

Minutes of the Wednesday, May 26, 2021 regular meeting of the Kill Devil Hills Board of Commissioners held at 6:00 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

- Members Present:** Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, B.J. McAvoy, and John Windley
- Members Absent:** None
- Others Present:** Debora P. Diaz, Town Manager; Casey Varnell, Town Attorney; Meredith Guns, Planning Director; Mary E. Quidley, 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. The Mayor noted this is the first meeting the Board has held when face masks for COVID-19 precautions are not necessary, and how nice it was to see everyone's faces and to be able to talk without the mask constraint.

Pledge of Allegiance and Moment of Silence

During the Moment of Silence, Mayor Sproul asked everyone to remember those less fortunate than ourselves and in particular the Dare County Superintendent of Schools, John Farrelly, as his mother has just passed on.

Agenda Approval

On motion by Commissioner Gray, seconded by Commissioner McAvoy, the agenda for this meeting was approved as presented by unanimous, 5-0, vote.

Public Comment

Response to Public Comment

Introductions and Presentations

Old Business

New Business

1. **Review of KDH Town Code amendments mandated by NC General Assembly reorganization of statutes mainly related to local planning and development regulations in the General Statutes (Attached NB-1)**

Planning Director Meredith Guns presented this item. She explained that at the May 10, 2021 meeting the BOC received a summary of the amendments to the Town Code required by the changes in General Statutes identified above. Six of the chapters in the Town Code are affected by the General Assembly's reorganization of planning and development regulations from Chapter 160A to the new Chapter 160D:

- Chapter 10 General Provisions
- Chapter 30 BOC
- Chapter 31 Boards and Committees
- Chapter 150 Buildings
- Chapter 152 Subdivisions*
- Chapter 153 Zoning*

**Public hearings are required to amend land-use ordinances*

(Town Clerk's Note: Due to an oversight, the required public hearing on Chapter 150, Buildings, is scheduled for Wednesday, June 23, 2021; BOC action was included in the June 14, 2021 Consent Agenda.)

Chapter 160D becomes effective July 1, 2021.

Ms. Guns and the Town Attorney were prepared to address questions and comments from the Board on the proposed changes to the ordinances identified above. Ms. Guns reviewed some of the procedural changes that will be made upon adoption of the amendments to Chapter 153, which include:

- Quasi-judicial hearings will be held for all special use applications, which previously would have been held as legislative hearings.
- Special use applications will require physical posting on-site for quasi-judicial hearings.
- Issuance of Historic Landmark Certificate of Appropriateness will require quasi-judicial hearings.
- Judicial challenges and appeals submitted and modified based on the project type.

On the Town's website, meeting materials for this item included: the Planning Director's May 10, 2021 summary; full ordinances amendments on the six chapters identified above; and, links to the existing Chapter 160A and the new Chapter 160D of the General Statutes.

A public hearing has been scheduled on the amendments to Chapters 152 and 153 for the Monday, June 14, 2021 BOC meeting. The amended chapters will be ready for BOC action at that meeting.

2. Street Improvement Recommendation for 2021/2022 Fiscal Year – Revisions to Schedule (Attached NB-2)

On November 9, 2020 the BOC approved the Street Improvement Recommendation for the 2021/2022 Fiscal Year, which included paving, drainage, water main replacement, and sidewalk construction on West Third Street. Adjoining work included projects on Seminole Street and along US 158, from West Third to West Fifth Streets.

Public Services Director Steve Albright's packet memorandum, referenced Town Engineer Pete Burkheimer's project information, which was also attached, and explained that revisiting the streets project became necessary because during the engineering process it became clear that completion of the entire original project within budgeted funding was unlikely. Therefore, Staff and Mr. Burkheimer worked to regroup the project into smaller jobs to be completed over multiple years, that will stay within typical budget levels. Mr. Burkheimer addressed this matter to the BOC.

As re-proposed, during the next fiscal year, if the Board agrees, would create a project that includes full replacement of the water main, overlay of the remaining portions of West Third Street, and sidewalk completion. The project for 2022/2023 would then include resurfacing Seminole Street and Indian Drive (from Seminole to Apache), and the US 158 drainage project. Waterline replacements for 2022/2023 would include: Seminole Street, and Indian Drive, also from Seminole west to Apache Street. Resurfacing Wrightsville Boulevard from Goddard Street at the north end and to Carolyn Drive at the south end, along with replacement of several lengths of waterline would then combine as a project to be bid in 2023/2024.

Staff recommended the BOC approve the revised projects timeline and the revised engineering services agreement as presented in this item.

Commissioner McAvoy made a motion for the BOC to approve the revised projects timeline, as detailed in Mr. Burkheimer's memorandum and presentation, and further that the engineering services agreement with American Engineering in the total of \$45,000 for the design and preliminary engineering phases for the water main replacement on West Third Street from Creek Street to Bay Drive, also be approved. Commissioner Gray seconded that motion and approval was unanimous, 5-0.

Commissioner Gray also recognized Mr. Burkheimer and the members of the Public Services Department for identifying the concerns with the original project and providing the BOC with recommendations that will still achieve the overall planned work over the next several years. The BOC was equally complimentary.

Committee Reports

Community Appearance Commission Chair Sue Kelly recapped the CAC's cigarette butt disposal container building project over the immediate past weekend. Twenty new butt holders are now ready to be erected in Kill Devil Hills. Ms. Kelly recognized local Boy Scout Troop 116 and Eagle Scout candidate Damien Gregory for their volunteerism in coordinating and helping to achieve this project.

