devil Hills. He also said an ordinance would greatly affect the building inspector's job, adding to the amount of work. Ms. Mogowski said neighboring Towns that have an ordinance in place do not seem to experience any hardship.

Ms. Painter commented that having more foliage around Town creates an appealing factor. Chair Kelly said that few species of trees will survive in our environment, near the ocean.

Steve Albright informed the group that in the early 2000's the Planning Board discussed tree preservation. He said that upon review, the Planning Board determined that having an ordinance for tree preservation, made the majority of lots in Town un-buildable. The Planning Board decided that trees along the street's right-of-ways would be easier to preserve. Currently, the Town does protect trees that are on the right-of-ways. Mr. Albright said that there are many factors to consider when looking into tree preservation.

Ms. Markland said that she likes Mr. Jones' idea about encouraging people to save trees, as opposed to forcing them with an ordinance. Mr. Jones did question how to get citizens to save the trees with no ordinance in place. Ms. Painter suggested a marketing campaign and education the public. One idea was to have an arborist speak at a meeting. She also thinks that declaring an official Town tree will help with the preservation efforts. Chair Kelly stated that doing a marketing campaign, the same time as the cigarette butt campaign, would be too much. The CAC decided not to send the memo to the BOC requesting an ordinance. The CAC would like to work on a tree preservation campaign after they have a campaign against cigarette butts.

3. CAC Award

Chair Kelly asked the group to provide a list of nominees to receive the Community Appearance Awards for 2017. Ms. Mogowski asked if churches could be nominated, as recipients of the award. The group was in favor of allowing churches to be nominated for the award. The members generated 3 lists of business nominees: best appearance, most improved, and best appearance for a business within a multi-unit complex.

TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM August 24, 2017

TO: Community Appearance Commission
Meredith Guns, Planning Director
Cameron Ray, Planner
Rachel Herrmann, Secretary to the CAC

FROM: Mary E. Quidley, Town Clerk, mary@kdhnc.com, 252.449.5302

REF: Minutes of the March 23, 2017 and the Agenda for the May 25, 2017 Meetings

Rachel had a concern about the motion to approve the March minutes and asked me to review the discussions and procedures and offer advice. I listened to the audio tapes of the March 23rd and May 25th meetings and there do need to be some adjustments made to preserve the record of the March meeting as it was conducted.

March 23rd

Old Business
3. Review of Requested Materials
C. Tree Preservation

Rachel's summary of the consensus of those members present was correct. Staff was asked to bring back a draft letter/memorandum for the CAC to amend/approve advising the Board of Commissioners that the CAC would like to add an ordinance to the Town Code on tree preservation. The idea was that if the BOC was against such an ordinance then there would be no need for the CAC to spend time working on it.

May 25th

Approval of the Minutes of [March 23, 2017]

There were three motions on this one item, and only one motion was voted on:

- First: a motion to approve the minutes as presented; there was a second to the motion.

Although the minutes as to the consensus from the March 23rd meeting were correct, as stated above, there was discussion on the issue of a tree preservation ordinance; the tree preservation issue was a scheduled item on the May 25th agenda, under *Old Business*. A CAC member who was not present at the March meeting did not support the tree ordinance in effect in Nags Head, which had been a specific inclusion in the draft memorandum as directed by the CAC in March. A second motion was made:

- Second: a motion to remove the parenthesized statement, "that mentions the support for Nags Head's adopted ordinance." There was a second to the motion.

  Discussion continued again, and a third motion was made:

- Third: to rephrase the parenthesized statement to say that the CAC prefers a portion of Nags Head's adopted ordinance on tree preservation. There was a second to the motion and it was approved, unanimously, 7-0.

Only the first motion to approve the minutes has relevancy to actual agenda item, which was *Approval of the Minutes*.

A better way to have addressed this would have been for the focus to have remained on the true accuracy of the minutes and the motion to approve them. Discussion on the content of the *Old Business* memo should have been held until the *Old Business #2* item was reached. Then the decision on whether or not to include Nags Head's tree ordinance could have been made under the appropriate agenda item, *Old Business, 2. Tree Preservation.*

Any motion to amend the minutes of a meeting need to be based on identification of error on the clerk's part. It's not appropriate to amend the minutes of a meeting because someone disagrees with the comments made or the direction given; those are substantive matters and should be addressed during the business portion of the meeting.

