

Minutes of the Monday, April 11, 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, Kill Devil Hills.

Members Participating: Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, Bernard "B.J." McAvoy, and John Windley

Members Not Participating:

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

Call to Order

At 6:04 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 the Quidley Family in their thoughts. The Town had just learned of the passing of Susan Quidley, the sister of former Town Clerk Mary Elizabeth Quidley.

Agenda Approval

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

1. Public Hearing (Attached PH-1)

Town Attorney Casey Varnell read aloud the rules for public hearings and then opened each hearing: notice for the following item has been published in the *Coastland Times*, meeting or exceeding the N.C.G.S. requirements for public hearings and subject matter, posted on the Town's bulletin boards, website at <https://www.kdhnc.com/970/March-7-2022-Board-of-Commissioners-Meet>, social media platforms, and has been disseminated through the town's electronic distribution list.

1. Proposed permanent closure of a portion of West Eighth Street (Attached PH-1)

The Town of Nags Head requested that Kill Devil Hills consider permanently closing the westernmost portion of West Eighth Street, which would result in this unimproved portion

between Pond Avenue and the bank of Fresh Pond being closed permanently. The portion proposed to be closed is described specifically as follows:

“The westernmost portion of West Eighth Street, located west of Pond Avenue to the bank of Fresh Pond (body of water) in the Fresh Pond Beaches Subdivision – adjacent to Lots 1-3, Block 9, in the Town of Kill Devil Hills”

With Nags Head also initiating a similar action, each surrounding property owner (KDH and Nags Head) would equally divide this section of West Eighth Street.

Pursuant to N.C.G.S. §160A-299, the BOC approved a *Resolution of Intent to Permanently Close a Portion of West Eighth Street and Set the Date for a Public Hearing Thereon* at its March 7, 2022, meeting, which scheduled this public hearing. A notice was published in the *Coastland Times* for four consecutive weeks, notice signage was placed at the street in two locations, and surrounding property owners were provided notice through certified mail.

Commissioner Windley moved approve *A Resolution Ordering the Permanent Closure of a Portion of West Eighth Street*, to permanently close a portion of Eighth Street, specifically “The westernmost portion of West Eighth Street, located west of Pond Avenue to the bank of Fresh Pond (body of water) in the Fresh Pond Beaches Subdivision – adjacent to Lots 1-3, Block 9, in the Town of Kill Devil Hills.” Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

2. Water System Development Fees (Attached PH-2)

In 2017, the North Carolina General Assembly adopted legislation that requires local governments that provide water and sewer services to establish cost-based justification for charging Water System Development Fees (SDFs), replacing earlier “initial hook-up fees” or “impact fee” fee systems. The initial SDF analysis and accompanying rates were adopted by the Town in March 2018.

Water and wastewater providers are required to review and update SDFs every five years. N.C.G.S. §162A-209 lays out the process for SDF adoption and updates: prior to adoption, the Town must post the SDF analysis on its website at a minimum and solicit a means for the public to submit written comments, which shall be considered for possible modifications or revisions to the analysis and subsequent action to adopt and implement policies and ordinance amendment(s). Following this 45-day posting period, the Board of Commissioners must conduct a public hearing to consider SDF analysis adoption, with any modification or revision. Additionally, the Town must publish the adopted SDFs in its annual budget ordinance and Comprehensive Fee Schedule.

N.C.G.S. Article 8, also known as the “Public Water and Sewer System Development Fee Act,” also pertains to wastewater systems. In the Southern Sanitary District (SSD), disposal is accomplished through purchased capacity from a private utility, Kill Devil Hills Wastewater Treatment Plant, LLC (KDHWTP); the collection system within the Southern Sanitary District belongs to the Town of Kill Devil Hills.

At its January 26, 2022, meeting, Town Engineer Pete Burkheimer and Patrick Lewis, PE, presented an overview of the proposed rate recommendations for both Water System Development Fees and Southern Sanitary District/Ocean Acres Wastewater System Development Fees. Staff concurred with the SDF analysis and recommendations. The BOC approved the 45-day review and solicitation of written public comment period and scheduled this public hearing.

The Town has solicited input from the public by posting SDF information on its website, through repeated electronic distribution, in newspaper ads, and by providing written copies requesting public input at Town Hall, the Public Services Administration Building, and at the KDH branch of the Dare County Library.