Prior to beginning this evening's meeting, a video of the CAC's Arbor Day Ceremony, which included planting a live oak, the Town's official tree, on the front lawn at the Administration Building, was shown and Ms. Kelly expressed appreciation to Town Staff for assisting in and coordinating development of this video. It will be shown on Dare County's Government Channel.

The next CAC meeting will be tomorrow morning, Thursday, May 27, 2021 at 8:30 a.m. and items that will be discussed during the meeting include: the Community Appearance Award for 2021, the CAC's cigarette butt campaign, how property owners can be encouraged to keep trees and, a new member will be introduced.

Commissioners Agenda

Commissioner Windley

- Recognized Ms. Guns for the great explanation she gave on vested rights, via e-mail, in response to a question he had earlier today about the changes in the Town Code necessary to comply with the General Assembly action.
- Recognized the Mayor for his response to let local restaurants know how their schedules would be affected by Governor Cooper's most recent COVID-19 proclamation. Mayor Sproul explained that he felt it important to advise the Town's restaurant population of the Town's intent to allow outdoor dining this summer, subject to approval obtained through regular channels in the Planning Department, to ensure every opportunity is given to help restaurants meet the needs of their patrons and the establishment.

Mayor's Agenda

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

The Town Manager reviewed the items of the Consent Agenda:

1. Minutes (Attached CA-1A)

A. May 10, 2021

2. Budget Amendment (Attached CA-2A)

A. #26 – to appropriate funds for the 2022 Beach Nourishment Project received from NCDEQ

3. Memorandum of Understanding between the Town of Nags Head and the Town of Kill Devil Hills for the Operation of the Eighth Street Ocean Access (Attached CA-3)

The Towns of Kill Devil Hills and Nags Head share use and maintenance of the Eighth Street beach access. The draft memorandum of understanding, which was included with this agenda item, sets out the responsibilities of each entity with respect to this facility. The term of this agreement is for three years, beginning July 1, 2021 through June 30, 2024. The annual fee for each town to cover routine repairs and maintenance is \$1,000. Approval of the Consent Agenda will record the Board's approval of this agreement in the minutes of this meeting.

4. Schedule public hearing on a requested amendment to the Town Code, Chapter, 153, Zoning (Attached CA-4A)

A. To allow Tattoo Studio(s) as a Conditional Use within the Commercial Zones

At its meeting on May 18, 2021, the Planning Board reviewed the original request for the above ordinance amendment. During discussion and review, and with the applicant's approval, the original language was modified to allow Tattoo Studio(s) as a Conditional Use within the Commercial Zone and several conditions were added. A draft of the proposed public hearing language was included in Assistant Planning Director Cameron Ray's attached memorandum, which makes reference to the terminology change from *conditional use* to *special use* as a result of the mandates of N.C.G.S. 160D; however, since those mandates have not yet been adopted, Staff used the current term: *conditional use*.

The Planning Board voted unanimously to recommend this amendment request to the BOC, as modified, with a favorable opinion for public hearing. Approval of the Consent Agenda will schedule this item for public hearing on Monday, June 14, 2021, at 6:00 p.m.

Staff recommended approval of the Consent Agenda as submitted.

Commissioner McAvoy made a motion to approve the Consent Agenda as presented and Commissioner Windley seconded that motion. Approval was unanimous, 5-0.

General Worksession

1. Town Manager's Recommended Budget for FY 2021/2022

The Town Manager conducted a review on budget preparation, explaining that revenues have been conservatively estimated. Finance Director Beverly Kissinger added that not knowing how shoulder season visitation may be during the current calendar year, and for the Spring 2022, occupancy tax revenues were projected particularly cautiously.

The review was conducted fund by fund, division by division, with general comments and questions. It was agreed that the changes approved in the upcoming and future year's streets improvements projects would not be incorporated into the budget prior to adoption, in favor of

waiting to see exactly how bids come in and what level of project may be recommended. Also, the Finance Department was notified prior to this meeting that the solid waste tipping fee will increase for the upcoming year; that is also an item that will not be changed in the Recommended Budget, but will be revisited as the new fiscal year moves forward, and a recommendation made as appropriate.

During the worksession, the BOC made no changes to the Recommended Budget and complimented the Town Manager and Finance Director for submitting a good and effective budget. Commissioner Gray also pointed out that the budget clearly reflects how the various departments interact and work together; the Town Manager agreed and added how proud she is for the teamwork that can achieve so much.

The public hearing on the Recommended Budget will be held on Monday, June 14, 2021 at 6:00 p.m. in the Meeting Room.

The Recommended Budget will continue to be available for public inspection in the Town Clerk's Office, 102 Town Hall Drive, off Colington Road; at the Dare County Public Library on Mustian Street in Kill Devil Hills; on the Town of Kill Devil Hills Facebook page; and, on the Town's website, www.kdhnc.com. A copy of the budget and budget ordinance, in their entirety, are available for public inspection: on a table outside of the main entrance to 102 Town Hall Drive, Monday thru Friday; and, on Kill Devil Hills' website, https://www.kdhnc.com/DocumentCenter/View/13120/2021_2022-Recommended-Budget-.

The Town Manager thanked the BOC for their guidance and comments.

Public Comment

Adjournment

There being no further business before the BOC at this time, Commissioner McAvoy made a motion to adjourn this meeting. Commissioner Gray seconded that motion and approval was unanimous, 5-0.

It was 7:36 p.m.