

Minutes of the Monday, October 12, 2020, 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, off Colington Road.

- Members Present:** Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, Bernard "B.J." McAvoy and John Windley
- Members Absent:** none
- Others Present:** Debora P. Díaz, Town Manager; Casey Varnell, Town Attorney; Meredith Guns, Planning Director; Cameron Ray, Assistant Planning Director; and James Michael O'Dell, Deputy Town Clerk

Call to Order

At 6:00 p.m., Mayor 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 Ingram moved to approve the agenda for this meeting as presented. Commissioner Windley seconded the motion, which passed by a unanimous, 5-0, vote.

Public Hearing

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

- 1. Zoning Amendment Request – Chapter 153, Zoning – 153.181 (B) Setbacks for Mixed Use Development (Dwelling and Business) – Request to modify setback for mixed use development to commercial standards rather than residential standards (Attached PH-1)**

At its meeting on August 18, 2020, the Planning Board reviewed this proposed amendment to the Zoning Ordinance and voted to forward it for consideration by the BOC. At its September 14, 2020, meeting, the Board of Commissioners scheduled the proposed amendment for this public hearing. There were no speakers during public hearing comment.

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Mayor Sproul shared that this proposed amendment would modify the rear yard setback for mixed use development in the Commercial Zoning District, changing from 20% of depth not

to exceed 30 feet, to a rear yard setback requirement of 10 feet. This setback change would parallel with commercial setbacks requirements rather than residential ones.

Commissioner McAvoy inquired how many properties could be affected and whether there was an alternative reason for the application, which indicated that the amendment would increase the likelihood of affordable housing. Planning Director Meredith Guns noted that any businesses built to the commercial setback would qualify under this amendment. She said that the applicant, Tracy Rider, of OBX Room in the Inn, wants to retrofit an existing building in the commercial zone to incorporate year-round housing on its upstairs level for those who use the organization's services. The proposed amendment could increase housing options because existing structures in the commercial zone would have the ability to convert second floor space to residential usage. However, if the commercial property abuts a residential property, it is required to maintain the more restrictive 20% rear yard setback. Assistant Planning Director Cameron Ray stated there are existing mixed use non-conformities in Town with residential uses, and no one has expressed complaint. Mayor Sproul noted that this would only be permitted in the commercial zone, and that communities across the U.S. have been witnessing growth of mixed use development in the last three decades. Mr. Ray said that this mixed use option was also useful for new construction. Commissioner McAvoy inquired why the Town had designated some mixed use options in the Town Code. Ms. Guns stated that Staff was unsure why previous Boards in the 1980s had set out the mixed use option. Commissioner McAvoy inquired whether Staff foresaw any negatives for adjacent property owners. Staff did not foresee any negatives since this will only affect the commercial zone, and if a property abuts the residential zone, the 20% rear setback requirement remains.

Commissioner Windley moved that the Board of Commissioners finds that the proposed amendment to Chapter 153, Zoning, §153.181(B) Setbacks for Mixed Use Development (Dwelling and Business) – Request to modify setback for mixed use development to commercial standards rather than residential standards 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 promotes diverse types of housing. Commissioner Ingram seconded the motion, which was approved by a 4-1 vote, with Commissioner McAvoy voting against.

Public Comment

Response to Public Comment

Old Business

1. Appointment

This item was carried forward from the September 14, 2002, meeting by consensus of the BOC.

A. Planning Board – one regular position

With Eddie Valdivieso’s resignation, his Planning Board position is vacant, with an unexpired term ending in December 2020.

Commissioner Ingram moved to appoint T. Dillon Heikens to the Planning Board for a term ending December 2020. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

New Business

1. Flood Insurance Policy Update 2020 and possible action to incorporate into PPI Update (Attached NB-1)

Ms. Guns shared that at the August 10, 2020 meeting, the BOC received a report on the National Flood Insurance Program (NFIP) and the Community Ratings System (CRS) Program for Public Information (PPI) plan. The CRS program provides flood insurance discounts for all Town policy holders in the Special Flood Hazard Area based on the education and outreach programs conducted by the Town. The Town’s PPI plan included the review and revision of the priority audience, topics and associated messages, review of completed and incomplete project(s) and new outreach efforts developed by the PPI Committee and presented as part of the PPI update and recertification.