May 25th continued

Old Business
2. Tree Preservation

Even though a motion had been made, albeit inappropriately under *Approval of the Minutes*, discussion on what the memorandum should say continued. No further changes to the memo were made. Ultimately, it was agreed that until the cigarette butt campaign was concluded pursuing a tree preservation ordinance would be too much.

To have the record reflect proper action, I'd like to suggest the CAC, at the next meeting, make a motion to accept this memorandum and to append the May 25th minutes with it which will adequately explain the situation; Rachel can use this action as justification for not amending the March 23rd minutes. Your action to amend the Planning memorandum on the tree preservation

ordinance can stand as it was taken, which was basically rejected during continued discussions under *Old Business*.

I'll be glad to speak with anyone regarding this memorandum and the recommendations submitted in it.

For anyone interested, Rachel has a couple of publications from the School of Government at UNC-CH that pertain to procedures for small boards and commissions. We typically provide them to boards/committees chairs, but anyone is well to check any of them out.

Thank you.

156.137 TREE AND VEGETATION PRESERVATION AND PLANTING.

(A) Purpose.

(1) The purpose of this section is to preserve, protect, and replace trees and vegetation within the Town because such plantings:

(a) Are an important public resource.

(b) Preserve and enhance the Town's physical and aesthetic environment, especially its natural and unique atmosphere;

(c) Enhance the air quality by filtering air pollutants;

(d) Reduce topsoil erosion by the holding effect of their roots;

(e) Reduce storm water runoff;

(f) Provide a buffer and screen against noise pollution;

(g) Reduce energy consumption by acting as a wind break and producing shade;

(h) Preserve and enhance nesting areas for birds and other wildlife which, in turn, assist in the control of insects;

(i) Protect and enhance property values;

(j) Protect and enhance the quality of life and the general welfare of the Town;

(k) Improve the compatibility of uses by providing privacy and enhancing the aesthetic transition between uses.

(2) For the purpose of this section, tree is defined as a self-supporting, woody plant, together with its root system, having a well-defined stem or trunk or a multi-stemmed trunk system, a more or less well-defined crown, and a mature height of at least 8 feet. "Tree" does not include trees in containers or nursery stock trees kept or maintained for resale. "Vegetation" is herein defined as perennial bushes and shrubs or ornamental or other grasses meeting minimum size requirements at planting.

(3) Multi-trunk trees.

(a) For the purposes of this section, *multi-trunk trees* are defined as trees that have more than one trunk growing from a single root mass or trees that split into multiple stems below breast height (4.5 feet above ground).

(b) The diameter at breast height of multi-trunk trees shall be measured according to the following formula from the U.S. Forest Service National Core Field Guide: the dbh for a multi-trunk tree is calculated by taking the square root of the sum of squared dbhs of all trunks. The following example shows how this formula is intended to be applied:

Example: Multi-trunk tree with four 10-inch trunks

1. Find square of each trunk. $10 \times 10 = 100$
2. Add squared numbers together. $100 + 100 + 100 + 100 = 400$
3. Calculate square root of total. Square root of $400 = 20$
4. This multi-stem tree would be measured as a 20" dbh tree.

(c) Preserving some trunks of a multi-trunk tree is preferable to removal of the entire tree. The Director is authorized to allow the pruning or removal of an individual trunk to accommodate reasonable development of a property.

(B) Clear cutting. On a vacant, undeveloped parcel, removal of any tree greater than 6 inches in diameter at breast height is prohibited except after receiving an approved development site plan and issued building permit, an approved tree management plan and any required tree removal permit.

(C) Tree removal permit.

(1) Permit required. No person shall remove or destroy any tree which is 24 inches or greater diameter at breast height on any lot without first obtaining a tree removal permit from the Director of Community Development (Director) in accordance with the procedures set forth in this section. Further, no person shall remove or destroy any tree located in the common open space of any development without first obtaining a tree removal permit.

