



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

November 13, 2019

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager

REF: New Business

1. Large single-family dwellings/event houses

A. Letter to NC Building Code Council regarding building code language (Attached NB-1A)

As mentioned at the October 16, 2019, meeting, the attached letter has been updated from its original version to reflect more recent discussions and concerns. The Town is requesting the North Carolina Building Code Council consider developing a third category for large single-family dwellings/event homes, as the Town believes they exceed the regulatory standards of a traditional single-family dwelling. In addition, there are concerns about life and structural safety at these structures. The letter notes the negative impacts on surrounding property owners, including aesthetics and the propensity to overcrowd.

Board guidance is requested.

B. Preliminary information on new study team (Attached NB-1B)

At the October 16, 2019 meeting, the Board of Commissioners directed Staff to develop the framework of a new committee that would study event homes and the various issues related to them for which concerns have been communicated. Membership of the new committee was agreed to include residents, property owners, and non-resident property owners, and the Board directed that a majority of the members would be residents.

Attached is a preliminary Scope and Purpose that Staff believes will meet the Board's intent. There are a number of questions and comments, **printed in fuschia**, for the Board to consider and answer, which will help finalize the application and the Scope and Purpose, including:

- Identification of the stakeholders, which will be members of the group, and how many voting members there will be;
- The expected timeframe for completion;

- Confirmation of Commissioner Windley's selection as the Chair;
- Selection of potential tasks for the group to tackle; and,
- A draft application for Board input and approval.

Staff has also prepared lists of resources and resource groups, along with previous Town Code amendments that involve event homes. The October 16, 2019 letter the Board received from Robert Hornik, attorney for the community group KDH Against Mini Hotels, has been summarized, along with other points as *Other Discussion Points*. General Statutes, Building Code, legal opinion, and relative information from the Planning Department have been included.

If the Board of Commissioners desires to consider an alternative to establishing a new committee, Staff respectfully suggests the following options could be considered:

Take no further action until a response to the letter in Item A above is received.

A joint worksession with the Board of Commissioners and Planning Board to discuss existing event home regulations and to determine if regulation over and above State and Local regulation is desired.

- If additional regulation is desired and identified, direct Staff to work with the Planning Board to move an amendment forward.

Establish a small working group comprised of a member of the Board of Commissioners, a Planning Board member, and 2-3 community members, with Staff assistance, to identify potentially desirable regulations, if any, which could include the ideas Mr. Hornik presented in his October 16th letter.

- Present those ideas to the Planning Board for review and recommendation, and then to the Board of Commissioners for action.

Use the Planning Board, an experienced group with established procedures, to work through the information originally intended for the new committee.

- A full report could be prepared answering any lingering questions, and addressing continued comments on the issue regulating event homes, with recommendation or recommendations on defined action given to the Board of Commissioners.

Board guidance will be appreciated.

November 14, 2019

Chairman Robbie B. Davis and the
North Carolina Building Code Council
Office of State Fire Marshal
Building Code Council
1202 Mail Service Center
Raleigh NC 27699-1202

Dear Chairman Davis and the Building Code Council:

The Town of Kill Devil Hills is a small coastal community in northeast North Carolina. Our year round population is approximately 7,200; however, our seasonal summer population swells to nearly 30,000. Housing for this seasonal influx is mostly comprised of privately owned single-family dwellings, multi-family structures and several hotels. Over the past decade, the Town has seen a sharp increase in the construction of large event-style, single-family dwellings, some of which contain more than 24 bedrooms; amass 14,000 square feet, and more; and, have the ability to accommodate more than fifty people. These dwellings are concentrated along the Town's oceanfront and are typically constructed on fifty-foot wide lots that are very deep. The resulting construction is a long, narrow dwelling with a large, street side, area for parking. Typically, these structures are targeted for large events and most include guest amenities such as a pool with a cabana and sometimes even a wedding chapel, which accompany the particular dwelling on its seaward side.

The Board of Commissioners has numerous life-safety concerns regarding these large single-family dwellings. The Board has discussed safety concerns and the limitations local governments have to implement any additional safety requirements. Citizens have expressed issues with these dwellings for other reasons, too, including but not limited to aesthetics and the propensity to overcrowd. One claim made by those opposed to these homes is that they should not be categorized as a single-family dwelling. Our responses have been that they meet the requirements of the NC Residential Code, and that our Town Code may not be more restrictive than the Building Code, but these answers have not satisfied the detractors.

The NC Building Code does not classify these structures to be commercial buildings; however, we believe they exceed the regulatory standards of a traditional single-family dwelling, given the number of

bedrooms, amount of guests these dwellings will accommodate, and the large events held in these dwellings. Our understanding is that there has been discussion of, and patent support given, amongst the NC Building Code Council for a third classification that would amount to a more appropriate designation of the aforementioned structures than simply “residential” or “commercial.” There is an understanding that applying commercial standards to this type of development would be detrimental to the building industry and this is not the desire of the Town. At their November 13, 2019 meeting, the Board of Commissioners agreed to request the Building Code Council review these issues with the intent of potentially developing a third classification to address these types of structures, or any other remedy which may provide relief to the above-noted concerns. Please accept this letter as the Town’s cordial request that the Council consider the same.

