Minutes of the Monday, March 7, 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. Diáz, 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 6:01 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

Agenda Approval

Commissioner McAvoy moved to approve the agenda as presented. Commissioner Gray 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 the 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, 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.

A. Zoning Amendment Request –153.002 Definitions & 153.177(H)(8) Outdoor Dining Activity Area(s): Allow Sail Shade(s)

At its January 18, 2022, meeting, the Planning Board reviewed a zoning amendment from John Kirchmier to amend §153.177(H)(8), to permit sail shades in Outdoor Dining Activity Areas in the Commercial Zone. On February 7, 2022, the BOC scheduled this zoning amendment for public hearing; Staff recommended approval of this amendment.

There were no speakers at the public hearing.

Commissioner Windley moved to approve the amendment as presented and that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, §153.002 Definitions & 153.177(H)(8) Outdoor Dining Activity Area(s): Allow Sail Shade(s) is consistent with all comprehensive plans and other official adopted plans of the Town of Kill Devil Hills that are applicable. The amendment is reasonable and in the public interest because it provides additional options for the outdoor dining experience. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 5-0, vote.

Town Attorney's Agenda

1. Closed Session

Mr. Varnell requested that the Board of Commissioners enter into closed session pursuant to NCGS §143-318.11(a)(3) in order to preserve attorney-client privilege concerning various legal matters.

Commissioner McAvoy moved that the Board of Commissioners enter into closed session pursuant to NCGS §143-318.11(a)(3) in order to preserve attorney-client privilege concerning various legal matters. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

The Board entered closed session at 6:06 p.m.; the Board resumed open session at 6:32 p.m.

Mr. Varnell reported that the BOC had provided direction to him on various legal matters, and reviewed the August 9, 2021, closed session minutes.

Commissioner Ingram moved to approve the closed session minutes of the August 9, 2021, meeting, pending the Town's Attorney's review and recommendation on opening them to the public. Commissioner Windley seconded the motion, which was passed by a unanimous, 5-0, vote.

Public Comment

Amanda Hooper, 1202 Ninth Avenue, Kill Devil Hills Representing the League of Women Voters of Dare County (LOWV), Ms. Hooper presented the Board of Commissioners with the 2022 Citizens Guide. This year, the LOWV published 6,600 copies of the guide, and expressed the group's appreciation for the Town of Kill Devil Hills and its staff.

John Kirchmier, 508 Burns Drive, Kill Devil Hills Mr. Kirchmier shared his continued support for temporary outdoor seating that had been permitted for food service establishments under the Town's emergency order. He noted that outdoor dining has been an overwhelming success, and asked the BOC to continue the outdoor seating through the summer season. He was excited about the sail shade changes, but noted that realistically could take until autumn to get them installed.

Response to Public Comment

Ongoing Business

1. Town Charter amendment (Attached OB-1)

Town Manager Debora P. Diáz reported that 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. 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 recommended the added clarifying language for our Mayor's voting rights into the Town Charter amendment.

Under §160A-102, the first step in this process was the BOC's consideration of a Resolution of Intent to change the Town Charter, which was adopted at the January 10, 2022, meeting. At that time, the BOC scheduled a public hearing on the proposed charter amendment within 45 days of the resolution's adoption, which was set for and conducted at the February 7, 2022, meeting. By statute, no action could be taken at that time; action could only be taken at the Board's next regularly scheduled meeting, or March 7, 2022.

Commissioner Ingram moved to change the term for Kill Devil Hills Mayor from two years to four years, and clarify the mayoral voting rights, with the Mayor voting on all items, but not providing a tie-break vote on any item that he or she has already vote. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

New Business

1. Site Plan Review – 902 S Virginia Dare Trail: Proposed Ocean Breeze Townhomes - - Proposed 6 multifamily buildings with 31 residential units and 88 total bedrooms, community pool, Corrigan Street improvements on behalf of the developer, and associated site improvements (Attached NB-1)

Ms. Diáz stated that Mike Robinson, PE, has submitted a site plan on behalf of Ocean Breeze Developers, LLC, for the proposed construction of six multifamily buildings with 31 residential units (totaling 88 bedrooms), a community pool, and associated site improvements in the Commercial zone. This proposed multifamily development is a permitted use in the

Commercial Zone. This site plan also includes the improvement of Corrigan Street as a Town right-of-way.

