Minutes of the Monday, August 14, 2023, regular meeting of the Kill Devil Hills Board of Commissioners held at 6:00 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; and James Michael O'Dell, Town Clerk.

Call to Order

At 6:03 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 noted that it had been a difficult time for our Outer Banks community. Three lives were tragically lost to a house fire last week, and he expressed appreciation to all of the first responders and numerous Town Staff who assisted during and after the situation. Mayor Sproul stated that several Town Staff have recently experienced the loss of a parent, along with Commissioner Gray, whose mother, Lillie "Doll" Gray, has passed away. He asked everyone to keep these families in their thoughts.

Agenda Approval

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

Public Hearing

Assistant Planning Director Cameron Ray read aloud the rules for public hearings and then opened the hearing.

Notices for the following item has been published in the *Coastland Times*, meeting or exceeding the N.C.G.S. requirements for public hearings. The notice has been posted on the Town's bulletin boards, the Town's website at https://www.kdhnc.com/1112/August-14-2023-Board-of-Commissioners-Me, social media platforms, and has been disseminated through the Town's electronic distribution list.

ATTACHMENT CA-1A

1. Public Hearing (Attached PH-1A)

A. Proposed Zoning Amendment –§153.079 Dune Protection: Modify Regulations for Development within Dune Systems

Mr. Ray shared that the BOC directed Staff to prepare alternatives to promote the increased protection and preservation of dunes throughout Kill Devil Hills. At the May 24, 2023, meeting, Planning and Inspections Staff proposed options for the Dune Protection ordinance (§153.079), and presented the draft ordinance to the Planning Board for consideration at its June 20, 2023, meeting. The Planning Board voted to forward this item to the Board of Commissioners, with a favorable recommendation. The Planning Department's meeting memorandum highlighted the amendment, which updates definitions of dunes and increases protection for the Town's dune system.

Katie Morgan, 101 Maddox Crossing, Kill Devil Hills (Colington), NC – Ms. Morgan shared her support for the amendment that increased protection for the dune system.

Commissioner Gray expressed appreciation to Commissioner Ingram for bringing up the issue. Commissioner Windley viewed this ordinance as a template for increased dune protection and looked forward to sharing it with the Coastal Resources Advisory Council Commission.

Commissioner Ingram moved that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, –§153.079 Dune Protection: Modify Regulations for Development within Dune Systems 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 provides greater protection and preservation of the dune system. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

Public Comment

Donna Creef, Governmental Affairs Director, Outer Banks Association of Realtors (OBAR) – Ms. Creef shared that the OBAR Board recently approved a resolution in support of federal legislation that would extend and make changes to the National Flood Insurance Program (NHIP). On behalf of OBAR, Ms. Creef requested the BOC consider adoption of a similar resolution, which had been submitted to Staff. She also noted that the N.C. Rate Bureau had filed a request for a 78.6% rate increase for dwelling policies, which follows on a 12.6% increase last year. Although this only affects year-round rentals, OBAR is concerned that these potential rate increases will be passed along to renters, only making housing more expensive. Ms. Creef reported that the pool of insurance carriers willing to provide coverage to coastal communities was shrinking.

Response to Public Comment

Ongoing Business

New Business

1. Site Plan Review – 1828 N. Croatan Highway in the Commercial Zone – Proposed Retail Store (Attached NB-1)

Mr. Ray stated that Development Services Group, Inc. has submitted a proposed site plan for the construction of a 4,000 square-foot retail store, parking lot with 16 parking spaces, and associated site modifications at 1828 North Croatan Highway. The Planning Department's meeting memorandum and submitted site plans highlighted the request.

At its July 18, 2023, meeting, the Planning Board voted to forward this site plan to the Board of Commissioners, recommending approval pending several conditions, which have been addressed by the applicant. Staff recommended approval of the site plan as presented.

Commissioner Gray moved to approve the Site Plan for a proposed 4,000 square foot retail store, parking lot with 16 parking spaces, and associated site modifications at 1828 North Croatan Highway, as presented. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

2. Site Plan Review – 1906 S Croatan Highway in the Commercial Zone — Proposed Boat Service Building Addition and Site Modifications (Attached NB-2)

Mr. Ray reported that Albemarle Engineering has submitted a proposed site plan for the addition of a 2,400 square-foot service building, reconfiguration of the existing parking lot with 23 parking spaces, and installation of stormwater management measures at 1906 South Croatan Highway; the existing retail building will remain on site. The Planning Department's meeting memorandum and accompanying materials highlighted the request. The proposed boat sales and boat repair are permitted uses in the Commercial Zone.