Thank you for taking the time to read and contemplate our concerns. We will sincerely appreciate any insight and assistance you can provide on this situation.

In the event you need any further information from the Town, please do not hesitate to contact Planning Director Meredith Guns, or Assistant Planning Director Cameron Ray using the address on this letterhead, or by the following contact information:

Planning Director Meredith Guns

Phone: 252.449.5318

E-mail: meredith@kdhnc.com

Assistant Director Cameron Ray

Phone: 252.449.5318

E-mail: cameron@kdhnc.com

We look forward to hearing from you.

Sincerely,

Sheila F. Davies, Ph.D.
Mayor

C: KDH Board of Commissioners
Planning Director Meredith Guns
file

Creation of the **EVENT HOUSE STUDY GROUP**

Regarding membership on the new Event House Study Group, the Board of Commissioners has agreed that residents, property owners, and non-resident property owners be included, with the group composed of a majority of residents. Experience in planning, zoning, land use, and local building/contracting will be helpful. The issue of large single-family dwelling/event homes (EH) has generated high levels of interest and much discussion since 2014. The abilities of all members to listen and communicate in a respectful manner are important to the success of this group.

*Staff proposes to call this group the **Event House Study Group (EHSG)**. **Board guidance will be appreciated.**

Timeframe is there a completion schedule the Board of Commissioners has in mind?

There are a finite number of lots on the oceanfront available for development at this time. This does not include developed properties that may be purchased for redevelopment. In the interest of all concerned the new group should move forward as expeditiously as possible, with a completion not later than _____. **The Board of Commissioners may want to consider authorizing professional mediation to help the group work through this complicated, sensitive issue.**

Identification of Stakeholders for Group Membership

The UNC-CH School of Government advises that there are a number of ways to measure the diversity of a group.

- a) Residence
 - i. Size/Ownership: Single-family, multi-family, weekly rentals, hotels, etc.
 - ii. Property location (Oceanfront – commercial residential; First Row – commercial residential; Second Row – commercial/residential; West of US 158)
- b) Occupation
 - i. Developer, builder
 - ii. Retiree
 - iii. Business owner
 - iv. Other
- c) Age, race, gender, etc.
- d) Viewpoint – those in favor/opposed to construction and/or regulation of large single-family dwellings/event homes
- e) Environmental/conservation advocacy
- f) Members appointed from the Planning Board, or civic groups that are either specific to Kill Devil Hills or the Outer Banks

Following is a list of potential stakeholders for the new group. Staff requests consensus direction on specific elements for membership so we can prepare a final application and advertisement notice for interested persons.

- Residents. **Already agreed upon at the October 16, 2019 meeting, but the BOC may want to consider:**

- Must they be Property Owners, too? _____
- Will there be any geographical restrictions – West of US 158; East of NC 12? West of NC 12, but not West of US 158; Town-wide? _____

Consideration could be given to selecting owners of diverse oceanfront properties (i.e., residential, commercial, multi-family, etc.)

- Property owners; including Non-Resident Property Owners. **Already agreed upon at the October 16, 2019 meeting. No other guidance is needed.**

- KDH Against Mini-Hotels? _____
- Business Community? Business Property Owners? Business Property Operators? _____
- Outer Banks Board of Realtors? _____
- Land developers/investors? _____
- Planning Board member? _____
- Community Appearance Commission? _____
- Outer Banks Homebuilders Association? _____
- Building Contractors? _____
- Engineers/Architects? _____
- North Carolina Coastal Federation? _____
- Surfrider Foundation? _____

Membership. Please provide consensus guidance on:

- How many voting members? _____
- Will Commissioner Windley chair the group? Will he be a voting, non-voting, or voting only to break a tie, member? _____

Terms of Office

Members of the EHSB shall be appointed for a finite term that will expire when their report is submitted to the Board of Commissioners and the Board determines that the group’s task is completed.

Advisory Capacity Non-Voting Members. If members of the Board of Commissioners have additional ideas on how our Staff and the Town Attorney can be helpful to this group, please let us know.

- Planning Department (full-time)
To serve as the EHSG's Staff liaison, function as advisors, consultants.
- *Public Services Department
To provide input regarding services, impact on services (refuse, trash on the beach, water usage, etc.). Stormwater management. Surface water affects? The cost of providing services to EH. Other _____
- *Fire Department (public safety issues)
To provide information on fire concerns, public safety issues, impact on the oceanfront. Access for emergency vehicles. Sprinkler systems. Other _____
- *Police Department (public safety issues)
To address complaints, vehicular accidents, possibility of increased roadside parking, impact on public safety. Access for emergency vehicles. Other _____
- *Town Attorney
To address specific legal questions, interpret legal issues, review recommendations. Other _____
- *Town Engineer
To review recommendations, offer ordinance solutions, compromises, etc. Other _____
- *Finance Department
To provide information on ad valorem revenues, inter-governmental revenues (such as occupancy taxes), the ad valorem tax levy, etc., which are affected by property values, tax collections, etc., and how the Town's budget has been impacted by EH. To assist with projects and hypothetical scenarios to calculate budget impacts without EH. Additional burden on city services. Other _____

**Intermittent/As Needed service*

EVENT HOUSE STUDY GROUP

Scope and Purpose

Development of Tasks for the Event House Study Group (EHSg).