At its February 15, 2022, meeting, the Planning Board reviewed this site plan and voted to forward it to the BOC for consideration, pending the condition submitted from Public Services:

- Streets: Additional grading detail needs to be provided for sidewalks accessing NC 12. A culvert under the sidewalks and in the road swale may be warranted.

Staff recommended approval of the site plan with the condition above.

Commissioner Gray moved that the Board of Commissioners approve the site plan – 902 S Virginia Dare Trail: Proposed Ocean Breeze Townhomes -- Proposed 6 multifamily buildings with 31 residential units and 88 total bedrooms, community pool, Corrigan Street improvements on behalf of the developer, and associated site improvements, as presented, pending the outlined Staff condition. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

2. Site Plan Review – 100 East Fifth Street — Proposed Cluster Home Development — Including 11 "4-Bedroom" and 2 "3-Bedroom" Residential Units and Community Pool with Pool Building (Attached NB-2)

Assistant Planning Director Cameron Ray shared that Mike Robinson, PE, has also submitted a site plan on behalf of Fifth Street KDH, LLC, to construct a cluster home development composed of (11) 4-bedroom and (2) 3-bedroom units, community pool, pool building, drive aisle, and associated site improvements at 100 East Fifth Street. This proposed cluster home development is a permitted use in the Commercial Zone.

At its February 15, 2022, meeting, the Planning Board voted to forward this site plan to the BOC for consideration, with several conditions, most of which have been addressed. However, the following condition from Public Services remains unaddressed:

- Streets: Public Services acknowledges that the stormwater along US 158 is not final per the plan sheet notes. Public Services generally approved the concept shown on the plans but if possible would want the drainage to be placed further in the US 158 right-of-way and away from the private property and possibly connect to existing drainage under East Fifth Street and provide a midblock drainage structure. Public Services has consulted with the engineer and are planning a meeting to coordinate final drainage design details in the US 158 right-of-way prior to approving the building permit

Staff recommended approval of the site plan with the condition above.

Commissioner Ingram moved the Board of Commissioners approve the site plan – 100 East Fifth Street — Proposed Cluster Home Development —Including 11 "4-Bedroom" and 2 "3-Bedroom" Residential Units and Community Pool with Pool Building as presented, pending the condition outlined above. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

3. Site Plan Review – 2011 S Croatan Highway — Proposed 2927 sq. ft. Drive-Thru Carwash, 26 parking spaces, drive-thru aisle and associated site modifications (Attached NB-3)

Quible and Associates has submitted a site plan on behalf of MPF Investment Company, LP, to construct a 2,927 square foot drive thru car wash, with 26 parking spaces, drive thru aisle, and associated site modifications. This proposed car wash is a permitted use in the Commercial Zone.

Ms. Diáz stated that at its February 15, 2022, meeting, the Planning Board voted to forward this site plan to the BOC for consideration, pending minor revisions, which have been addressed by the applicant. Staff recommends approval of the site plan as submitted.

Commissioner Windley moved the Board of Commissioners approve the site plan – Site Plan Review – 2011 S Croatan Highway — proposed 2927 sq. ft. Drive-Thru Carwash, 26 parking spaces, drive-thru aisle and associated site modifications, as presented. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 5-0, vote.

4. Street Improvement Recommendation 2022/2023 Fiscal Year and 2023-2024 Plan Year (Attached NB-4)

On February 22, 2022, the Street Improvement and Special Projects Committee (SISPC) met and voted to forward to the Board of Commissioners recommendations outlined in Planning Director Meredith Guns' attached meeting memorandum pertaining to the streets and drainage improvements recommended for the 2022-2023 fiscal year and the 2023-2024 plan year, which are listed below:

Recommended 2022-2023 Project	**Recommended 2023-2024 Project**
Seminole Street Indian Drive US 158 Drainage	Wrightsville Boulevard (from Goddard to Carolyn Drive)
Estimated Cost: $1,390,000	**Estimated Cost**: $2,265,000

American Engineering and Town Engineer Pete Burkhimer have submitted a proposal for the 2022-2023 (Seminole St., Indian Dr. & US 158 Drainage) streets and drainage engineering and design phase. A cost of $7,390.00 is projected for the bidding phase of the project, with a

total of $62,720.00. The engineering cost is lower than typically expected due to one-third of the project's infrastructure was initially designed as part of the ongoing West Third Street project.