At its July 18, 2023, meeting, the Planning Board voted to forward this site plan to the Board of Commissioners, recommending approval as presented. Staff recommended approval of the site plan. With this addition of the building, the development will bring the property into conformity. Commissioners Ingram and Windley expressed appreciation on the existing oak tree being saved in the development.

Commissioner Ingram moved to approve the Site Plan for a proposed 2,400 square-foot service building, reconfiguration of the existing parking lot with 23 parking spaces, and installation of stormwater management measures at 1906 South Croatan Highway, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

3. Cottage Courts & Cluster Homes – Considerations for Additional Regulations (Attached NB-3)

Mr. Ray stated that in response to the public and development community for alternatives to traditional single-family dwellings, ordinances were established for Cottage Courts and Cluster Homes to provide flexible options to address housing issues in Town, while complying with the standards of the zoning district in which they are located.

Recently, the BOC directed Staff to develop additional regulatory options for Cottage Courts and Cluster Homes. The Planning Department's meeting memorandum provided a history of the ordinances and highlighted possibilities to address some recent concerns. They included the following:

- Revised minimum building separation to be tiered, based off total gross floor area and building height.
- Revised size maximum requirements for gross floor area.
- Reduced building height for Cottage Courts/Cluster Homes within the Ocean Impact Residential Zone (OIR).
- Increased front yard setbacks for a more consistent appearance within the OIR.
- Revised density requirements to be more restrictive. This can also be tiered, based off building size, height, and density.

Planning Director Meredith Guns provided an overview on the top three approaches. Mayor Sproul noted that a density measurement requirement made it more consistent. He stated that the Board had worked to try to address large single family dwellings, incentivized fire suppression, and other measures to promote safety while addressing housing.

Mr. Varnell joined the meeting at 6:29 p.m.

Commissioner Windley supported the Planning Department's top three recommendations, and Commissioner Ingram concurred. Commissioner McAvoy stated that front yard setbacks promoted consistency. Commissioner Gray supported Staff's recommendations. The Board expressed its appreciation to the Planning Department for its work in developing these regulatory options.

4. Chapter 95, Fire Prevention and Protection, §95.02 Pit Fires – requested amendment to establish a stationary outdoor gas fire pit exception (Attached NB-4)

Mr. Ray stated that a code amendment application had been submitted by John J. Kirchmier, III, requesting the establishment of an exception to Chapter 95, Fire Prevention and Protection, §95.02 Pit Fires, that would permit stationary outdoor gas fire pits, after review and approval of the Fire Marshal. The Planning Department's meeting memorandum highlighted the requested changes. Staff recommended approval of the requested amendment, as presented.

Commissioner Ingram moved to approve the requested amendment to Chapter 95, Fire Prevention and Protection, §95.02 Pit Fires – to establish a stationary outdoor gas fire pit exception, as presented. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

5. Appointment

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

Mary Simpson's term on the Planning Board expires September 2023, and she has not expressed a desire for reappointment.

Commissioner Ingram moved to table the appointment until the September 11, 2023, meeting. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 5-0, vote.

6. Community Rating System – Cycle Visit Program Update (Attached NB-6A, NB-6B, and NB-6C)

Ms. Guns stated that as a part of its participation in the National Flood Insurance Program (NHIP) and the Community Ratings System (CRS), the Town established a Program for Public Information (PPI), which encourages homeowners to maintain flood insurance policies and provides citizens information on flood insurance policies, premiums, insurance in force, and coverages. The plan also provides an outreach strategies to educate the public on storm preparedness, flooding risks, flood mitigations, construction methods, flooding types, flood zones and elevation information. Ms. Guns' meeting memorandum and materials highlighted the various aspects of the CRS Program, which has been historically under a 5-year review cycle; however, since the Town has improved to a Class 5 rating, the review cycle has been shortened to a 3-year cycle, with the Town's last CRS review in 2020. The following three CRS elements were presented for the Board's review:

A. Annual Flood Insurance Policy Update

Ms. Guns' data on the number of Flood Insurance Policies in force as of July 2023 was highlighted. She noted that the Town's public education outreach to promote homeowners maintaining insurance coverage regardless of their flood zones has been considered highly successful. Ms. Guns also highlighted Public Services' and Town Engineer's work on the stormwater drainage over the years.

B. Annual Program for Public Information (PPI) Plan update and annual Progress Report

Ms. Guns noted that the Town's Program for Public Information (PPI) Committee annually reviews the PPI Plan. The group's Annual Evaluation Report was prepared for the Board's review, and was included with the meeting materials. With the upcoming CRS Cycle

visit, the PPI Committee reviewed and updated the entire plan. Staff recommended approval for the revised 2023 Floodplain and Stormwater Management Program for Public Information. Mayor Sproul expressed appreciation for the centralized education outreach to the public. Ms. Guns thanked former Dare County Planning Director Donna Creef for her work in the outreach's approach.

