Minutes of the Monday, January 10, 2022, 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 Participating: Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, Bernard "B.J." McAvoy, and John Windley

Members Not Participating:

Others Participating: Debora P. Diáz, Town Manager; Meredith Guns, Planning Director; Cameron Ray, Assistant Planning Director; Casey Varnell, Town Attorney; and James Michael O'Dell, Deputy Town Clerk

Call to Order

At 6:02 p.m., Mayor Ben Sproul opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present.

Pledge of Allegiance and Moment of Silence

Mayor Sproul asked everyone to keep in their thoughts and prayers the family of Mary Elizabeth Quidley, the former Town Clerk, who passed away last month.

Agenda Approval

Commissioner Gray moved to approve the agenda as presented. Commissioner McAvoy seconded the motion, which passed by a unanimous, 5-0, vote.

1. Public Hearings

Mr. Varnell read aloud the rules for public hearings and then opened each hearing. Notice for the following items has been published in the *Coastland Times*, meeting or exceeding the N.C.G.S. requirements for public hearings, posted on the Town's bulletin boards, website at https://www.kdhnc.com/962/January-10-2022-Board-of-Commissioners-M, and social media platforms, and has been disseminated through the town's electronic distribution list.

A. Special Use Application

1. 2003 S. Croatan Hwy in the Commercial Zone – to add Outdoor Dining Activity Area

This special use application was submitted by Noosa Beach Grille for an Outdoor Dining Activity Area at 2003 N. Croatan Highway within the Commercial Zone. As a Special Use

accessory to a restaurant there are 12 applicable conditions in Subsection §153.177(H), which are attached, along with the commercial site plan application, proposed site plan, and Dare County Health Department approval.

The Planning Board reviewed this request at its October 12, 2021 meeting and agreed to forward it to the BOC with a recommendation for approval, subject to one condition, which has since been satisfied. At its December 13, 2021, meeting, the BOC scheduled this quasi-judicial public hearing.

Mr. Varnell shared that this hearing was quasi-judicial in nature. He noted that all information should be evidentiary, and would be applied to the following four standards:

1. The proposed use does not materially endanger the public health or safety.
2. The proposed use meets all required conditions and specifications of the Town's ordinance.
3. The proposed use will not substantially injure the value of adjoining property, or, in some cases, the proposed use is a public necessity.
4. The proposed use will be in harmony in the area in which it is located, and otherwise be in general conformity with the local government's comprehensive plan.

Deputy Clerk James Michael O'Dell was called upon to conduct the Roll Call and five members of the Board of Commissioners were present, constituting a quorum.

Ben Cahoon, Meredith Guns, and Tim Lessner were sworn in by Mr. O'Dell.

With no objection, the Board accepted the Special Use application and meeting materials for this item into evidence.

Applicant

Ben Cahoon, Cahoon & Kasten Architects, was present, representing the applicant Noosa Beach Grille, and stated he was prepared to answer any questions from the Board.

The Town

Planning Director Meredith Guns was present, representing the Town. She stated that she was prepared to answer any questions from the Board, and that the proposed site plan meets the requirements of the Town Code. The Planning Board recommended approval and Staff supports that recommendation.

Adjoining Property Owner

Tim Lessner identified his address as 2010 South Virginia Dare Trail, and stated that he lived in Hughes Retreat Condominiums and served on its board of directors. He shared that he had no complaint about the Special Use being granted to the applicant. He observed that there

was no additional construction expected and that music would be possible. Mr. Lessner asked the applicant to be mindful of trash and encouraged signage to keep any patrons from walking onto the Hughes Retreat property.

Opposition

None

There were no other witnesses and Mr. Varnell then closed the evidentiary portion of the hearing.

Board of Commissioners Findings of Fact

The Board of Commissioners established the following findings of fact:

1. Does the proposed use materially endanger the public health or safety? The Board voted no in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: Neither Town Staff nor the Dare County Health Department have submitted evidence that the proposed Special Use of the Outdoor Dining Activity Area(s) at this location would materially endanger the public health and safety. Such a Special Use must comply with all aspects of the N.C. Building Code, along with all requirements of the KDH Town Code, including §153.177(H)).

2. Does the proposed use meet all required conditions and specifications of the Town's ordinance? The Board voted yes in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: Town Staff has conceded in its memorandum to the Board of Commissioners that following the October 12, 2021, Planning Board meeting, all required conditions have been met by the applicant for consideration to be granted a Special Use.

3. The proposed use will not substantially injure the value of adjoining property. The Board voted yes in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: For outdoor dining activity area(s) to comply with Chapter 153, Zoning, §153.177, there are limitations to hours of operation, noise and lighting, parking requirements, and trash upkeep. Neither the Town nor any surrounding property owners have submitted any evidence of substantial injury to adjoining properties.