From time to time the Board of Commissioners has need for in-depth input from its citizens, which may include expert advice and comment, on issues of importance to development within the Town of Kill Devil Hills. Timely, informed and effective advisory input, over and above normal planning and zoning issues, can be important in the planning and zoning decision-making process that begins at the Staff level and concludes with the elected officials.

The Board of Commissioners has determined that the above is particularly true on the issue of potential regulation of EH, thus establishing a special group of diverse stakeholders to conduct impartial, concentrated study and review, on this issue and perhaps others,

Board consensus on the following potential tasks for the EHSg is requested. Staff has included relevant comments found throughout the minutes to help the group in its deliberations.

Yes/No	Potential Tasks for the EHSg.
1 Yes/No	<u>October 16, 2019 DRAFT BOC Minutes.</u> In-depth study of housing issues in Kill Devil Hills and make recommendations to the BOC on how to proceed. The goal being for a diverse group of KDH citizens representing builders, concerned citizens, the business community, REALTORS and community organizations to study big homes in the Ocean Impact Residential Zone.
2 Yes/No	Discover what, if anything, other local governments in North Carolina are doing to address regulations of EH. Compare regulations. Consider that Kill Devil Hills is unique from many other communities because it has very deep oceanfront building lots and wastewater availability through KDHWWTWP, LLC. <ul style="list-style-type: none"> ▪ Some have adopted and implemented language that actually limits the square footage of a single-family dwelling; however, there may be forth-coming action to eliminate this type of regulation as it may be inconsistent with Building Code requirements. Is limiting square footage a permitted way to regulate event homes? ▪ Limiting structure size is tricky because lot sizes vary and limiting house sizes on all lot types may not be the most equitable and justifiable means to address the issue. ▪ Would maximum square footage be applied Town wide? There are larger single-family dwellings located on the west-side, but they are mostly for permanent residents. ▪ Should a maximum square footage throughout Town be recommended, should it be tiered based on the zone? (i.e., less restrictive in commercial and more restrictive in residential and oceanfront zones?)

<p>3</p> <p>Yes/No</p>	<p>How can application of Floor Area Ratio (FAR) affect construction on the Town's oceanfront?</p> <p><u>August 10, 2015</u>. The overall height and mass of some of the existing large dwellings in Kill Devil Hills, and while the FAR seems reasonable the hope that a way could be found to help such houses "fit" better.</p>
<p>4</p> <p>Yes/No</p>	<p>What are the safety issues associated with EH? Are they different from multi-family structures such as condos and hotels? Are there solutions to these issues within the North Carolina General Statutes, Building Code, and Town of Kill Devil Hills ordinances? What can the Town do to increase life- and property safety at EH?</p> <ul style="list-style-type: none"> ▪ <u>October 12, 2015</u>. Fire Chief Troy Tilley explained that his concerns included the actual intense and large amount of energy that would come from large structures in the event of a fully involved fire and that energy might affect nearby structures. ▪ <u>October 12, 2015</u>. Vehicular ingress, egress and parking at large structure locations can be problematic and during an emergency situation could be extremely difficult.
<p>5</p> <p>Yes/No</p>	<p>Public opinion.</p> <ul style="list-style-type: none"> ▪ 1997 Land Use Plan Survey ▪ 2007 Land Use Survey ▪ 2019 Land Use Plan Survey? ▪ Public comments during BOC meetings? ▪ Petitions? How much weight should the two petitions already submitted carry in the decision-making process? ▪ Could a survey that focuses solely on EH be of use? Could questions be created that are fair and objective that will generate useful responses? <ul style="list-style-type: none"> ▪ On-line? ▪ In the quarterly water billing? (three-month turn-around time)
<p>6</p> <p>Yes/No</p>	<p>Incentives, which must be kept within the limitations of the NC Building Code and the NC General Statutes.</p> <ul style="list-style-type: none"> ▪ In 2015, the Board of Commissioners agreed that they were interested in potentially offering incentives to increase safety measures in EH. ▪ Are there other areas worth considering for incentives? What are they, and what incentives could the Town offer? ▪ <u>February 9, 2015</u>. Discussion of a Zoning amendment submitted by Mr. Ulickas, which approved the use of permeable paving materials in exchange for additional lot coverage. Permeable materials are more expensive than non-permeable materials, but they improve stormwater management. Is there similar incentive opportunity that could encourage some other trade-off to benefit to neighboring properties? To the Town? ▪ Is there any incentive opportunity to encourage other development, such as cluster homes or cottage courts? Would such types of development have less impact than EH?
<p>7</p> <p>Yes/No</p>	<p>CAMA setbacks.</p> <ul style="list-style-type: none"> ▪ How do CAMA setbacks apply to EH?

