

Minutes of the Wednesday, April 24, 2019, regular meeting of the Kill Devil Hills Board of Commissioners held at 5:30 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Present: Mayor Sheila F. Davies; Commissioners Terry Gray, Nelson “Skip” Jones, Mike Hogan, and John Windley

Members Absent: None

Others Present: Debora P. Díaz, Town Manager; Meredith Guns, Planning Director; Casey Varnell, Town Attorney; and James Michael O’Dell, Deputy Town Clerk

Call to Order

At 5:30 p.m., Mayor Davies opened this meeting of the Kill Devil Hills Board of Commissioners and welcomed all present.

Pledge of Allegiance and Moment of Silence

Agenda Approval

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

Public Hearings

Mr. Varnell read aloud the rules for public hearings and opened the first public hearing.

- 1. §153.176 Commercial Zone Permitted Uses and §153.076(D) Off-Street Parking and Loading, Table of Parking Requirements – to add *Brewery* as a Permitted Use and create parking standard for *Brewery* with secondary uses**

Mr. Varnell stated that, if approved, this ordinance amendment will add *Brewery* as a permitted use in the Commercial Zones and establish a parking standard for *Brewery* with secondary uses. He noted that at the conclusion of the public hearing, the Board of Commissioners could approve, disapprove, or table the amendment for further consideration. With no speakers, Mr. Varnell closed the public hearing.

Commissioner Windley moved to approve the ordinance amendment, noting that the Board of Commissioners found §153.176 Commercial Zone Permitted Uses and §153.076(D)

Off-Street Parking and Loading, Table of Parking Requirements – to add *Brewery* as a Permitted Use and create parking standard for *Brewery* with secondary uses restaurants, 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 meets the intent of the commercial zoning district and provides additional business opportunities. Commissioner Hogan seconded the motion, which was approved by a unanimous, 5-0 vote.

2. §153.101 Ocean Impact Residential (OIR) Zone (A) Setbacks – (5) reduce side yard setback to 10 feet for all *Cluster Housing and Cottage Courts* in the OIR

Mr. Varnell then opened the second public hearing.

The original language regarding *Cluster Housing* and *Cottage Courts* was adopted at the January 14, 2019, Board of Commissioners meeting. The current request asks to reduce side yard setbacks by two feet in the Ocean Impact Residential Zone from 12 feet to 10 feet, a total four-foot reduction.

At its March 19, 2019, meeting, the Planning Board voted to forward this proposed amendment to the Board of Commissioners with a recommendation for denial, based on:

- Divergence between the proposed amendment and the Town’s Land Use Plan. The purpose of land use setback is to provide separation, safety, privacy and environmental protection; these are not supported by the intent of the amendment. And,
- The inequality through the Ocean Impact Residential Zone for properties with widths of 75 feet or more. As proposed, uses including single-family dwellings, multi-family dwellings, and duplexes would actually be required to meet minimum 12-foot setbacks on lots greater than 75 feet in width; cluster homes or cottage court developments, with a minimum of three independent dwellings would have setback requirements of only 10 feet with a greater lot width of 100 feet.

The applicant, Eddie Goodrich, was present and addressed the Board. He disagreed that cottage courts and cluster homes were similar in density to multi-family housing. The event homes are rented by multiple families, where that is not the case for cottage courts and cluster homes. Mr. Goodrich stated there was no increase in density, and suggested that density levels would decrease with such developments. He said that the houses cannot exceed 2,500 square feet. He stated the reason for requesting the setback changes was to permit a 16-foot drive aisle for vehicles and 30 feet for the structure, and stated it would provide consistency. Mr. Goodrich said the side yard setback for cluster homes in the commercial zone is 10 feet and large event homes is 10 feet. He stated historically that the lots throughout the Town have been subdivided into 50-foot wide lots.

Commissioner Gray inquired about any potential legal issues with the proposed ordinance amendment. Mr. Varnell stated that during the Planning Board review, the question of spot zoning arose. He said that his review of the proposed ordinance included the potential of spot zoning, which would not apply in this instance. He said the Board must consider if there is

any inequality in how this property would be treated compared to surrounding properties, and is it consistent with the Town's Land Use Plan. The Board must determine whether a rational basis has been met to move forward with approval of the proposed amendment. Mr. Goodrich asserted that a larger setback requirement for a smaller structure like a cluster home than for an event home is an inequality.

Mayor Davies remarked that due to the fragile nature of the oceanfront, the OIR is governed by the Town's most restrictive regulations. Planning Director Meredith Guns stated that lot setbacks in the OIR are based on lot width: setbacks for lots of 75 linear feet or less is 10 feet; 76 linear feet or larger requires a 12-foot setback. She noted the Town does not regulate the size of houses. Setbacks are based on the lot size, rather than structural size or development type. She also addressed vehicle turn radius, and stated nothing in the amendments or current regulations require parking to be under the houses; it is a desire of the developer.

