

**Minutes of the Monday, October 9, 2023, regular meeting of the Kill Devil Hills Board of Commissioners held at 6:00 p.m. in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills.**

**Members Participating:** Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, Bernard “B.J.” McAvoy, and John Windley

**Members Not Participating:**

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

**Call to Order**

At 6:00 p.m., Mayor Ben Sproul opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present.

**Pledge of Allegiance and Moment of Silence**

Mayor Sproul shared that former Historic Landmarks Commission chairperson Jerry Farless has passed away. He also noted the passing of former Commissioner and Mayor *Pro Tem* E.M. “Coy” Harbeson, a longtime fixture of the community, and an advocate for Kill Devil Hills and its citizens. He asked everyone to keep their families in their thoughts. He remarked about the conflict in Israel and Gaza. He also noted it was Breast Cancer Awareness Month, and asked everyone to think of those dealing with the disease.

**Agenda Approval**

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

**Public Comment**

**Response to Public Comment**

**Ongoing Business**

**1. Appointments**

The Town uses numerous methods in ongoing efforts to encourage residents to submit applications to serve on its boards and committees. Methods used to reach the public include the Town’s website, social media platforms, electronic distribution lists, Town bulletin boards, print

media ads, Town-sponsored special events, and direct Staff interactions. Town Staff has also developed a QR code to be shared, which links a user directly to the board and committee application.

All applications on file from persons interested in serving in this capacity have been previously copied to the Board of Commissioners and no new applications for those purposes have been received.

#### **A. Community Appearance Commission**

With the resignations of Bambos Charalambous and Martin Dalton, two positions, with expirations of October 2023 are available for appointment. At its June 28, 2023, meeting, the Board tabled consideration of these appointments until this meeting.

Commissioner Windley moved to appoint Theresa “Teree” Neal and Nancy Rechenbach each to a three-year appointment to the Community Appearance Commission for a term that will expire in October 2026. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

#### **New Business**

##### **1. Educator housing project – request by Dare Education Foundation for reduction or waiver of Site Plan, Building Permit Review, and System Development Fees for affordable educator housing project (Attached NB-1)**

Town Manager Debora Díaz stated that following a \$1,000,000 funding commitment from Dare County, the Dare Education Foundation (DEF) has informed the Town that it plans to construct an eight or 10 multi-unit residential building for long-term educator housing at 800 Eighth Avenue. This apartment building would be in addition to the three existing educator housing units at the complex, which were completed in 2008. At the time of the original development, the Board of Commissioners approved waiving the Site Plan, Building Permit Review, and System Development Fees, and established the following policy:

“[I]t [is] the policy of the Town of Kill Devil Hills to waive certain fees associated with workforce housing and that the waiver of those fees be implemented as requested for the teacher housing proposed by the Dare Education Foundation’s request to include the site plan review fee, building permit fee, and initial water hookup fees.”

The Administration Department’s meeting memorandum provided an overview of the project, its history, and details the outcome of the DEF’s request in 2007 that the Board of Commissioners reduce or waive applicable Site Plan, Building Permit Review, and System Development Fees for this project.

The anticipated fees, which have been estimated below, were based upon a structure with identical square footage to the existing units:

• <u>Site Plan Fees</u> (apartment buildings) – 9,486 sq. ft. x \$.50 per foot (assuming no additional parking required)	\$ 4,743.00
• <u>Building Permit Review Fees</u> – 9,486 sq. ft. x \$.80 per foot	\$ 7,588.80
• <u>System Development Fees</u> – (multi-family) \$6,000 per unit	(8 units) \$48,000.00
	(10 units) <u>\$60,000.00</u>
TOTAL for potential waiver	(8 units) \$60,331.80
	(10 units) \$72,331.80

Ms. Díaz highlighted DEF’s request, noting that at this stage, the engineer for the project was unsure whether the project would be composed of eight two-bedroom units, or 10 units, with one- and two-bedroom units. She stated that the anticipated System Development Fees amount could change due to the number of planned units, although the other fees would remain the same if this project is the same square footage as the previous structures and did not require additional parking.

Mayor Sproul stated there was a long waiting list for the existing housing, and that he understood it to be an effective recruiting tool to attract quality educators to the area. Commissioner McAvoy shared that this was an example of how Kill Devil Hills has successfully partnered to create essential housing for long-term residents in the community.