<p>8</p> <p>Yes/No</p>	<p>Financial consideration.</p> <ul style="list-style-type: none"> ▪ <u>August 10, 2015</u>. Is there willingness to sacrifice the tax revenue of lots by limiting house size? ▪ <u>August 10, 2015</u>. 40% of the Town’s ad valorem tax revenue is generated on the oceanfront. ▪ How much would tax revenues change if vacant oceanfront properties were prohibited from being developed with large single-family dwellings? ▪ Limiting building size will decrease tax income to the Town. ▪ Does it cost the Town more to provide services to EH than other dwellings or facilities? If so, which services and why? If not, why not? ▪ Are there other financial issues to consider?
<p>9</p> <p>Yes/No</p>	<ul style="list-style-type: none"> ▪ Town Code amendments could include: <ul style="list-style-type: none"> ▪ Effects ▪ Structure Size ▪ Safety ▪ Parking
<p>10</p> <p>Yes/No</p>	<p>What are the legalities involving:</p> <ul style="list-style-type: none"> ▪ If changing zoning regulations involve downzoning, and there are active projects and site plan development, any change in development rights will affect owners who have purchased a lot with the intent of constructing a large EH after careful review of what their development rights are at the time of purchase. ▪ What are property rights? ▪ Do EH infringe on the property rights of others? If so, how?
<p>11</p> <p>Yes/No</p>	<p>Long-term impact. The following issues continue to appear; however, demographics is tricky to predict and, in some instances, impossible to plan for:</p> <ul style="list-style-type: none"> ▪ <u>August 10, 2015</u>. What happens if/when the large single-family structures are no longer popular with the visiting public? ▪ <u>August 10, 2015</u>. Construction, whether EH or small, is market driven, and that the larger structures are not standing vacant during high visitation seasons, along with the concern that if the Town continues to allow large single-family dwellings on the oceanfront that eventually the scale will be tipped to the point that visitors go elsewhere because the Town has lost its uniqueness and the large-dwelling atmosphere may not be what visitors had in mind for their vacation. ▪ <u>August 10, 2015</u>. That not everyone can afford to stay in the large single-family dwellings when they go on vacation, and the fact that some of the visitation market could be excluded if Kill Devil Hills doesn’t also accommodate those who prefer smaller rentals.
<p>12</p> <p>Yes/No</p>	<p>Town Code. Are there amendments to chapters other than Zoning that could address identified issues with EH, such as noise, parking, events held at EH, etc.?</p>
<p>13</p> <p>Yes/No</p>	<p>Are there alternative development concepts?</p> <ul style="list-style-type: none"> ▪ Amendment(s) to Chapter 153, Zoning – regarding cottage courts, cluster homes, other_____? ▪ They can be offered as options, not required.

Potential Resources

- KDH Chapter 153, Ocean Impact Residential Zone
- Other regulatory language from the Town Code (cottage courts, parking, lighting, stormwater, landscaping)
- NC General Statutes
 - §160A-381. Grant of Power. Regarding local authority to regulate residential, one- and two-family dwellings; local regulation of design elements prohibited.
 - §160A-381. Grant of Power. Section (e). and Report by the Town Attorney on moratorium and vested rights issues.
 - §160A-385.1. Vested Rights. Establishes at what specific point does a landowner earn the right to undertake and complete a development plan.
 - §143-138. North Carolina State Building Code. Section (e). This section establishes the effect on local codes by the Building Code.
- North Carolina State Building Code. Chapter 1. Scope and Administration. Part 1 – Scope and Application *and* the definition of “Dwelling Unit.”
- Review regulations of EH from: Dare County, Currituck County, the Towns of Duck, Southern Shores, Kitty Hawk and Nags Head.
- KDH Land Use Survey 2007.
- KDH Land Use Plan Public Opinion Survey 2019.
- _____
- _____
- _____
- _____