Commissioner Ingram moved to approve the Water System Development fees, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Public Comment

Eddie Goodrich, Kill Devil Hills Mr. Goodrich stated he had submitted a zoning amendment request, which was an item on the Consent Agenda for scheduling a public hearing for April 27, 2022. He shared that the Planning Board, Town Staff, and neighboring property owners had expressed concerns about his request; he concurred with their views, noting that a proposed change to commercial zoning for that parcel was too broad. He withdrew his application, and requested the BOC not schedule the public hearing on the rezoning application, which was part of the Consent Agenda. He asked the BOC to consider developing conditional zoning, and offered to work with the Planning Department and the Town Attorney to develop a plan to implement commercial conditional zoning for the Town.

Response to Public Comment

Mayor Sproul stated that the BOC and Staff understood the need for workforce / affordable housing. Commissioner Gray said he supported additional options for housing, as there is a critical need, and asked Planning Staff to research potential options. Commissioner Ingram asked for Staff to review the short term / long term rental issue in the Town.

Introductions and Presentations

1. Golf cart use in Kill Devil Hills

Chris Marik and Ben Fulton from Ocean Atlantic Rentals were present to share information on golf cart usage in Town, explaining the differences between golf carts and low speed golf carts. Mr. Marik explained about the current state of golf cart usage in the Town and neighboring cities. He supported the integration of golf cart usage in the Town, which is different from a LSV (Low Speed Vehicle). LSVs are licensed by North Carolina and require inspections annually. He shared that golf carts may be permitted in various forms across North

Carolina and the east coast. With visitors from various locations traveling to this area with golf carts, along with residents looking for additional options, he proposed allowing electric golf carts on the westside of Town only, with a self-regulated permitting system. Their presentation, along with sample ordinances that were provided to the BOC, have been included with the meeting materials.

Commissioner Windley inquired about modified utility vehicles (MUTVs), which are offered by some businesses in Town. Mr. Marik stated that MUTVs are a different category, and are also regulated by North Carolina. Commissioner McAvoy inquired about the carts that Ocean Atlantic Rentals provided, and what would be the effect if the Town permitted electric golf carts; Mr. Marik stated that his business would benefit, even with needing to acquire permitting and upgrade/retrofit. He stated that it would be presented to the Towns of Kitty Hawk and Nags Head in the future, as neither town currently permits electric golf carts on their roadways either. Commissioner Gray shared that the BOC welcomed future input by the Town Staff and Town Attorney. The Board thanked the representatives for their presentation.

Response to Public Comment

Ongoing Business

New Business

1. Recommendation to amend Ocean Acres wastewater flow allocation (Attached NB-1)

Ms. Díaz stated that since the Town updated its residential wastewater flow allocation in 2008, development in the Ocean Acres neighborhood has greatly increased: from 68 undeveloped lots to now 20 remaining. Public Services Director Steve Albright's memorandum in the meeting materials highlighted the growth and capacity levels, with no growth in commercial allocations and reduction in residential allocations to 880 gallons.

The Ocean Acres average daily flows graph in Mr. Albright's memorandum demonstrates that rates remain well below the 70,000 gallons per day of purchased capacity monthly maximum. In calculating the capacity to address the potential of homes in the remaining lots, an additional 8,720 gallons per day is required. Staff recommends the following:

- Combine the remaining residential and commercial flow into a single account with a remaining capacity of 13,450 gallons.
- Authorize the capacity sale to both commercial accounts (if any need arises) and residential accounts from the remaining combined allocation.
- Maintain all other policies for the sale of capacity related to commercial and residential customers.

Commissioner Windley moved that the Board of Commissioners approve the Ocean Acres flow allocation as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

2. Bay Disposal rate increase request (Attached NB-2)

Ms. Diáz stated that Bay Disposal & Recycling, which provides voluntary subscription residential curbside recycling for the Town's citizens, has requested a rate increase. Public Services Director Steve Albright's attached memorandum provides an overview of the request, which would increase the monthly rate to \$13.20 per cart, per month.

The BOC previously approved a rate increase on May 11, 2020, to \$12.76 per cart, per month. However, based on uncertainties at the time, Bay Disposal & Recycling maintained its then monthly rate of \$12.45 and never implemented the approved increase for customers.

The Town has enjoyed a 14-year relationship with Bay Disposal & Recycling, providing citizens a convenient service to those who want it, without imposing it on those who prefer to utilize the Town's Recycle Center. If this rate increase is approved, it would only be the fourth increase since the company entered into a franchise agreement with the Town in 2008.

Staff recommended the BOC approve the rate increase to \$13.20 per cart, per month for Bay Disposal & Recycling's subscription type residential curbside recycling program.

