



TOWN OF KILL DEVIL HILLS

Post Office Box 1719, 102 Town Hall Drive

Kill Devil Hills, North Carolina 27948

252-449-5300

www.kdhnc.com

September 20, 2023

Mayor

BENJAMIN A. SPROUL

Mayor Pro Tem
IVY RAY INGRAM

Commissioners
TERRY L. GRAY
BERNARD B. MCAVOY, JR.
JOHN L. WINDLEY

Town Manager
DEBORA P. DIAZ

Assistant Town Manager
CHARLENE S. ALLEN

Town Clerk
JAMES MICHAEL O'DELL

Town Attorney
CASEY C. VARNELL

Representative Tim Moore
Speaker of the House
16 West Jones Street, Room 2304
Raleigh, North Carolina 27601-1096

Representative Keith Kidwell
16 West Jones Street, Room 1206
Raleigh, North Carolina 27601-1096

Senator Norman Sanderson
300 N. Salisbury Street, Room 309
Raleigh, North Carolina 27601-1096

Senator Phil Berger
President *Pro Tempore* of the Senate
16 West Jones Street, Room 2007
Raleigh, North Carolina 27601

Representative Edward Goodwin
16 West Jones Street, Room 2217
Raleigh, North Carolina 27601-1096

Robert Woodard, Chairman
Dare County Board of Commissioners
PO Box 1000
Manteo, North Carolina 27954

Dear Speaker Moore, Senator Berger, Representative Kidwell, Senator Sanderson, Representative Goodwin, and Chairman Woodard,

I write to you today on behalf of the Town of Kill Devil Hills Board of Commissioners and its residents, property owners, and businesses.

On September 19, 2023, *The News and Observer* published a proposed State budget which contains the following provision:

DARE COUNTY AFFORDABLE HOUSING

SECTION 24.8.(a) The following shall apply to all construction of buildings and infrastructure under the agreement or series of agreements entered into pursuant to Section 24.1 of S.L. 2022-74 to construct affordable housing units in accordance with Dare County's longstanding master development plan to increase workforce housing:

- (1) With respect to building permits and inspections of the new construction, the State of North Carolina and any local government with jurisdiction over the new construction shall expedite the issuance of permits and prioritizing the conduct of all necessary inspections.**

(2) With respect to development regulations: a. Articles 6 and 7 of Chapter 160D of the General Statutes shall not apply to the new construction under the agreement or series of agreements. b. Approval under Article 8 of Chapter 160D of the General Statutes shall not be required for the new construction under the agreement or series of agreements; however, a plat of any subdivided land shall be recorded by a selected qualified private partner.

(3) With respect to utilities, and provided that the local government has sufficient capacity, any local government within a 1-mile radius of the new construction under the agreement or series of agreements shall provide all utilities in the same manner as that local government provides utilities to all other new construction in that jurisdiction.

SECTION 24.8.(b) This section is effective when it becomes law.

Articles 6 and 7 of Chapter 160D of the General Statutes are those which grant municipalities the authority to regulate development and enforce zoning. In effect, this law would result in Duck, Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head and Manteo being unable to enforce their zoning regulations on any affordable housing project funded by Dare County using the \$35 million the State allocated to them, no matter whom the developer: no height limits, no restrictions on lot coverage, no setbacks, no parking standards, no limit on density, etc. Additionally, if a municipality with sewer services is within one mile of a potential affordable housing site, it will be forced to provide sewer services, regardless of any financial burden on the citizens.

This language is in direct conflict with NCGS160D which grants power to the municipality to adopt zoning regulations and specifies what can be regulated. Additionally, 160D-Article 9 lists those uses which have been granted relief from local zoning regulations. If the Legislature determines that affordable housing should be included among these specific uses, it should be incorporated into the language in 160D. The housing crisis is a Statewide issue and removing six municipalities in one coastal county's ability to regulate is unconstitutional.

The Town of Kill Devil Hills has been on the forefront of promoting affordable housing for the past 17 years. In 2006, (during the last housing crisis), the Town adopted an affordable housing ordinance which allowed greater density and waived all fees to promote the development of affordable housing. The Town worked in partnership with Dare County to facilitate a Dare County initiative to construct teacher housing in 2008 by waiving fees to make the project come to fruition.

This provision's inclusion in the Appropriation Bill of 2023 was not disclosed to any of Dare County's municipalities, but its impact is clear. This provision will strip our towns of their ability to govern, and their ability to protect the communities, that residents and their leadership have created over many decades of careful decision-making. We all know we need affordable, workforce, or essential housing and Kill Devil Hills has provided this much needed use for decades with responsible but flexible land use regulations. If the Legislature deems this a priority then revisions to the statute governing land use (chapter 160D) should be the process,

creating collaboration and government transparency. The current approach through the proposed Section 24.8 is a dangerous precedent.

We urgently ask that the Legislature strike this section in its entirety prior to adoption of the Appropriation Bill of 2023.

And if this bill passes, we call on Dare County to disavow itself of the Legislature's action, and to refuse to support or fund any project which does not go through a local municipality's site review and approval process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben Sproul', written over the word 'Sincerely,'.

Ben Sproul, Mayor
Town of Kill Devil Hills

Encl.

Cc: Kill Devil Hills Board of Commissioners
Duck Town Council
Southern Shores Town Council
Kitty Hawk Town Council
Nags Head Board of Commissioners
Manteo Board of Commissioners
Dare County Board of Commissioners
Rose Vaughn Williams, North Carolina League of Municipalities
Casey C. Varnell, Kill Devil Hills Town Attorney
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