(2) Issuance of permit. Tree removal permits shall be issued only after the Director has received the required tree management plan and a completed application for such permit which has been signed by the property owner. In determining whether to grant or deny a permit, the Director shall consider:

(a) The effect of the proposed tree removal upon the stabilization of soil;

(b) The intended use of the property and feasible alternatives which would preserve existing trees;

(c) The existing topography, proposed changes in the topography and proposed landscaping;

(d) The hardship imposed or the reasonable use denied to the applicant as a result of permit denial;

(e) Historical value of the trees;

(f) Good horticultural and forestry practices;

(g) The effect of the proposed tree removal on the deadening and absorption of sound;

(h) The likelihood that the proposed action will adversely affect the control of flooding or soil erosion;

(i) The impact of such action on surrounding property or persons;

(j) The consistency of the proposed action with the purpose of this section.

(3) (a) A permit shall expire and become null and void if work authorized is not commenced within 6 months from the date of the permit or if such work when commenced is suspended or abandoned at any time for a period of six (6) months;

(b) If work has commenced and the permit becomes null and void or expires because of lack of progress or abandonment, a new permit for the proposed tree removal activity shall be obtained before proceeding with further work.

(4) Removal of any size tree where the tree trunk is within ten (10) feet of a structure shall be allowed without a permit.

(D) Tree emergency exception.

(1) A tree emergency shall be deemed to exist when:

(a) A tree has become an imminent danger or hazard to persons or property as a result of fire, motor vehicle accident, or natural occurrence such as lightning, windstorm, ice storm, flood, or other similar event; or

(b) A tree must be removed in order to perform emergency repair or replacement of public or private water, sewer, electric, gas, or telecommunications utilities.

(2) In the case of a tree emergency, the Director is hereby authorized to:

(a) Issue a tree removal permit without an application;

(b) Waive the requirement for a tree removal permit set forth in this section; or

(c) Waive any of the other regulations of this section.

(3) Notwithstanding any other regulations, a person otherwise required to obtain a tree removal permit may take any reasonable action necessary to avoid or eliminate the immediate danger or hazard, or conduct emergency repair or replacement of the public or private utility. The person taking such action shall file an application for a tree removal permit within seventy-two (72) hours after a tree is removed in a tree emergency.

In these instances, documentation of the need for the emergency tree removal must be provided. Such documentation can include (as applicable):

(a) Documentation from a certified arborist;

(b) Police report;

(c) Photographs; and/or

(d) Other information documenting the condition of the tree and circumstances surrounding its removal.

(E) Vegetation management plan required for new development and substantial redevelopment. Any addition to the footprint of a structure, increases in lot coverage, changes to driveway and parking areas, or total renovation cost greater than or equal to 50% of the assessed value of the principal structure and for tree removal permits as required in division (C)(1).

(1) Any applicant proposing to remove or destroy existing trees or vegetation in conjunction with any land development activity, including the moving of buildings, shall submit a vegetation management plan containing such of the following information as deemed necessary by the Director:

(a) The location, size and species of all trees which are at least 6 inches diameter at breast height, indicating which are to be preserved, which are to be removed, and a description of the condition of trees or vegetation that are to be preserved;

(b) Specifications for the removal of trees and protection of trees during construction;

(c) Proposed grade changes or other potentially injurious work adjacent to trees or vegetation designated for preservation with specifications for maintaining ground drainage and aeration around such trees;

(d) The location, size and species of all vegetation to be planted;

(e) An estimate of the vegetation canopy coverage to be provided as required in division (G) via retention or new planting

(f) Such other information that the Director deems essential.

(2) Any applicant proposing to remove or destroy multiple existing trees or substantial vegetation on a developed lot not in conjunction with a land development activity shall ensure that the total vegetation cover on the property is equal to or greater than the minimum requirement through retention of existing vegetation or planting of new vegetation to meet ordinance requirements.

(3) Although not required, any person or firm subject to the requirements of this chapter is encouraged to seek professional assistance from a certified arborist, landscape architect, or similar professional.

(F) Acts harmful to trees.