Commissioner Jones noted that the public does not like large event homes and that cottage courts are an alternative. Commissioner Jones inquired whether parking under houses is permitted. Ms. Guns stated that an incentive for parking under multi-family homes was only permitted in the OIR, with a height allowance. However, she stated that nothing in the amendments or current regulations require parking to be under the houses; it is a desire of the applicant. Commissioner Hogan inquired whether denying this amendment would prevent cottage courts from being built. Ms. Guns stated cottage courts are permitted in the Commercial Zone and OIR currently. Commissioner Windley stated he supported cottage courts, but the Land Use survey responses did not support any change to the setbacks; Commissioner Gray concurred. Mayor Davies stated the Board had unanimously supported the development of cottage courts but this proposed amendment would not be consistent with the Land Use Plan.

Commissioner Windley moved that the Board of Commissioners found that the proposed amendment to §153.101 Ocean Impact Residential (OIR) Zone (A) Setbacks – (5) Reduce Side Yard Setback to 10 feet for all *Cluster Housing* and *Cottage Courts* in the OIR was inconsistent with all comprehensive plans and other officially adopted plans of the Town of Kill Devil Hills that are applicable. The amendment was neither reasonable, nor in the public interest because it was inconsistent with the objectives and policies contained in the Kill Devil Hills Land Use Plan and other officially adopted plans that are applicable. Commissioner Hogan seconded the motion, which was approved by a unanimous, 5-0 vote.

Introductions and Presentations

1. Cape Hatteras National Seashore Superintendent Dave Hallac – 2018 year in review

Superintendent Dave Hallac presented an update on the Cape Hatteras National Seashore, and its operations for 2018. He highlighted the 3.2 million visits to the National Park properties, along with the reopening of the Wright Brothers Memorial Visitor Center. He also highlighted a new organization, Outer Banks Forever, a philanthropic organization formed to support projects of the Park Service and its area parks. A member of the public inquired whether the Park Service was monitoring sea level rise. Supt. Hallac stated two long-term tidal gauges were in place locally, one at the Duck Research Pier and the other at Oregon Inlet. He noted the

information was available online. Supt. Hallac's PowerPoint presentation has been included in the meeting materials. The Board thanked Supt. Hallac for his presentation.

2. Roxana Ballinger and Ashley Bahen – update on the Saving Lives Task Force and the KDH Police Department post-Naloxone response team pilot program

Dare County Department of Public Health and Human Services Representative Ashley Bahen provided an update on the Dare County Saving Lives Task Force and the Kill Devil Hills Police Department's pilot program to provide opioid mediation assistance. Ms. Bahen stated the response team's goal was to decrease overdose deaths, repeated overdose incidents, and barriers to treatment. The task force members reach overdose individuals within 24 to 72 hours of being notified of an overdose reversal by first responders. Since the team's inception in September 2018, it has been informed of nine overdose reversals, seven of which occurred in Kill Devil Hills. Through follow up contact, the team has provided 10 naloxone kits and conducted 12 face-to-face meetings with individuals. She stated the program is expanding to include the towns of Manteo, Duck, Southern Shores, and Nags Head. Her PowerPoint presentation has been included in the meeting materials. The Board thanked Ms. Bahen for her presentation.

Old Business

New Business

Commissioners' Agenda

1. West-side recreation facilities research, current and potential improvements, policies (Attached CA-1)

Commissioner Gray presented information on west-side recreational facilities, which had been under development, at his request, since the beginning of the new year. He brought it forward at this meeting for Board reviewed. Commissioner Gray expressed his hope that the Board of Commissioners would send it to Planning Board, the Street Improvement and Special Projects Committee (SISPC), or to a special *ad hoc* committee for additional review and recommendation on, among other things: needed capital improvements, overall policy issues, staffing, challenges, and operations and public use. At the completion of this review, recommendations would be submitted to the Board of Commissioners for use as a guide for the west-side recreational facilities.

Commissioner Gray thanked everyone who had assisted on this project, as did the Board of Commissioners.

The Board, through consensus, directed that an *ad hoc* committee be established for the purpose stated above, and that it be modeled after the Baum Tract Site Study Committee. Staff was asked to bring back a framework and selection procedure for the new committee at the May 13th meeting.