Staff was advised on Friday, October 9, 2020, that the PPI update and recertification, along with the information presented on the PPI at this meeting, must be formally adopted by the Board of Commissioners. Ms. Guns provided an overview of the data on flood insurance policies, premiums, insurance in force, and coverages, with data comparisons from March 24, 2020, and a similar period in 2015. She said that Staff had conducted multiple outreach events with business owners, contractors, realty organizations, mortgage brokers, and the public to promote the public maintaining flood insurance with grandfathered policies because flood maps will change in the future. If policies are not kept, obtaining new policies could be an economic hardship when the flood maps change and a property’s flood zone is changed. For example, she noted that pre-flood insurance rate map (FIRM) policies were held by 273 properties, whose current reasonably-cost flood insurance coverage could skyrocket if they let their policies lapse. She stated that if any member of the public has a question or concern about their flood insurance policy, to contact the Planning Department before making any changes.

Commissioner Gray moved to adopt the updated Kill Devil Hills Program for Public Information plan presented at the August 10, 2020, meeting, including the Flood Insurance Policy Update 2020, from tonight’s meeting. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

2. Procedure for disposition of real property and review of offer to purchase 2011 South Croatan Highway and 0 South Croatan Highway adjacent thereto, and 2032 Wrightsville Avenue (Attached NB-2)

Town Manager Debora Díaz shared that at the recent BOC retreat, Staff was asked to provide information on the disposition of real property. She noted that if a municipality desires to sell real property, three main competitive sales options are available, which were outlined in the packet materials for this item.

The Town has received a written preliminary offer to purchase several parcels of property at the northeast corner of East Eighth Street, properties which were originally the planned site for a joint Kill Devil Hills / Nags Head fire station, which was never constructed. MPF Investment Company, LP has offered \$1,505,000 for all three pieces.

Staff recommended the BOC:

- Authorize and direct the Town Manager and Town Attorney to investigate the proposal for compliance with North Carolina law; and,
- To negotiate the terms of the offer with MPF Investment Company, LP, as may be necessary; and,
- That upon completion of negotiations and receipt of a valid bid, this matter is to return to the BOC for further consideration, along with a *Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue*, including acceptance of the offer and authorizing the upset bid process.

Mayor Sproul highlighted the upset bid process, and noted at the conclusion of the process, the Town has the option to reject the final offer.

Commissioner Gray moved to authorize and direct the Town Manager and Town Attorney to investigate the proposal for compliance with North Carolina law; to negotiate the terms of the offer with MPF Investment Company, LP, as may be necessary; and, that upon completion of negotiations and receipt of a valid bid, this matter is to return to the Board of Commissioners for further consideration, along with a *Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue*, including acceptance of the offer and authorizing the upset bid process.

Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

Committee Reports

Community Appearance Commission (CAC) Commissioner Windley shared that the CAC had recently met, and had scheduled two small, informal beach clean-ups in November, with tentative dates of November 14 and Nov 28, 2020. He stated that the events were still in the planning stage. Volunteers can begin at a designated beach access

to get gloves and trash bags, and then spread out. He stated that the CAC would work to maintain social distancing and avoid any type of crowd in one location. He has spoken with Surfriider Foundation representatives for additional input.

Commissioners' Agenda

Commissioner Gray

OBX Rod and Custom Car Show Festival About 400 participants were in the cruise event, which was in several locations around Town. This year's event, which benefited the Children & Youth Partnership and the Dare County Motorsports Charity Group, almost doubled its attendance and included participants from various states. The event was a great success and well received by area businesses and the public.

Commissioner Windley

Town Parking Commissioner Windley inquired whether there was any interest in the BOC reviewing Town parking ordinances to consider updates that could benefit areas around Town. Members concurred with his suggestion. Mayor Sproul encouraged long-term, creative ideas be considered to address the Town's parking options as part of the process. Ms. Díaz suggested that at the November meeting, Staff could present the parking ordinance where the BOC can hold a general discussion with Staff and provide input to Staff for the development of any recommendations for Planning Board review. Through consensus, the BOC accepted Ms. Díaz's recommendation.

Mayor's Agenda

1. Proclamation

A. November 2020 as Alzheimer's Disease Awareness Month (Attached MA-1A)

Mayor Sproul noted that over 5 million Americans are currently afflicted by Alzheimer's Disease, and more than 16 million family members and caregivers provide care for them. By mid-century, the number of Americans with Alzheimer's is expected to grow to 13.8 million. This proclamation observes Alzheimer's Disease Awareness Month, and is intended to heighten awareness in our community, and as former President Ronald Reagan stated, "... perhaps it will encourage a clearer understanding of the individuals and families who are affected by it."

Through consensus, the BOC approved the proclamation naming *November 2020 as Alzheimer's Disease Awareness Month*, as presented.