(1) No person shall abuse, mutilate or otherwise damage any tree or vegetation located on public property, or any tree or vegetation protected by this section, including those located in the public right-of-way along street frontages within subdivisions. However, nothing in this section shall be construed to prevent reasonable and proper trimming of trees or vegetation located on public property by authorized persons in accordance with accepted horticultural practices.

(2) No person shall attach any sign, notice, placard, electrical wire or other injurious device to any tree, nor shall any person cause any substance harmful to trees to come in contact with them, or prevent water and oxygen from reaching their roots.

(G) Canopy cover required.

(1) New development and substantial redevelopment as defined in section 156.137(E) on any property shall provide for the planting or retention of trees (or approved substitute vegetation in the "Town of Duck Vegetation Planting Guidelines") on the site to provide for a minimum vegetative lot coverage as follows:

(a) Ten percent for a lot within any commercial zoning district.

(b) Fifteen percent for a residential lot.

Required vegetative lot coverage will be calculated based on the total lot area minus the footprint of the principal building.

(2) To meet the minimum requirements of this division, vegetative lot coverage shall be calculated using the following methods:

(a) Vegetation that is newly planted to meet vegetative lot coverage requirements shall include only vegetation on an approved list of local vegetation, as provided in "the Town of Duck Vegetation Planting Guidelines", or other trees, bushes, shrubs, or grasses as approved by the Director of Community Development upon submission of a landscape plan with assessment of local hardiness and calculation of canopy. All vegetation planted to meet these requirements shall be a minimum size as specified in "the Town of Duck Vegetation Planting Guidelines" and shall be planted as described in the technical standards included within the Guidelines. Palm trees and

tropical vegetation cannot be counted to meet vegetative lot coverage requirements. If the canopy coverage is accomplished by installation, canopy credit shall be provided based on the categories listed below. The plant list contained in "the Town of Duck Vegetation Planting Guidelines" defines the plant species that are included within each category.

1. Large trees, provide a 400 square foot canopy credit.

2. Small trees, provide a 200 square foot canopy credit.

3. Mulched bushes or shrubs (18-24 inches minimum height at planting or a three gallon size) provide a 40 square foot canopy credit.

4. Ornamental grasses (18-24 inches minimum height at planting or of a three gallon size) provide a 20 square foot canopy credit. Credit for smaller coastal grasses and forbs, such as American Beach Grass, will be provided at 100 sprigs or plants for every 100 square feet of lot area. Credit will not be provided for retention of existing vegetation in oceanfront areas within the CAMA small structure setback.

(b) Existing vegetation that is retained to meet vegetative lot coverage requirements may be calculated based on the methods described in division (a) above based on the allowable square footage as shown for large and small trees, shrubs, and grasses. Areas of significant, mature vegetation that will remain undisturbed may also be calculated on a square foot basis by determining the area within the perimeter surrounding the vegetation to be retained. Existing vegetation to be retained need not be on the approved list of local vegetation as provided in the "Town of Duck Vegetation Planting Guidelines," provided it is a native or locally adaptive plant species.

(c) For trees to be eligible for any tree canopy cover credit, the required amount of open soil surface must be present and protected around the tree. The area of vegetative canopy cover for which credit is given shall always remain in vegetative cover and there shall be no other use of the area other than for vegetation growth or passive recreation except as otherwise provided herein. Developed properties shall be required to maintain the minimum vegetative canopy described above and must provide for replacement of or vegetations that are removed, per division (E)(2).

(H) Vegetation protection during and post development.

(1) During development or razing activity, the builder shall install effective dripline protection around all vegetation preservation areas, and shall further install tree wells, retaining walls, construction fencing, or other structures necessary to protect individual trees designated for preservation. The protective measures shall be specified on the vegetation management plan and shall be designed and installed in a manner consistent with good horticultural practices and subject to the approval of the site plan approving agent.

(2) If vegetation is not listed for removal on the tree removal permit but is destroyed or receives major damage due to construction activities, it must be replaced

with vegetation sufficient to reach the required vegetation canopy, subject to review and approval of the Director of Community Development.