Commissioner Gray moved to approve the rate increase request as presented. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

3. Appointments and nominations (Attached NB-3)

All applications on file from persons interested in serving in this capacity have been previously copied to the Board of Commissioners and no new applications for those purposes have been received.

A. Planning Board

With Mark Evans' resignation, a seat is available on the Planning Board, with a term ending February 2023. A motion will be in order to make an appointment to the Planning Board that will expire in February 2023.

B. Community Appearance Commission

Christine Damrose-Mahlmann's resignation makes a seat available on the Community Appearance Commission (CAC), with a term ending October 2024. A motion will be in order to make an appointment to the CAC that will expire in October 2024.

Through consensus, the Board determined to postpone the appointments until a later meeting, and requested that additional advertising through social media and other avenues be pursued to increase the number of applications.

C. North Carolina Coastal Resources Advisory Council

Kill Devil Hills was contacted about submitting a nomination of any interested person to serve on the North Carolina Coastal Resources Advisory Council (CRAC). The group works in conjunction with the N.C. Coastal Resources Commission by fostering protection and measured development guided by the N.C. Coastal Area Management Act (CAMA). The nomination will require submittal of a résumé and supporting documentation for successful consideration.

Commissioner Gray moved to nominate Commissioner John Windley to the North Carolina Coastal Resources Advisory Council (CRAC). Commissioner McAvoy seconded the nomination, which was approved by a unanimous, 5-0, vote.

4. Review of offer to purchase 3315 North Virginia Dare Trail (Attached NB-4)

Ms. Díaz stated that the Town received a written offer on March 21, 2022, to purchase a parcel located at 3315 North Virginia Dare Trail, Pin #988509056311, depicted on the individual tax map, along with the individual deed, attached to this memorandum. Sand Life, LLC, is offering \$5,400.00 for the property, which was deeded to the Town as a gift in 2001. The property is an unbuildable vacant lot. The offeror's residence is located across from the property at 3316 North Virginia Dare Trail.

If the BOC proposes to accept the offer, Staff recommends 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 Sand Life, LLC, 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 3315 North Virginia Dare Trail*, including acceptance of the offer and authorizing the upset bid process.

Mayor Sproul moved to approve the Staff recommendations, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Committee Reports

Community Appearance Commission (CAC) – CAC Chairperson Kelly lauded the Town's recent Trash Attack! Community Clean Up event. She then reported on the CAC Live Oak tree adoption program, and shared that the event has been extremely successful. Twenty-six trees are being adopted by KDH residents and property owners.

She then reported that many of the original tasks given the CAC by the BOC had been accomplished or were achieved on a regular basis, and asked the BOC for direction in what topic areas it would prefer the CAC to pursue. Commissioner Windley shared that the group was not needing an immediate response, but would prefer Board guidance. Mayor Sproul suggested additional beautification projects around Town; he stated the BOC would consider additional opportunities in the future.

Dare County Tourism Board (DCTB) Commissioner Ingram stated there would be a public hearing regarding a boardwalk for the Nags Head Soundside Event Site on April 14. She also suggested inviting DCTB President Tim Cafferty and Outer Banks Visitors Bureau Director to present on the Event Site to a future meeting. Commissioner Ingram also reported that several members had attended the economic summit that featured a presentation by the author of *13 Ways to Kill Your Community*.

Commissioners' Agenda

Commissioner Windley

College of The Albemarle (COA) – Dare Campus Commissioner Windley shared that he had attended the recent grand opening of the new COA building in Manteo. He was tremendously impressed and noted COA has a lot to offer Dare County and its citizens.

Mayor's Agenda

1. Resolutions and proclamations

A. Resolution Supporting the Construction of the Mid-Currituck Bridge and Its Continued Inclusion in the State Transportation Improvement Plan (Attached MA-1A)

The Town of Kill Devil Hills has been at the forefront in its support of the construction of a Mid-Currituck Bridge, which would provide a vital link for visitors to and residents of the Outer Banks. Our Town's commitment to this vision was voiced in a resolution of support 31 years ago this month; the need for a bridge has not changed, nor has our Town's continued support.

B. A Proclamation Declaring April 2022 as Fair Housing Month (Attached MA-1B)

As our Board meets on the fifty-fourth anniversary of this far-reaching landmark federal legislation, it is an appropriate time to reflect on our nation's journey to abolish discrimination in all forms. Jimmy Anderson, past President of the Outer Banks Association of Realtors, and Association CEO Willo Kelly were present to share remarks regarding the importance of the Fair Housing Act.