Commissioner Gray moved to approve the revised 2023 Floodplain and Stormwater Management Program for Public Information, as presented. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

C. Progress Report for Outer Banks Regional Hazard Mitigation Plan

On May 27, 2020, Kill Devil Hills adopted the Outer Banks Regional Hazard Mitigation Plan, a regional plan with Dare County, all its municipalities, and Currituck County. The Plan, which must be updated and adopted every five years, is required by FEMA to be eligible for public assistance after an event. Between updates, the Town reviews its Mitigation Strategies annually and reports progress to the Board of Commissioners. Ms. Guns noted that Annex D of the HMP (the Kill Devil Hills portion) and a 2023 progress report for the Town Mitigation Strategies were included with the meeting materials. Ms. Guns stated that the Town does not participate in the purchase of repetitive flooding properties; however, the County does participate in a program of elevating structures in flood-prone areas.

The Board expressed its appreciation to Ms. Guns and the Planning Department for its work.

Committee Reports

Commissioners' Agenda

Commissioner Gray

Disc Golf Course Commissioner Gray expressed appreciation to the volunteers who have worked on the Casey R. Logan Disc Golf Course. Mayor Sproul shared that he had played the course, and enjoyed it.

Mayor's Agenda

1. Ice Cream Social

Mayor Sproul shared that the Town's upcoming Ice Cream Social was scheduled for Tuesday, September 26, 2023, from 4:30 p.m. to 7:00 p.m., at Aviation Park.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. July 10, 2023

2. Monthly Report (Attached CA-2A)

A. June 2023

3. Fiber Optic Master Encroachment Agreement and amendment to the Town's Fee Schedule: Encroachment Application Fee (Attached CA-3)

Following the development of the recently adopted Chapter 113, Fiber Optic Services ordinance, the Town has been positioned to enter into franchise agreements with fiber optic providers. Multiple vendors have contacted Staff regarding the establishment of fiber-to-the-premises (FTTP) infrastructure. Included with this item is a Fiber Optic Master Encroachment Agreement between Open Fiber USA, LLC, and the Town of Kill Devil Hills to permit encroachment on Town streets and rights-of-way for the development of a FTTP network. This agreement has been reviewed by Staff and the Town Attorney.

During review of this process, Staff also identified the need for the Town to establish an encroachment application fee related to the Town's review of encroachment by a private utility within a Town right-of-way. Similar to other jurisdictions, an Encroachment Application Fee of $.10 per linear foot (Minimum of $100) would be added to the Town's consolidated fee schedule.

Staff recommended approval of the Fiber Optic Master Encroachment Agreement and amendment to Consolidated Fee Schedule: Encroachment Application Fee. Approval of the Consent Agenda will approve the attached Fiber Optic Master Encroachment Agreement, authorize the Town Manager's execution of the agreement, and amend the Town's consolidated fee schedule to include Encroachment Application Fee.

Ms. Diáz presented the Consent Agenda, and recommended approval.

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

Public Comment

Allen Creech, 309 Holly Street, Kill Devil Hills, NC – Mr. Creech thanked the Board of Commissioners and Staff for their work on Cluster Homes and Cottage Courts. He expressed concerns about the structures being built, and noted that developers would maximize any development.

Lea Dixon, Bay Drive, Kill Devil Hills, NC – Ms. Dixon stated she lives on Bay Drive, near the Arch Street soundside access. She said that, in the development process, many neighboring properties were cutting down live oak trees. She expressed support for ordinances to preserve trees.

Katie Morgan, 101 Maddox Crossing, Kill Devil Hills (Colington), NC – Ms. Morgan expressed appreciation to the BOC for the development of the Disc Golf Course and the Town's new Splash Pad. She expressed support for tree preservation in all coastal communities.

Response to Public Comment

Mayor Sproul thanked all speakers for their comments. Commissioner Ingram inquired about tree preservation ordinances. Mr. Ray replied that Staff had researched the information, and had met with the Community Appearance Commission on the topic. He shared that potential regulations could be taxing on a property owner due to additional surveying costs to identify trees on site for something as simple as adding a shed on the property. Ms. Guns noted that with larger lots in Town, some regulation could be effective; however, application of tree preservation regulations could be difficult. In the Town's most restrictive zones, like the Maritime Forest, no clear cutting is permitted and properties are limited as to how many trees may be removed. She stated that if potential regulation specifically included live oak preservation, it could prohibit development on the Town's smaller lots in many subdivisions. Planning will research the tissue further and return to a future meeting for Board consideration.

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 7:14 p.m.

Submitted by:

James Michael O'Dell
Town Clerk