Town Engineer Pete Burkhimer stated that the drainage portion of the project was expected to bring great benefits, and if approved, would commence in the autumn of the year. Commissioner McAvoy concurred with Mr. Burkhimer, citing the expectation of increased drainage for the West Durham area.

Staff recommended the Board of Commissioners:

1. Approve the Street Improvement Recommendations for 2022/2023 Fiscal Year and 2023/2024 Plan Year, as presented in this item's packet materials

2. Approve and authorize the Town Manager to execute the engineering services agreement presented by American Engineering Associates – Southeast PA, Inc., including preliminary engineering, design, and bidding phases for the 2022-2023 project (Seminole St., Indian Dr. & US 158 Drainage), along with any necessary budget amendments and Capital Reserve Fund expenditures.

Commissioner Gray moved to approve the Street Improvement Recommendation 2022/2023 Fiscal Year and 2023/2024 Plan Year, as presented and listed above. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 5-0, vote.

5. Limited Interim Stormwater Management Plan Update (Attached NB-5)

In response to identified drainage concerns and recent public comments, Town Engineer Pete Burkhimer has developed an update to the Town's Stormwater Management Plan. Planning Director Meredith Guns' accompanying memorandum details the recommended change, which is as follows:

> "It is the Town's policy to construct, maintain and rehabilitate its streets and roads so that their storm drainage systems (roadside ditches/swales, culverts, enclosed pipe systems, outfalls, etc.) accomplish the following objectives:
>
> i. Keep the street drained so that it is safely passable to vehicular and pedestrian traffic.
> ii. To the maximum extent practicable, avoid stormwater from the street draining onto private property, except through an easement.
> iii. Receive the surface flow of stormwater from adjacent single-family residential properties.
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> In addition, in those areas where the Town determines that groundwater management measures are feasible, such a system may be installed and may provide some benefit to adjacent residential properties whose land and/are structures are lower than the elevation of the street. In so doing, the Town is applying a technique which has been shown to promote the three foregoing objectives. The Town welcomes any secondary benefits that such groundwater systems may provide in alleviating a private property owner's adverse

drainage conditions due to being lower than the street, but affirmatively declares that it is under no duty to do so and accepts no liability should any such mitigation be ineffective or not totally effective in any given rainfall event."

Mr. Burkhimer shared that the recommended update outlines the primary objectives and goals of the Town's capital projects, noting that drainage and stormwater projects are primarily designed to protect the Town's infrastructure and safety; adjacent private properties may receive some secondary benefits from these projects. Included with this update was a KDH Watershed Map prepared by Assistant Planning Director Derek Dail to highlight progress addressing areas of concern.

Commissioner McAvoy shared that at its February 22, 2022, meeting the Street Improvement and Special Projects Committee reviewed this item and voted to recommend the BOC accept the policy statement as an adopted policy to be used while considering capital street and drainage projects. Ms. Guns noted that it was a policy that Staff would be utilizing in making capital projects recommendations, and that this policy delineated what has been Staff's longtime practice.

Commissioner Gray moved to approve the Limited Interim Stormwater Management Plan Update, as presented. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

6. Appointments (Attached NB-6)

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. Appointment histories are included with this memorandum.

A. Planning Board

Howard Buchanan's term expires April 2022, and he has expressed a desire for reappointment. A motion will be in order to make a three-year appointment to the Planning Board that will expire in April 2025.

B. Personnel Committee

Christine Stafford's term expires April 2022, and she has expressed a desire for reappointment. A motion will be in order to make a three-year appointment to the Personnel Board that will expire in April 2025.

Commissioner Windley moved to appoint Howard Buchanan to the Planning Board and Christine Stafford to the Personnel Committee, each for terms that will expire April 2025. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Through consensus, the Board of Commissioners excused Commissioner McAvoy from the meeting; he left the meeting at 7:04 p.m.

7. Oath of Office – Town Clerk (Attached NB-7)

With the recent personnel changes in the Administration Department, it is necessary to appoint a new Town Clerk for Kill Devil Hills, as is required under N.C.G.S §160A-171:

> "There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records, and shall perform any other duties that may be required by law or the council."

Michael O'Dell joined the Kill Devil Hills Staff in 2014, and was sworn in as the Deputy Town Clerk in 2018. He was asked to serve as the Town's Interim Town Clerk on December 17, 2021. Throughout his tenure, he has clerked most of the Town's boards and committees. He has clerked BOC meetings for several years, and was trained by longtime Town Clerk Mary Elizabeth Quidley. Additionally, Mr. O'Dell completed the UNC School of Government's Clerk's Certification Institute in November 2021.