4. The proposed use will be in harmony in the area in which it is located, and otherwise be in general conformity with the local government's comprehensive plan. The Board voted yes in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: Outdoor Dining Activity Area(s) are permitted as a Special Use for this property located in the Commercial Zone under the KDH Town Code, which is in compliance with the Town's Land Use Plan.

Mr. Varnell stated that it was in the BOC's discretion to include any restrictions on this Special Use. The BOC did not place any additional restrictions on the Special Use for the property located at 2003 S. Croatan Highway.

With the standards being met, supported by the findings of fact, the Board of Commissioners, through consensus, approved the Special Use application for an Outdoor Dining Activity Area by Noosa Beach Grille, 2003 S. Croatan Highway in the Commercial Zone.

Mr. Varnell then read the instructions for the following public hearings.

B. Zoning Amendments Requests

At its December 13, 2021, meeting, the BOC scheduled the following zoning amendments for this public hearing. At the conclusion of these public hearings, a motion will be in order to approve, disapprove, or table each amendment for further consideration.

Additionally, a finding must be established by the Board with respect to each change; therefore in the motion to approve or disapprove each amendment, language has been included for the each item below:

1. §153.210(C) Light Industrial Two Zone – to increase Floor Area Ratio (FAR) for multi-family development

If approved, this requested amendment to regulations within the Light Industrial Two Zone will allow multi-family development projects to utilize FAR for density requirements in a manner similar to existing requirements in the Ocean Impact Residential Zone and Commercial Zone. A graduated FAR is proposed: from a base of 0.50 to 0.55 if the developer increases the site yard setbacks; and, in addition to the increased setbacks, if the developer increases the side yard buffer by two feet, the maximum FAR factor would be 0.60.

On November 16, 2021, the Planning Board voted to recommend approval of this ordinance, which accomplishes the abbreviated explanation above. The Assistant Planning Director's December 13, 2021 memorandum detailed the changes.

Commissioner Ingram moved that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, §153.210(C) Light Industrial Two Zone – to increase Floor Area Ratio (FAR) for multi-family development is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because to allow for a slight increase in density. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

2. §153.310(A) and §153.311(A) Cottage Courts & Cluster Homes – to remove requirement to abut NC12 in the Commercial and Ocean Impact Residential Zones

This requested amendment to sections §153.310(A) and §153.311(A), would remove the requirement for Cottage Courts & Cluster Home developments to abut NC 12 in the Commercial and Ocean Impact Residential Zones.

At is November 16, 2021, meeting, the Planning Board voted to recommend approval by the BOC of the language contained in the Assistant Planning Director's December 13, 2021 memorandum.

Ms. Guns shared the history of the Cottage Courts and Cluster Homes ordinance, noting the citizen's request created the original requirement that cottage courts and cluster homes abut NC 12.

Commissioner Windley moved that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, §153.310(A) and §153.311(A) Cottage Courts & Cluster Homes – to remove requirement to abut NC12 in the Commercial and Ocean Impact Residential Zones is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it is in unison with the Town's Land Use Plan. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

3. §153.100(D) Ocean Impact Residential Zone and §153.180(C) Commercial Zone - to add density requirements for Cottage Courts & Cluster Homes

Proposed by Staff to establish density requirements for Cluster Homes & Cottages, which were inadvertently overlooked in 2018 when these uses were originally approved, this amendment would add these two uses to the density requirements within the zoning districts in which they are allowed: the Ocean Impact Residential and Commercial Zones. The full ordinance language appears in the Assistant Planning Director's December 13, 2021 memorandum.

Commissioner Windley moved that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, §153.100(D) Ocean Impact Residential Zone and §153.180(C) Commercial Zone - to add density requirements for Cottage Courts & Cluster Homes is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it helps clarify the ordinance. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

4. §153.076(A)(13) Off Street Parking and Loading - to add sidewalk requirements for Cottage Courts & Cluster Homes

If adopted, this proposed amendment will clarify that sidewalk construction/installation will be required of all Cottage Courts & Cluster Homes developments along US 158, similar to all other multi-family and commercial developments.

The Planning Board voted to recommend this amendment, which is fully detailed in the Assistant Planning Director's December 13, 2021, memorandum.