(3) Trees conserved and planted to meet vegetation canopy requirements shall be actively protected during development activity and passively protected throughout their life in accordance with requirements for protected trees set forth below:

(a) Prohibited activities. During lot clearing, grading, building, and all construction activities, the following activities and conditions, and any other activities and conditions harmful to a tree's roots, trunk, or crown, within the vegetation protection zone are prohibited:

1. Vehicle or equipment traffic, parking, or storage, except as provided for in limited activities below.

2. Materials or supplies storage.

3. Placement of temporary or permanent structures.

4. Equipment maintenance or washout.

5. Wounding of trunk.

6. Wounding or breakage of scaffold limbs or branches greater than six (6) inches in diameter.

7. Fires; excessive heat from equipment exhaust pipes.

(b) Limited activities. During lot clearing, grading, building, and all construction activities, the following activities and conditions within the vegetation protection zone are limited to one (1) side of the tree in the outer 1/2 of the dripline, but in no case closer than 2.5 feet to the trunk of a planted tree and ten (10) feet to the trunk of a conserved tree:

1. Site or lot clearing or grubbing.

2. Soil excavation.

3. Soil cuts.

4. Soil fill.

5. Grading.

6. Trenching.

7. Tilling.

8. Edging.

9. Soil compaction.

10. Top dressing with soil greater than two inches in depth.

11. Paving.

(I) Preservation of special trees.

(1) The Town Council may, by ordinance, designate any tree as a heritage, memorial, or designated specimen tree. A heritage tree means any tree which the Town Council has designated by ordinance to have notable historic or cultural interest. A memorial tree means any tree which the Town Council has designated by ordinance to be a special commemorating memorial. A designated specimen tree means any tree which the Town Council has designated by ordinance to be notable by virtue of its outstanding size and quality for its particular species. No designated tree shall be removed, damaged or disturbed in any way unless the Town Council finds that:

(a) There is an overriding need for public improvements;

(b) A severe hardship exists in developing a site; or

(c) The tree dies, becomes irreversibly diseased or irreversibly damaged by natural causes. In permitting such action, the Town Council may require that the tree be relocated on-site or to another site designated by the Town, or be replaced with a similar tree or trees to approximate the canopy lost.

(2) The provisions of this section shall not apply to:

(a) Work conducted on federal, state, or local government owned property;

(b) Emergency work to protect life, limb or property;

(c) Routine installation, maintenance and repair of utilities;

(J) Violations and penalties.

(1) It shall be a violation for any person to remove a tree without having first obtained a tree removal permit, if so required under the provisions of Sections 156.115 and 156.137 of the Town Code. It shall be a violation for a property owner to employ, authorize or direct any third person or entity to remove a tree without having first obtained a tree removal permit, if so required under the provisions of this section.

(2) A separate violation shall be deemed to have occurred for each tree removed without a tree removal permit in violation of the provisions of this section.

(3) Each violation of the tree removal permit requirements of this section shall subject the offender to a civil penalty in the amount of one thousand dollars ($1,000).

(4) Removal of a tree greater than six (6) inches in diameter at breast height on any vacant, undeveloped parcel without the necessary permits and approvals as defined above in section 156.137 (B), shall subject the offender to a civil penalty according to the following procedure:

(a) If the number and type of removed trees and/or vegetation can be determined, the civil penalty shall be assessed as follows:

1. Unauthorized removal of large trees as defined by the "Town of Duck Vegetation Planting Guidelines" shall subject the offender to a civil penalty in the amount of four hundred dollars ($400) per tree.

2. Unauthorized removal of small trees as defined by the "Town of Duck Vegetation Planting Guidelines" shall subject the offender to a civil penalty in the amount of two hundred dollars ($200) per tree.

3. Unauthorized removal of shrubs as defined by the "Town of Duck Vegetation Planting Guidelines" shall subject the offender to a civil penalty in the amount of forty dollars ($40) per shrub.

(b) If the number and type of removed trees and/or vegetation cannot be determined, a civil penalty can be determined based on the square footage of disturbed area and/or area of canopy coverage removed. The penalty shall be equal to one dollar ($1) for every one square foot of canopy coverage removed. In no instance shall the civil penalty exceed five thousand dollars ($5,000).