Potential Resource Groups

- Outer Banks Chamber of Commerce
Statistical information pertaining to any aspect of EH. Membership opinion polls? Discuss local market economics regarding construction, unit rentals, and associated businesses.
- ***Outer Banks Homebuilders Association**
Potential source on local building, demand for EH construction.
- Visitation Rentals Managers and Offices
Information on demand for rental of EH on the Outer Banks and Kill Devil Hills since 2014. Does demand remain strong? Does it seem to be peaking? Or fading? What are the trends for vacation rentals?
- Outer Banks Visitors Bureau
Demographic Information EH? Is there information on this issue available through other locations that could provide insight on the subject? Opinion polls? Information on all seasonal rentals in KDH; are there developing trends overall?
- KDH Against Mini-Hotels
Active community group initiated by property owners. Presented an original signed petition, and an electronically generated petition, at the October 16, 2019 BOC meeting. Each petition includes names of residents and non-residents; there is no way to certify either document to determine Kill Devil Hills citizens. This group also submitted a letter to the Board of Commissioners from Attorney Robert Hornik offering suggestions on possible regulations for EH. (Mr. Hornik's suggestions are detailed further in this review.)
- Outer Banks Board of Realtors
Explain "best use of land" concept. What constitutes that? Illustrate the response(s). Address sales of real property in areas where there are large single-family dwellings/event homes; what are the impacts, if any. Has this organization noticed trends in sales of, and around, EH? Are EH affecting values of adjoining or nearby properties? What other information can they provide?
- ***North Carolina Coastal Federation**
Stormwater, water quality information, other environmental impacts.
- ***Outer Banks Surfrider Foundation**
A local group with national/international connections. Could assist with identifying locations outside of North Carolina that have dealt with large single-family dwellings/events homes; if and how they were regulated; public opinion, etc.

- Outer Banks Wedding Association

What impact have EH ad on the wedding industry in the past decade? In Kill Devil Hills?

*These three groups also appear on the Stakeholders list as potential members representing the building industry, environmental interests, and the aesthetics issue.

Proposed Amendments to Chapter 153. Zoning ref: EH.

- *Ulickas – February 9, 2015 - §153.199(F)(4) Ocean Impact Residential Zone – Lot Coverage – to allow permeable pavement with lot coverage reduction – to increase lot coverage from 55% to 65% with the use of permeable pavement for lot coverage reduction for lots over 15,000 square feet. Approved.*
- *Sharon Nelson – June 28, 2017 - §153.002 Definitions and §153.095(C) Ocean Impact Residential Zone Intent – modify definition of Dwelling, Single Family to include maximum square footage of 6,000 square feet, and modify intent of the Ocean Impact Residential Zone. This amendment has been requested by Sharon Nelson and proposes modification of the definition of Dwelling, Single Family to include a maximum enclosed habitable living space of 6,000 square feet, which would also include any on-site accessory structures. As proposed it also includes adding a subsection to §153.095, which seeks to amend the intent of the Ocean Impact Residential Zone to include construction architectural standards and to impose compatibility criteria based on the natural and developed landscape, and the protection of “...quiet enjoyment, public safety and public welfare.” Denied.*

At the June 28, 2017 meeting, Ms. Nelson conducted a PowerPoint presentation. Comments included, but were not limited to:

- In the past 20 years, increased growth of large single-family dwellings (event homes): houses used to have 8-10 bedrooms and lot coverage was around 25%; today, 24-bedroom houses with more than 50% lot coverage are being constructed;
- Event homes are commercial enterprises, which constructed as single-family dwellings allow those with financial interests to avoid safeguards required for commercial establishments;
- The hotel industry must adhere to more strict zoning regulations and insurance standards, “setback rules, traffic and parking requirements, public safety, and handicap and fire code regulations.”
- Most residents and visitors oppose over-development and want the Outer Banks to keep its small-town atmosphere;
- Ms. Nelson placed a survey on a social media site that had approximately 233 responses from residents, visitors and interested others, who were overwhelmingly against construction of large event homes;
- Nags Head and Southern Shores restrict square footage of habitable living space; in Nags Head the amount is 5,000 square feet; in Southern Shores the largest single-family residence cannot exceed 6,000 square feet of enclosed living space;
- When the Planning Board voted to oppose the amendment, Ms. Nelson felt one reason appeared to be the possible creation of non-conforming structures, because if substantially damaged these large homes would not be able to be rebuilt to the original

size; and, other issues included down-zoning, arbitrary language proposed in the Intent clause, arbitrary construction size of 6,000 square feet;

- Regarding Planning Board issues, Ms. Nelson cited “grandfathering” of non-conforming structures, the universal risk faced by property owners on the oceanfront, oceanfront property owners are advised on rebuilding restrictions in the event of catastrophic damage, large and small property owners are equally impacted, and property owners who have taken no steps toward construction are not protected due to speculative interest.

Other comments on Ms. Nelson’s proposed amendment included:

From Commissioner Michael Midgette

- If the Board desires to limit the size of EH then a new defining term should be created with specific regulations.
- Replace “enclosed habitable living space” which is not defined in the Zoning Ordinance with “gross floor area” which is defined.
- The Board should be careful about restricting vacation rental homes without studying the facts and deciding what is in the best interests of everyone.
- The following language was felt to appear arbitrary and too restrictive to the oceanfront:

(C) It is also the intent of this section to establish a set of regulations designed to promote and encourage the unique character of the residential architecture and use which is an integral part of the town aesthetic and to ensure that future residential development is compatible with the natural and developed landscape, and to afford the highest level of protection for both permanent residents and seasonal visitors occupying these structures in the furtherance of quiet enjoyment. public safety and public welfare.