Commissioner McAvoy moved that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, §153.076(A)(13) Off Street Parking and Loading - to add sidewalk requirements for Cottage Courts & Cluster Homes is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it creates consistency with the other commercial developments on US 158. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Public Comment

Sallie Kerr, 3144 Bay Drive, Kill Devil Hills Ms. Kerr shared her concern about the permitting of pier construction on Bay Drive, at 3132 Bay Drive, that is anticipated to be over 300 feet long. She stated that 77 people have signed a petition requesting the Town restrict or limit pier length. She said that she had spoken with Coastal Area Management Agency (CAMA) representatives regarding pier requirements, and they had referred her to the Town. She stated that the Town of Kitty Hawk has regulations regarding piers. It was her understanding that the Town originally had an ordinance that a person could not construct a pier longer than one's neighbor's pier. She stated that a plan for another even longer pier in Kill Devil Hills was pending a permit. Ms. Kerr expressed concern about large piers being dislodged during storm events and damaging property. Ms. Kerr's submitted information has been included with the record of the meeting.

Response to Public Comment

Mayor Sproul thanked Ms. Kerr for her comments, but stated that the rules currently in place do not permit the Town of Kill Devil Hills to regulate pier length. Commissioner McAvoy expressed surprise that CAMA would not have some limitation on pier length. Mayor Sproul stated that soundside piers are outside the jurisdiction of the Town. Commissioner Gray noted that to exercise jurisdiction, the Town would have to have Extra-Territorial Jurisdiction (ETJ), which is does not. He noted that Kitty Hawk has an ETJ, but noted that Kitty Hawk's curved soundside coastal geography could have been the rationale for its regulation; in contrast, the KDH soundside coastline is straight.

Ms. Guns shared CAMA has specific regulations for lengths of piers; however, longer permitted piers may be in response to the depth of the water and the presence of aquatic vegetation. She noted that CAMA regulations exist regarding pier construction. She stated that Kill Devil Hills had never had ETJ, so the Town has never had any jurisdiction about pier length.

Commissioner Gray commented that the CAMA application process was extensive, and that multiple state agencies could be involved. The BOC thanked the Planning Department for its information and research on piers.

Introductions and Presentations

1. Presentation of Annual Comprehensive Financial Report for FY 2020/2021 and Award for Excellence in Financial Reporting FY 2020

CPA Robert Taylor of Potter and Company, Certified Public Accountants, presented the results of Kill Devil Hills' audit for the 2020/2021 fiscal year in an electronically recorded message. Mr. Taylor's comments included his firm's unmodified "clean" opinion, the best that can be issued, of the Town's financial condition. Although Mr. Taylor was available via conference call, the BOC presented no questions.

Finance Director Beverly Kissinger highlighted the Town's Certificate for Excellence in Financial Reporting for Fiscal Year Ended June 30, 2020. The Town has received this certificate from the Government Finance Officers Association (GFOA) for the last 33 years. Ms. Kissinger thanked the entire Finance Department for its diligent efforts in maintaining such a high standard of financial, budgetary, and accounting practices. She also acknowledged Assistant Town Manager Charlene Allen's and Assistant Finance Director Angell Doughtie's work. She then presented Ms. Doughtie with the GFOA Award for Financial Reporting Achievement for her work with the Annual Comprehensive Financial Report (ACFR).

Town Manager Debora Diáz suggested a budget guidance session at the Board's upcoming January 26, 2022, meeting. Through consensus, the BOC concurred with recommendation.

Old Business

New Business

1. Town Charter amendment (Attached NB-1)

At the November 8, 2021, BOC meeting, members discussed amending the Town Charter to change the Mayor's term from two to four years. Staff prepared a procedural timeline for amending the Charter through N.C.G.S. §160A-102 and the Town Attorney concurred with the process outline. He reported there were no foreseeable consequences with this proposed modification. Through consensus, the BOC directed Staff to proceed with the process for the amendment.

Changes to a town charter that may be implemented without action by the General Assembly are listed under §160A-101, and include setting a mayor's term between two to four years (§160A-101(8)(a)). Any change to the Town Charter affecting the election of city officers would need to be approved and finalized at least 90 days prior to the next election.

The statute language also notes that a mayor's voting rights, whether voting on all items or only in the event of a tie, may be included. In the Board's longtime adopted rules of procedure, our Mayor votes on all items. If the BOC chooses to proceed with an amendment to the KDH Mayor's term of office, Staff recommends the added clarifying language for our Mayor's voting rights into the Town Charter amendment.

As described in the attached procedural timeline, the first step in this process is the BOC's consideration to the BOC of a Resolution of Intent to change the Town Charter. If the Resolution of Intent is adopted, the BOC must schedule a public hearing on the proposed charter amendment within 45 days of the resolution's adoption, and action may be taken at the subsequent regularly scheduled meeting. Staff recommended scheduling a public hearing for Monday, February 7, 2022, at 6:00 p.m., with the BOC's consideration of the resolution set for the Monday, March 7, 2022, meeting.