Mayor Sproul moved to approve proclamations as presented. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

Public Forum Mayor Sproul noted that the BOC is committed to hearing from KDH citizens and receiving feedback. The Board's next public forum will be held at the April 27, 2022, meeting.

Town Attorney's Agenda

Town Manager's Agenda

Consent Agenda

1. Minutes (Attached CA-1A and CA-1B)

- A. March 5, 2022 Retreat
- B. March 7, 2022

2. Monthly Report (Attached CA-2A)

- A. February 2022

3. Budget Transfers and amendments (Attached CA-3A)

- A. Budget Amendment #14 – to appropriate funds for the Meekins Field project

Through consensus, the Board of Commissioners had previously approved this time-sensitive amendment, which Staff requested in order to further proceed with the improvements to Meekins Field. Approval of the Consent Agenda records the Board's approval.

4. Recommendation for 2021/2022 Lease Purchase Agreement (Attached CA-4)

The Finance Department has researched and compiled available interest rates for the lease/purchase of equipment and vehicles. The total amount to be financed is \$1,367,448.46 for items detailed in Finance Director Beverly Kissinger's memorandum in the meeting materials. Truist Bank submitted the most favorable financing proposal at an annual fixed interest rate of 2.41%; to be paid in eight semiannual payments. The loan is pre-payable at any time without penalty.

Approval of the Consent Agenda records approval of the attached budget amendment #15 to record the annual lease for equipment and vehicles and the accompanying resolution. The Town Attorney will review and approve the lease agreement prior to its execution.

5. Recommendation for acceptance of street improvements in the Water Oak subdivision, Phases 2 and 3: Zen Lane, Anika Way, and Water Oak Drive; and adopt the Powell Bill Map and Official Traffic map for the Town of Kill Devil Hills to reflect the improvements (Attached CA-5)

New streets in the Water Oak Subdivision, Phases 2 and 3, are presented at this meeting for approval by the Board of Commissioners: Zen Lane, Anika Way, and Water Oak Drive. Approval of the Consent Agenda will adopt the attached resolution, which:

- Accepts the street, water main, and right-of-way improvements on Zen Lane, Anika Way, and Water Oak Drive associated with Water Oak Phases 2 and 3 (improvements will be eligible for Powell Bill funding);
- Adopts the official traffic map revised to reflect the improvements;
- Adopts the revised Powell Bill Map to reflect the improvements.

The traffic map and Powell Bill Map will each be posted in the Meeting Room prior to the meeting, and included with the electronic packet on the Town's website, www.kdhnc.com.

6. Schedule Public Hearing – Zoning Map Amendment Request – Lots 9-15, Block 18, Kill Devil Hills Realty Corp. Subdivision (Attached CA-6)

Assistant Planning Director Cameron Ray's attached memorandum highlights Zoning Map request for Lots 9-15, Block 18, Kill Devil Hills Realty Corp. Subdivision, which was submitted by Eddie Goodrich. The proposed change would reclassify the lots from Low Density Residential Zone (RL) to Commercial Zone (C). At its March 15, 2022, meeting, the Planning Board recommended denial of the Zoning Map amendment. Staff recommended scheduling a public hearing for April 27, 2022, at 6:00 p.m.

[*Clerk's note:* at the meeting's first public comment, applicant Eddie Goodrich withdrew the application described in Consent Agenda item #6, and requested the item be removed from the Consent Agenda.]

7. A Resolution Authorizing the Disposition of Certain Personal Property by Private Sale (Attached CA-7)

The Town of Manteo has expressed interest in the purchase of a KDH Town garbage truck that is eligible for surplus, since it is no longer needed for Public Services operations. Because the Town of Manteo is considered an "entity carrying out a public purpose," the General Statutes permit the Town to dispose of this personal property through private sale, pending the adoption of a resolution. Approval of the Consent Agenda will approve the attached resolution and authorize the Town Manager to negotiate with the Manteo Town Manager on the sale of the truck.

Ms. Díaz presented the Consent Agenda, as amended, and recommended approval.

Commissioner Gray moved to approve the Consent Agenda, as amended with the removal of item #6. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

Public Comment

Fire Chief Tilley reported that the Dare County Tourism Bureau had awarded the Town a grant for \$12,200 towards the July 4th fireworks.

Response to Public Comment

Adjournment

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

The time was 7:15 p.m.

Submitted by:

James Michael O'Dell
Town Clerk