From Commissioner Mike Hogan

- The Board must consider all parties involved. The Board’s reasoning behind establishing regulations must be more than just an aesthetic matter. Calling for consideration of, perhaps, a scenario whereby oceanfront property has been a long-term investment, to change zoning regulations could drastically reduce value, which could negatively affect the long-term investment dividend, which could cause hardship and other unintended consequences.
- How a condominium structure that might have twelve units each with three bedrooms is different from a large dwelling with 20-24 bedrooms. The same amount of stress on Town services is placed by each, there’s approximately the same amount of people in each structure, same number of people on the beach. It is inhabitants of a structure, not the structure, that cause concerns or problems. Parking and emergency response access is something that should be considered. The LUP update is moving forward and once the public opinion survey is completed then the Board may have a mandate to establish

regulations. He felt discussions on limitations would be appropriately conducted sooner rather than later and added that establishing a special group comprised of representatives from various interests, and ordinary citizens, to do so could be beneficial.

From local contractor Skip Jones.

- Most of the oceanfront lots in Kill Devil Hills are substantially larger than those in Nags Head and Southern Shores, which might explain why Kill Devil Hills has more of the large single-family structures than either of the other municipalities. Mr. Jones explained that he is not necessarily a proponent of the look of big houses. He suggested there are other directions Kill Devil Hills can take to establish regulations on such dwellings than by strictly prohibiting them through the Zoning Ordinance. For example, Nags Head still has a “cottage court” use in its Zoning Ordinance, and three, or so, cottages could provide space similar to one large house. Allowing alternative uses as incentives could be one way to resolve the issue.
- September 11, 2019. § 153.070 – Stormwater Management – Clarify commercial and one- and two-family dwelling requirements, and create maintenance requirements. Approved.
- October 16, 2019. § 153.073 Landscaping Requirements – Modify Landscaping Requirements to Include Single-Family and Duplex Dwellings with Greater Than 6,000 Square Feet Lot Coverage. Denied.
- October 16, 2019. § 153.076 Off-Street Parking and Loading – Modify Parking Requirements for Single-Family and Duplex Dwellings with Eleven Bedrooms or More. Approved.

Moratorium: July 10, 2017

Town Attorney's Agenda

1. Report on moratorium and vested rights issues (Attached TA-1)

At the June 28, 2017 meeting, the Town Attorney was asked to report at this meeting on the pros/cons of enacting a moratorium on construction of large single-family dwellings, and the vestment of property rights for undeveloped properties. Both issues pertained to construction and property on the oceanfront.

Mr. Varnell provided the Board of Commissioners with two stand-out statutes pertaining to zoning moratoria and vested property rights: NCGS 160A-381 and NCGS 160A-385.1, respectively, each of which is included with the materials for this meeting.

With regard to vested rights to property ownership, Mr. Varnell shared the following example: Vested rights are not established when a person purchases a parcel and holds onto it for 10 years, then attempts to secure permits to develop the property while asserting that the Town's ordinances which were in effect 10 years previously should govern that development.

Mr. Varnell went on to explain that it is not a requirement that permits must have been issued or that construction has begun on a project for rights to vest within the property. If the property owner has made some form of substantial reliance upon the ordinances to develop the property, such as acting because he or she previously had received approval from the Town under the ordinances for a similar development and has substantially engaged engineering site plans or surveys, he indicated that there is then an argument for vested rights. He noted that most of the case law on this subject is circumstantial.

Mr. Varnell then report on temporary moratoria on building or developing. In 2011, the General Assembly adopted amendments to existing statutes that established restrictions on a municipality's authority to enact temporary building moratoria. The exception to that is NCGS 160A-381(E), which states:

"As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law, except for the purpose of developing and adopting new or amended plans or ordinances as to residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. ..."

As a result, municipalities cannot develop a new or amended plan or ordinance to restrict or prohibit residential development. A town cannot create a temporary moratorium to prohibit a development and then enact a code amendment to permanently set in place the prohibition. Mr. Varnell also stated that any amendment to the Town Code adopted in such a manner as to regulate large single-family homes would be difficult to develop and enforce.

Commercial developments are not affected by these rules and local governments may not adopt ordinances more restrictive than the North Carolina Building Code.