Commissioner Gray moved that the Board of Commissioners to adopt the *Resolution of Intent to Consider an Ordinance Amending the Town Charter of Kill Devil Hills to Change the Mayor's Term of Office to Four Years and Setting the Date for a Public Hearing Thereon*, scheduling a public hearing for Monday, February 7, 2022, at 6:00 p.m., with possible action by the Board at its regularly scheduled Monday, March 7, 2022, meeting. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

Committee Reports

Community Appearance Commission CAC Chair Sue Kelly shared that CAC members had represented the group at the Town's recent Holiday Market. She also shared the upcoming meeting schedule.

Commissioners' Agenda

Commissioner Gray

Town Staff Commissioner Gray expressed his appreciation to all Town Staff for its work with the Town's financial condition, holiday markets, holiday lights, and all services to the community.

Commissioner McAvoy

Decorated holiday houses Commissioner McAvoy expressed his appreciation to local residents who decorated their houses and properties for the holidays, lifting everyone's spirits.

Commissioner Ingram

Town facilities and events Commissioner Ingram highlighted the work of staff with the Aviation Park markets and holiday lighting.

Mayor's Agenda

Mayor Sproul thanked Commissioner Ingram for chairing the December 13, 2021, BOC meeting in his absence. He then acknowledged the astonishing dedication and professionalism of former Town Clerk Mary Elizabeth Quidley, who served the Town for over 37 years. Apart from her service to Kill Devil Hills, she served as the first Town Clerk for the Town of Kitty Hawk before joining the Town in the position of Tax Collector. He noted that a career of such length and distinguished service is unheard of in these times.

1. Rescheduling Board of Commissioners retreat

Following scheduling conflicts, the Board, through consensus, postponed its retreat, originally set for January 8, 2022, at 9:00 a.m. at the Town Hall meeting room, and agreed to select a new date at this meeting. Please review your calendars and we will discuss a new date.

Through consensus, the BOC selected Saturday, March 5, 2022, at 9:00 a.m. to 1:00 p.m. for its Board of Commissioners retreat, in the Town Hall Meeting Room.

Town Manager's Agenda

Ms. Diáz thanked Commissioner Ingram and her daughter, Emme, for judging the holiday door decoration contest at Town Hall.

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. December 13, 2021

2. Monthly report (Attached CA-2A)

A. November 2021

3. Budget Amendment (Attached CA-3A)

A. #9 – to record wellness grant funds received from the N.C. League of Municipalities

4. Partnership organization annual report (Attached CA-4A)

A. Nags Head Woods Ecological Preserve

The Town supports four partnership organizations that serve the citizens of Kill Devil Hills: the Community Care Clinic of Dare, Interfaith Community Outreach, Outer Banks YMCA, and Nags Head Woods Ecological Preserve. A requirement of the Town's partnership is an annual report of the organization's activities and service to the community. Aaron McCall, Northeast Regional Steward, submitted the 2020-2021 annual report, which highlighted the preserve's operations.

5. Annual certification of firefighters (Attached CA-5)

The Board of Trustees for the N.C. Firemen's Pension Fund requires all fire departments to submit a roster of active firefighters annually. Rosters must be certified by each local governing board in order to maintain eligibility for pensions and the line-of-duty death benefit provided for firefighters by the State. The KDH Fire Department prepared this list, which includes only those firefighters that have met the State's minimum requirement for training hours. Approval of the Consent Agenda will record the Board's certification of the Fire Department roster.

6. Schedule Public Hearing (Attached CA-6A)

A. Amendment to the Town of Kill Devil Hills Official Zoning Map

Planning Director Meredith Guns' attached memorandum highlighted the recent discussions between Staff and the engineer for Dare County Schools about the expansion of existing teacher housing. The Board of Education has requested a zoning classification change to Light Industrial Two Zone, which would permit multi-family as a special use. Additionally, Staff has also included minor changes to existing zoning lines to make the areas more consistent with the uses. At its recent meeting, the Planning Board recommended forwarding the rezoning for BOC consideration with a favorable recommendation. Staff recommended scheduling a public hearing for January 26, 2022, at 6:00 p.m.

Approval of the Consent Agenda will schedule this item for public hearing.

Ms. Diáz presented the Consent Agenda and recommended approval.

Commissioner Ingram moved to approve the Consent Agenda, as presented. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

Commissioner Gray said that in reviewing the Monthly Report, he noticed that although there was an increase in the number of fire calls, the Fire Department actually reduced response times. The Board congratulated the Fire Department for its continued work.

Public Comment

Response to Public Comment

Adjournment

There being no further business appearing before the BOC at this time, Commissioner Gray moved to adjourn the meeting. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

The time was 7:21 p.m.

Submitted by:

James Michael O'Dell
Deputy Town Clerk

These minutes were approved by the Board of Commissioners on January 26, 2022.

Ben Sproul
Mayor