Commissioner Windley

Vaping Commissioner Windley shared he had been considering what could be done to address the underage vaping issue in our area. He suggested updating rules for smoking on Town property. He stated there is an outdated code pertaining to smoking. He asked for consensus on directing the Staff to updating the Town's smoking policy to address these newer issues, and the Board of Commissioners agreed.

Mayor's Agenda

1. Resolutions

A. Resolution Supporting the More Powerful NC Campaign (Attached MA-1A)

Mayor Davies shared that the More Powerful NC Campaign aimed to address the opioid crisis, and requested support for the resolution, which had recently been adopted by the Dare County Board of Commissioners.

Mayor Davies moved to adopt the *Resolution Supporting the More Powerful NC Campaign*. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0 vote. Upon the Board of Commissioners' adoption, the resolution will be shared with Town citizens, employees, and other local governments, and posted on our website and social media.

B. Resolution Opposing North Carolina House Bill 486 That Would Change the Definition of Commercial Fishing (Attached MA-1B)

Mayor Davies said that the Board of Commissioners had continually supported commercial fishing and the working watermen. She stated that House Bill 486 would be detrimental to commercial fishing, noting that it would drastically increase the license fee and requirements, among other items.

Mayor Davies moved to adopt the *Resolution Opposing North Carolina House Bill 486 That Would Change the Definition of Commercial Fishing*. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0 vote. Upon the Board of Commissioners' adoption, the resolution will be distributed through regular outlets, and also be distributed to State representatives.

Mayor Davies also shared the following information:

Bill Pitt Ocean Access Mayor Davies invited the public to join the Board of Commissioners for the dedication ceremony of the Bill Pitt handicap accessible facility at the Ocean Bay Beach Access on Monday, May 13, at 10:00 a.m. She stated that it was an exciting time for Kill Devil Hills to have this access available to everyone who can come to our beaches, and it is the perfect gesture to honor former Commissioner Bill Pitt. She noted that the Town had partnered with the North Banks Rotary Club to make the project a reality.

Dog Park Update Work on the Town's dog park at Aviation Park is progressing and it will be completed later this spring. She stated once a grand opening was set, the information would be distributed on the Town's website and social media.

Sharon Allsbrook Retirement Mayor Davies congratulated Finance Department Accountant Sharon Allsbrook on her retirement after 30 years with the Town of Kill Devil Hills.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. April 8, 2019

2. Budget amendments (Attached CA-2A and 2B)

A. #20 – to appropriate FEMA/Hurricane Florence reimbursement

B. #21 – to appropriate additional funds for South Memorial culvert repair

3. Recommendation for acceptance of street improvements in the Water Oak Subdivision, Phase I: Harpoon Drive, Harmony Lane, Tranquil Place, and Zen Lane (Attached CA-3)

New streets in the Water Oak Subdivision, Phase I, were presented for approval by the Board of Commissioners: Harpoon Drive, Harmony Lane, Tranquil Place, and Zen Lane. There is a 200-foot length of sidewalk that must be raised approximately four inches, and one stormwater structure that requires adjustment at Harmony Lane/West First Street intersection. A bond in the amount of \$12,750 has been submitted to guarantee the work be completed and Barnhill has included its commitment that it will be completed on or before June 20, 2019.

The conceptual right-of-way improvement plan for these improvements was approved by the Board of Commissioners on January 8, 2018. Approval of the Consent Agenda will adopt the resolution, which:

- Accepts the street, water main, and right-of-way improvements on West Eden and West Palmetto Streets from Bath Street to Bay Drive (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 were posted in the Meeting Room prior to the meeting, and included with the electronic packet on the Town's website, www.kdhnc.com.

4. Schedule public hearings on requested amendments to Chapter 153, Zoning (Attached CA-4A and 4B)

A. Proposed amendment to Chapter 153, Zoning - §153.080 Electrical and Communication Services – clarify *communication services*

This proposed amendment to the Zoning Ordinance updates the language by removing *telephone* and replacing that outdated term with *communication services*, which includes all types of communication – telephone, cell phone, and/or other devices.

It was reviewed by the Planning Board at their April 16, 2019 meeting, at which time it was voted to be forwarded to the Board of Commissioners with favorable recommendation for a public hearing to be scheduled.

B. Proposed amendment to Chapter 153, Zoning - §153.075(C) Telecommunication Towers – Use Guidelines and Dimensional Requirements – to modify setbacks for Monopole Towers

This proposed amendment also updates existing language and regulation in the Zoning Ordinance as it pertains to telecommunications towers, including the monopole tower the Town is constructing, which, when completed, will become the site of the communications arrays currently located on the existing elevated water tank; the new elevated tank will not have antennae on top of it.