Other Discussion Points on EH

Robert Hornik - Brough Firm Letter – October 16, 2019

- KDH Chapter 153 does not consider such structures to be a distinct “use” classification with regulations that would distinguish them from “single-family dwellings” as defined in Chapter 153
- There is no regulation in KDH to prohibit large single-family dwellings in the OIR Zone, nor is there any requirement for developers of such structures to obtain a conditional use permit, or a special use permit before they are built
- The change in character of use and the resulting effects were not contemplated when Chapter 153 was written; many of the effects on nearby true single-family residences are significant and negative
- The number of bedrooms and size of the structures make it obvious that such structures are intended for use and occupancy by large numbers of people and are not “single family dwellings” as defined by Chapter 153. They are “more akin” to a hotel or motel, and should be treated as such from a regulatory standpoint. They accommodate large numbers of vehicles, create large amounts of traffic, noise and refuse on and around the property
- Most lots do not have sufficient space for setbacks or buffers to shield neighboring properties from the negative impact of the large single-family home use; they are not single-family residential structures and should not be treated as such
- Statutes have limited local ability to regulate interior design or configuration, and have been recently amended to limit the Town’s ability to regulate minimum heated space in a residence
- Nothing prohibits local governments from regulating maximum size of residential structures
- Suggests two-tiered permitting structure whereby “residences” consisting of some specified area of heated living space (example, 6,000 square feet) would be required to obtain a conditional use permit or a special use permit, rather than “simply a zoning permit”
- The Town could create a new use category for “event residences” (or similar title) and require CUP/SUP [conditional use permit/special use permit] for such uses. During the CUP/SUP process traffic, noise, sanitation, fire safety, police services, and other Town/government services, etc., could be addressed. Fire safety concerns for the actual residence and neighboring structures could be addressed.
- Event homes and neighboring, older, single-family residences tend to be stick-built; suggests the Town study the feasibility of seeking Town authority to require sprinkler systems for “structures over our suggested 6,000 square foot size.”
- Existing event residences would not be affected
- Regulations adopted now for large event homes, which include CUP/SUP standards which would be determined by the BOC, would be entitled to a permit subject to satisfaction of those CUP/SUP standards
- The Town could craft regulations that balance the interests of all property owners.

Generally

- §160A-381. Grant of Power.
 - Regarding local authority to regulate residential, one- and two-family dwellings; local regulation of design elements prohibited.
 - The non-prohibited variables that may still be regulated by local governments include: height, bulk, location of the structure on the lot, and the use of buffering or screening.
- §160A-381. Vested rights.
 - Conditional approval or approval of a site plan.
- Aesthetics. Local governments can no longer regulate aesthetic issues (which was not the case in 2015).
 - August 10, 2015. Is the issue the size of the house, or the aesthetics of large structures on narrow lots? Is it architectural design?
 - August 10, 2015. Loss of the traditional “beach” look?
 - People were beginning to ask questions about large single-family dwellings and whether or not this is how the Town wants to look; and that the BOC owes it to the citizens to have a discussion on this matter.
 - August 10, 2015. That local residents tend to dislike the large oceanfront dwellings, but that they do appeal to tourists who desire more in the way of amenities, amusements, etc.

KDH Planning Department
Regulatory Options for EH

- Establish a graduated scale based on building size and setbacks. Establish a maximum allowable square footage using the current setbacks and then establish a scale which every additional 500 square feet will require additional feet of setbacks.
 - Issues
 - This will not limit the square footage of the house, except that eventually the increase setbacks will be prohibitive to adequately site the house.
 - What would be the maximum square footage before the increase setbacks would come into effect and what increment of square footage would be appropriate (100, 250, 500, 750, 1000)?
- Restrict size with a Floor Area Ratio similar to the existing regulations for multi-family and hotel dwellings in the OIR.
 - Issues
 - If the FAR is set at .40 looking at a sample of some of the largest houses currently located on the oceanfront, only about half would have to be built smaller.
 - If the FAR is set lower than .40, a solid finding of fact will be appropriate.
- Require additional lot width for structures over a certain square footage in order to possibly diminish some of the visual issues with the large houses.
 - Questions
 - What would be the maximum square footage before additional lot width would be required and what increment of width (2,5,10)
 - This will not prevent the house from being built setback to setback, but the land width would be greater (creating less of a shotgun-house look).
- August 14, 2017. A preliminary list of possible issues to address regarding EH. Once the issue has been carefully identified, Staff can work to create regulations to address that particular concern.
 - Building bulk
 - Setbacks
 - Accessory structures
 - Parking
 - Safety
 - Noise
 - Guest behavior
 - Events

EVENT HOUSES STUDY GROUP Ground Rules

The purpose of these ground rules is:

- To enable the group to transact business expeditiously and efficiently;
- To establish and maintain a spirit of cooperation; to provide procedural points to help the Team voice differences of opinion, to work through those differences, and accept that differences aren't wrong; and
- To ensure that all group members and the public understand the requirements for public bodies, the organization and procedures of the group, and how the requirements of the assignment will be accomplished.

The EHSB was established by a public body and is therefore subject to the North Carolina Open Meetings Law (Chapter 143, Article 33C of the General Statutes).

Members of the EHSB are appointed for a finite term that will expire when their report is submitted to the Board of Commissioners and the Board determines that the EHSB's task has been completed.

Meetings of the EHSB will be scheduled by the Chair or Vice-Chair on a regular schedule as much as possible.

Participants and Participation – answers to highlighted questions will have been provided by the BOC during review of previous pages.