Mayor Ben Sproul administered the Oath of Office to Mr. O'Dell.

Committee Reports

Commissioners' Agenda

Mayor's Agenda

1. **Trash Attack! 2022**

Mayor Sproul announced that the Trash Attack! community clean-up event will be held at Aviation Park on Saturday April 9, 2022, from 9:00 to 11:30 a.m., with a rain date of Sunday, April 10, 2022, 1:00 – 3:30 p.m. As the Town transitions back into its first in-person Trash Attack! following COVID, we are conducting a "lite" event to best maintain participant comfort levels. In addition to an event t-shirt, participants will be offered bottled water and individually-wrapped snacks. Due to school scheduling and timelines, Trash Attack! will reintroduce its popular poster contest in 2023. He stated that additional information and participation forms are available on the Town's website at www.kdhnc.com.

2. Proclamations (Attached MA-2A and MA-2B)

A. April 2022 as Autism Awareness Month in Kill Devil Hills

B. April 2022 as Child Abuse Prevention Month in Kill Devil Hills

These proclamations honor the issues and children important to our community and vital to society. Mayor Sproul recommended approval of these proclamations and a motion or motions would be in order for their adoption.

Mayor Sproul moved to approve proclamations as presented. Commissioner Ingram seconded the motion, which was approved by a unanimous, 4-0, vote.

Town Manager's Agenda

Consent Agenda

1. Minutes

A. February 7, 2022

2. Monthly Report

A. January 2022

3. Budget Transfer and amendment (Attached CA-3A and CA-3B)

A. Budget Transfer #10 – to transfer funds division to cover expenses related to Debtbook software subscription that will track and account for all installment debt as well as new GSAB87 required calculations and financial statement disclosures.

B. Budget Amendment #13 – to appropriate 2021-2022 Government Education Access Channels Grant

4. FY 2021/2022 Auditor (Attached CA-4)

The three-year audit proposal with Potter and Company, PA was recommended and approved in April 2020 for year-end 2020 in the amount of $35,000. This agreement for the third year includes a Consumer Price Index inflationary increase of 3.6% over the prior year. The proposed fee for the FY 2021/2022 audit is $42,500.

Finance Director Beverly Kissinger recommended approval of the proposed fee of $42,500 and Staff agreed. Approval of the Consent Agenda will record approval of the 2021/2022 audit contract with Potter and Company, PA, and authorize its execution by appropriate officials.

5. Resolution of Intent to permanently close a portion of West Eighth Street (Attached CA-5)

The Town of Nags Head has requested that the BOC consider permanently closing the westernmost portion of West Eighth Street. Such an action, if approved, would result in this unimproved portion between Pond Avenue and the bank of Fresh Pond being closed. With Nags Head also initiating a similar action, each surrounding property owner (KDH and Nags Head) would divide this section of West Eighth Street. Approval of the Consent Agenda will authorize execution of the *Resolution of Intent to Permanently Close a Portion of West Eighth Street and Set the Date for a Public Hearing Thereon* and schedule a public hearing for Monday, April 11, 2022, at 6:00 p.m.

Ms. Diáz presented the Consent Agenda and recommended approval.

Commissioner Gray inquired about the rationale for the permanent closure that portion of Eighth Street. Ms. Diáz stated that the Town of Nags Head plans to utilize the square footage of the property towards major improvements to its Public Works facility. Public Services Director Steve Albright said with the resulting change, a 30 yard setback would be replaced by a much reduced side yard setback for the Nags Head facility, giving more flexibility. Commissioner Gray asked whether this property could be utilized as a potential future access to Fresh Pond. Mr. Albright stated that the Kill Devil Hills water plant was slated for additional upgrades through its masterplan, and would utilize its portion of the closed street.

Commissioner Ingram moved to approve the Consent Agenda, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

Public Comment

Response to Public Comment

Adjournment

There being no further business appearing before the BOC at this time, Commissioner Windley moved to adjourn the meeting. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

The time was 7:20 p.m.

Submitted by:

James Michael O'Dell
Town Clerk

These minutes were approved by the Board of Commissioners on April 11, 2022.

Ben Sproul
Mayor