The amendment provides greater incentives for co-location of services on a tower, and the use of a monopole; modifies the failure or collapse zone to include no building or structures and that it be certified by a NC-licensed design professional; and, the setbacks are modified to agree with the fall zone requirements, also certified by a NC-licensed design professional.

The modifications are consistent with current tower practices and will protect surrounding structures and properties in the event a tower were to fail.

The Planning Board reviewed this proposed amendment at its April 16, 2019 meeting, at which time it was voted to be forwarded to the Board of Commissioners with favorable recommendation for a public hearing to be scheduled.

Staff recommended the Board of Commissioners schedule Consent Agenda Items 4A and 4B for public hearing on Monday, May 13, 2019 at 5:30 p.m. and approval of the Consent Agenda will record that direction.

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

Commissioner Hogan moved to approve the Consent Agenda as presented. Commissioner Jones provided a second, and the motion passed with a unanimous, 5-0 vote.

Public Forum

Mayor Davies opened the Public Forum, and shared that this less formal gathering was conducted twice a year to provide the public a chance to interact with the Board. She noted there are no time limits for the speakers in the Forum.

Martha Vaughan, 1217C South Virginia Dare Trail, Kill Devil Hills – Ms. Vaughan stated that she and her neighbors from 1217 A, B, C, D and 1219 A, B, C, D South Virginia Dare Trail were concerned about the mini-hotels or event houses being developed in the area. She inquired whether lot density could be reviewed again to address the issue. She said the large homes' features do not fit in with the community aesthetically.

A member of the public shared that he was a neighbor of Ms. Vaughan's and that these properties were part of a cottage court. He expressed concern that a neighboring vacant lot would be developed with an event home, and inquired what could be done to prevent it.

Mayor Davies stated the Board has struggled with the issue in the past several years, noting that it was a balance of property rights against restrictions. Commissioner Hogan stated that the Town is prohibited by State law in limiting the number of bedrooms of those structures. Ms. Guns stated that the Town was prohibited from limiting the number of bedrooms, specific appearance, or even color of the event homes. Commissioner Jones stated that many local governments were attempting to address this difficult issue. He felt the wedding industry was driving the development of those homes. Mayor Davies hoped that the market would correct the building of the event homes, and thanked the speakers for sharing their input.

Natalie Painter, 308 West Helga St., Kill Devil Hills – Ms. Painter expressed concern about replacement telecommunication towers, specifically 5G network towers. She stated it was important to build into the existing infrastructure in the Town, and work to make the units more aesthetically pleasing. Commissioner Hogan stated that the Town is limited in its approach to regulating the new communication towers. Ms. Painter stated that the units are expected to be approximately 500 feet apart. Commissioner Jones supported any combination with existing infrastructure. Mayor Davies stated the Board will be discussing the issue at an upcoming meeting. Assistant Planning Director Cameron Ray stated that the Town was very limited in addressing utilities in State right-of-ways, but did require burial of new telecommunications infrastructure.

Matt Walker, 439 West Walker Street, Kill Devil Hills – In representing the Surfrider Foundation, Mr. Walker updated everyone on the anticipated federal plan for offshore drilling. He said that the U.S. Bureau of Ocean Energy Management had reserved space at a local hotel on May 14 for public input; however, the plan has yet to be released. He encouraged the public to attend events in opposition, along with submitting comments during the public comment period.

Two written comments were submitted to the Board of Commissioners for the Public Forum and the full text of the comments have included with the meeting materials:

Donald Fitzsimmons, 1907 North Virginia Dare Trail, Kill Devil Hills – Mr. Fitzsimmons expressed concern that the bike/walking lanes along N.C. 12 were too narrow and close to the road, and asked the Town to consider alternatives. [clerk's note: Planning Director Meredith Guns communicated with Mr. Fitzsimmons via email about the wide-paved shoulder improvements]

David Downing – Mr. Downing expressed concerns about the temporary closure of Meekins Field. [clerk's note: Staff shared via email with Mr. Downing that the temporary closure of Meekins Field was due to the Town's water tower construction project, and the response is also included in the packet.]

The Board of Commissioners recognized members of Boy Scout Troop 116, who were in attendance and working to achieve the Citizenship in the Community Merit Badge.

Commissioner Gray noted it was Bike Week, and encouraged everyone to be diligent on the roadways.

Mayor Davies reminded everyone that all regular Board meetings have two public comment times, and citizens are always encouraged to attend and share their ideas and concerns.

Adjournment

There being no further business appearing before the Board of Commissioners at this time, Commissioner Jones moved to adjourn the meeting. Commissioner Gray seconded the motion and approval was by a unanimous, 5-0 vote. It was 7:23 p.m.

Submitted by:

James Michael O'Dell
Deputy Town Clerk