1. The EHSB is comprised of _____ voting members, all of whom have an interest in Kill Devil Hills, either through residency, property ownership, business ownership/operation, or _____, who will fully and directly engage in group deliberations. In the event of a tie, the Chair of the EHSB, who shall be a member of the Board of Commissioners, will vote and break the tie; at no other time will the Chair vote.

2. The EHSB is chaired by (a member of the Board of Commissioners) (Commissioner John Windley).

3. To assure an effective process, members agree to make every effort to attend all meetings and to stay current with information provided. Voting members may not designate alternates for any group meeting.

4. The public is welcome to attend all meetings, and while public comment will be sought and is welcome, members of the audience are not participants in the group's deliberations unless invited by the chair. There will be an established "Public Comment" portion for each meeting. Written comments of any length are welcome throughout the process and will be included with the minutes and packet materials for the meeting at which they are submitted.

EVENT HOUSE STUDY GROUP
Meetings

1. Each group member agrees to honest and direct communications. Participants are expected to support the process, and in good faith collaborate toward completion of EHSG's task as charged by the Board of Commissioners.

Each item presented for consideration is entitled to full and open discussion.

All group members may engage directly in the entire process. Discussions will strive to identify common ground among all participants to deliver the most powerful collective statement possible. When common ground cannot be identified, the opinion of individual participants will be respected and documented as they emerge. Participants are expected to provide thoughtful, on-point opinions, objective fact-based comments and alternatives during discussions.

Members may anticipate assignments between meetings.

2. The Chair will participate in, encourage, and manage discussions using more or less structure depending on the nature of the issue and nature of deliberations, calling for action once an issue has been thoroughly examined and a majority-supported outcome appears imminent. A vote by the majority of the membership present will constitute action. Decisions on issues will be made during meetings by majority vote of the membership present.

Outside the open meeting the Chair will work for the EHSG to assure the membership is supplied with background and current information on issues and recreation locations, and that relative members of the Town Staff or outside resources are available as needed.

The Chair will coordinate agendas for each EHSG meeting with the EHSG secretary, including carryover items and new business, using the following format:

- Call to Order
- Pledge of Allegiance
- Agenda Approval
- Approval of the Minutes
- Old Business
- New Business
- Other Business
- Public Comment
- Response to Public Comment
- Adjourn

3. Items for the agenda, including assignment reports are to be included in the packet materials to provide adequate time for review and consideration by all members. Packets will be available to all members not less than five (5) days prior to a meeting.

4. Minutes will be prepared as a summary of the meetings and will include all action. Observations contained in the minutes may not necessarily be individually attributed. If members desire, they may submit attributed information and/or written comments directly to the secretary to the EHSB for inclusion with the minutes of each meeting. All minutes, packet materials, attributions and other information pertinent to the discussions and decision-making process will be made available and remain available for public inspection.

APPLICATION FOR EVENT HOUSE STUDY GROUP

Town of Kill Devil Hills

For Office Use Only		
Date Received	Time	Date Appointed

PLEASE COMPLETE EACH SECTION (print or type)

NAME _____ **HOME PHONE** _____

HOME ADDRESS _____

MAILING ADDRESS _____

BUSINESS ADDRESS _____ **BUSINESS PHONE** _____

EMAIL ADDRESS _____ **CELL PHONE** _____

Are you currently serving as an appointee to a Kill Devil Hills committee, commission, or board?

_____ **Yes** _____ **No** **If Yes, please list which one(s) and length of service on each:**

Are there any restrictions on your time or flexibility: _____

Do you have access to the Internet? _____

Please described your interests, skills, and areas of expertise: _____

Please list your past and present professional and civic activities: _____

If appointed, what do you believe is your strongest skill or ability to offer the Event House Study Group?

If appointed, will you be representing a specific organization or group, a specific interest, or neither?

Why are you interested in serving on the Event House Study Group?

What do you hope the Event House Study Group will accomplish?

Is there any possible conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee to the Event Home Study Group by the Board of Commissioners?

_____ No _____ Yes (If yes, please attach an explanation of the possible conflict)

I understand that if I miss three (3) consecutive regular meetings of this Committee that I will be removed from the committee. In addition, members are required to attend at least 50% of each meeting in order to be counted present. I also understand I'm required to attend 75% of all regular or special meetings of this committee during the course of my term. but no less than 65% during any given calendar year to maintain my seat on this Committee. Members of the Event House Study Group shall be appointed for a finite term that will expire when their task is completed.

I certify that the facts contained in this application are true and correct to the best of my knowledge and belief. I understand that this application will be retained in the Office of the Town Clerk for two (2) years and must be updated after that time. If not updated after that time, the application will be removed from the active consideration file.

I understand the intent of the Event Home Study Group is a review and advisory committee that will study large single-family dwellings/event homes and various issues relating to these structures.

Signature _____ Date _____

RETURN COMPLETED FORM TO:

Office of the Town Clerk
Town of Kill Devil Hills
Post Office Box 1719
Kill Devil Hills, NC 27948