(5) Unauthorized removal of trees and vegetation shall also subject the offender to mitigation requirements as specified herein.

(a) When dealing with violations of clear-cutting standards under section 156.137(B) or canopy coverage standards in section 156.137(G), the required canopy coverage of replacement trees shall be no less than the canopy coverage which has been determined to have been removed for the assessment of the required civil penalty. The mitigation requirements shall be calculated using the formula to determine canopy coverage as defined above in section 156.137 (G). Replacement trees and vegetation, to the extent that it can be determined, shall of a similar type to that which has been removed.

(b) When dealing with tree removal violations of section 156.137(C), the diameter at breast height measurement of the trunk shall be used to determine the number of replacement trees. Trees of similar type must be planted such that the total caliper inches of trees planted is no less than the dbh of the tree(s) removed. In cases where the size of an individual tree(s) cannot be determined, the canopy coverage of replacement trees and vegetation shall be no less than the canopy coverage which has been determined to have been removed for the assessment of the required civil penalty.

(c) The size of such replacement trees at the time of installation shall be a minimum of three inches (3") in caliper and ten feet (10') in height. Each tree must be planted at least thirty feet (30') from any other tree.

(6) If in the determination of the Director, the site cannot reasonably accommodate the required numbers of replacement trees, then only the amount of trees which can be accommodated on the site will be replaced and the remainder of replacement trees and vegetation shall be mitigated through a payment in lieu of providing on-site trees. This payment shall be made to the Town of Duck to be used for tree and vegetation planting and maintenance in public spaces. The amount of the payment shall be in accordance with the costs for purchase, delivery, and planting of the required replacement trees and vegetation.

(K) Conflicting provisions.

(1) Where provisions of this zoning ordinance dictate conflicting landscaping or screening requirements, the more stringent requirements shall prevail.

(2) Except under the following conditions, no certificate of occupancy or other final approval shall be issued until the relocation or replacement of trees and/or vegetation, as required by the tree removal or vegetation management plan, has been completed and the final approval has been given by the Director of Community Development. To address temporary adverse conditions during the current planting season, at any time prior to the issuance of the certificate of occupancy the property owner may request to defer installation of vegetation for a period not to exceed ninety days beyond the date of the certificate of occupancy. This request will be accompanied by the following:

(a) A cash deposit, an irrevocable letter of credit, or other financial surety shall be provided to the Town to be held until the planting is completed. The amount shall be equal to $1 for every one square foot of canopy coverage required to be installed to satisfy the canopy coverage requirements as specified in the approved vegetation management plan.

(b) A signed Memorandum of Understanding between the property owner or authorized agent and the Town specifying the timeframe for installation of all vegetation and the penalties for failing to abide by the terms of the agreement. This agreement shall also include terms for refunding the cash deposit upon verification of compliance with terms of the vegetation management plan or tree removal permit.

(L) Special exceptions. Town Council may, upon application of the property owner, grant special exceptions modifying the requirements of this division in accordance with the procedures and limitations established for conditional use permits in § 156.145. Special exceptions shall be granted only if the applicant has clearly demonstrated a situation of extreme topography, unusual lot shape or extraordinary circumstance. In addition, the requested special exception shall only be granted if the Town Council finds that the proposed development will not be inconsistent with the CAMA Core Land Use

Plan and the purpose of this division, and otherwise will not result in inadequate on-site amenity or any condition which will adversely affect nearby property. Requests for special exceptions may be granted in whole, in modified form with conditions or denied by the Town Council after consideration of the requisites presented in this section.

(M) Irrigation. Vegetation that is well-adapted to the local environment does not generally require irrigation. Irrigation systems are not required; however, all irrigation systems installed subsequent to this section must meet the requirements of this section. If irrigation systems are used, the preferred source for their water is from individual or community wells rather than from the county water supply. For irrigation systems which use county water, the installation shall include rain sensors so that unnecessary watering does not occur and thereby add to the local high ground water table. No components of an individually owned private irrigation system shall be installed in any right-of-way. Water from sprinkler heads of an irrigation system shall be appropriately directed to retain the flow of water on the site for which it has been installed and to avoid run-off to adjacent properties and rights of way.