Elected officials meeting Mayor Sproul recently attended a meeting of all chief elected officials in Dare County, which is regularly held. Areas of discussion included beach nourishment funding and the Fresh Pond. He stated that Nags Head Mayor Ben Cahoon said that the Nags

Head BOC would be receptive to ideas about the Fresh Pond if Nags Head citizens desired a discussion. Mayor Sproul stated that the scope of any development at the Fresh Pond would be limited because of a lack of parking, limited parking, and an existing gun range nearby. Commissioner McAvoy expressed his support for developing recreational opportunities for the Fresh Pond.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

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

- A. September 14, 2020
- B. September 19, 2020 Board Retreat

2. Monthly report (Attached CA-2A)

- A. August 2020

3. Budget amendment (Attached CA-3A)

- A. #4 – to allocate money received from the U.S. Department of Justice for the purchase of bulletproof vests.

4. Partnership organization annual report (Attached CA-4A)

- A. Nags Head Woods Ecological Preserve

The Town supports four partnership organizations, which serve the citizens of Kill Devil Hills: the Community Care Clinic of Dare, Interfaith Community Outreach, Outer Banks YMCA, and Nags Head Woods Ecological Preserve. A requirement of the Town's partnership is an annual report of the organization's activities and service to the community. Aaron McCall, Northeast Regional Steward, has submitted the 2019-2020 annual report highlighting the preserve's operations.

5. Recommended Resolution Authorizing the Sale of Unclaimed and Found Property (Attached CA-5)

On occasion, the Police Department must dispose of items that have been turned in or found and unclaimed by their rightful owners. North Carolina law requires that revenues raised from the sale of this unclaimed property, less the Town's expenses, must be turned over to the

Dare County Board of Education. The resolution included with the meeting materials authorizes the sale of the listed items; the Town of Kill Devil Hills utilizes GovDeals.com for surplus and found or unclaimed property.

In previous years, organizations have approached the Town and requested the donation of bicycles for distribution to foreign student workers; however, no organization has contacted the Town. If publication of the notice would generate interest by a qualified non-profit organization, the Police Department will return to the BOC to request authorization to donate the bicycles.

As presented at the meeting, approval of the Consent Agenda will record the Board's authorization for the sale of unclaimed property in accordance with the requirements of the General Statutes.

6. Schedule Public Hearing (Attached CA-6A)

A. Annexation of Lots 3 and 4, Pine Grove Subdivision

A Petition for Voluntary Annexation of the only two lots remaining in the Pine Grove Subdivision, Lot 3 and Lot 4, which are located at the west-end of West First Street, has been received. Several Town departments have been involved in this matter and all have worked with the Town Attorney to assure compliance with North Carolina law for extension of corporate limits, and the Town Code. The annexation will require an amendment to the Town's Zoning Map.

In the meeting materials is the Petition for Voluntary Annexation, which all property owners have signed in PDF format, and electronically returned to the Town Clerk. A public hearing on the Petition, and the Zoning Map amendment, with a minimum 10-day, two-publication, advertising and distribution/posting period is required.

The original petition is in the regular mail process and must be returned, fully executed, to the Clerk by Friday, October 23, 2020, in order to complete the advertising requirements for a November 9th public hearing.

Town Clerk Mary Quidley has worked closely with both parties on the annexation documents and in that process, she has taken the liberty to certify the sufficiency of the petition under N.C.G.S. 160A-31 for the benefit of the BOC.

Approval of the Consent Agenda will approve a *Resolution Directing the Town Clerk to Investigate a Petition Received under N.C.G.S. §160A-31 and N.C.G.S. §160A-58*, a *Resolution Fixing Date of Public Hearing on Question of Annexation Pursuant to N.C.G.S. §1060A-31*, and schedule the Petition for Voluntary Annexation of Lots 3 and 4, Pine Grove Subdivision, and the accompanying amendment to the Kill Devil Hills Zoning Map, for public hearing on Monday, November 9, 2020, at 6:00 p.m.

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

Commissioner Ingram moved to approve the Consent Agenda, as presented.

Commissioner Gray provided a second, and the motion passed with a unanimous, 5-0, vote.

Public comment

Response to Public Comment

Adjournment

There being no further business appearing before the BOC at this time, Commissioner Gray moved to adjourn the meeting. Commissioner Windley seconded the motion and approval was by a unanimous, 5-0, vote. It was 7:10 p.m.

Submitted by:

James Michael O'Dell
Deputy Town Clerk