Commissioner Gray moved to support the Board’s previous policy, and waive the Site Plan, Building Permit Review, and System Development Fees for the Dare Education Foundation’s construction of long-term educator housing at 800 Eighth Avenue, not to exceed the anticipated cost of 10 units: \$72,331.80. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 5-0, vote.

**Committee Reports**

**Commissioners’ Agenda**

Commissioner Gray

Letter Asking Dare County Board of Commissioners to Oppose Affordable Housing Section of 2023 Appropriations Bill Commissioner Gray requested a letter be submitted to the Chairperson of the Dare County Board of Commissioners (DCBC), urging the DCBC to adopt a resolution to not participate in the section of legislation approved in the Appropriations Bill of 2023, and to lobby to have that section repealed. Through consensus, the Board directed that a letter be submitted.

Fire Department Open House Commissioner Gray reminded everyone of the upcoming Fire Department Open House at Station 14 on Tuesday, October 10, 2023, from 4 p.m. to 7:00 p.m.

The “Wall that Heals” Exhibit The “Wall that Heals,” a traveling three-quarter scale replica of the Vietnam Veterans Memorial, will be on display at the Soundside Event Site in Nags Head from Thursday, November 16, 2023 to Sunday, November 19, 2023.

### Commissioner Windley

League of Women Voters (LOWV) Candidates Forum Commissioner Windley and members of the Board expressed appreciation to the LOWV for conducting the recent candidates forum.

### **Mayor’s Agenda**

- 1. Resolutions and Proclamations (Attached MA-1A, MA-1B, and MA-1C)**
  - A. Resolution in Support of Honoring North Carolina Veterans and Active Service Members in Operation Green Light**
  - B. Resolution in Support of Maintaining Local Governmental Authority in Affordable Housing**
  - C. Resolution Opposing Consolidated Atlantic Highly Migratory Species Fishery Amendment 15 Section F Subsection F2**

These resolutions and proclamations highlight the various issues that affect our community. The first resolution honors our veterans and active service members and their families, and encourages everyone to “go green” in support. The other resolutions express the Board’s positions on local governmental planning and zoning authority and opposition to federal changes that would negatively affect local watermen have previously been approved through electronic consensus; approval of these would record the Board’s earlier action in the record of this meeting.

Mayor Sproul moved to approve and record the resolutions, as presented. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

### **2. Fire Department Open House**

The Fire Department will host its annual Open House on Tuesday, October 10, 2023, from 4:00 p.m. to 7:00 pm. at Station 14, located at 1634 North Croatan Highway. There will be great activities for kids of all ages, important fire safety information, and some great food.

### **Town Manager’s Agenda**

## **Town Attorney's Agenda**

Town Manager Casey Varnell noted that a complaint had been filed by all Dare County municipalities, including Kill Devil Hills, in Wake County to challenge the legality of Section 24.8 of the 2023 Appropriations Bill, along with an injunction to hold the law in abeyance until a legal review of its validity is conducted. He noted that the Board would be updated as events progress. The Board expressed its appreciation to Mr. Varnell and the other attorneys for their work.

## **Consent Agenda**

- 1. Minutes (Attached CA-1A)**
  - A. September 11, 2023
- 2. Monthly Report (Attached CA-2A)**
  - A. August 2023
- 3. Partnership Reports (Attached CA-3A)**
  - A. Nags Head Woods Ecological Preserve

The Town supports four partnership organizations that 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 facility's 2022-2023 annual report, which highlights the preserve's operations.

## **4. Schedule Public Hearings (Attached CA-4A and CA-4B)**

The Planning Department's meeting memoranda highlighted a proposed amendment to the Town Code and a Special Use Site Plan review. At its September 19, 2023, meeting, the Planning Board reviewed the following items:

- A. Zoning Amendment Request – 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement**

The proposed amendment would allow uses listed on original subdivision plats to be exempted from the Commercial Zone site requirements for a minimum lot area of 15,000 square

feet. The Planning Board forwarded this amendment to the BOC, unanimously recommending denial. Staff has also recommended denial.

**B. Special Use Site Plan Review – Bermuda Bay P.U.D. – Section 200A – Amend Site Plan for Covered Pavilion with Storage Room**

The meeting materials detailed SAGA Construction’s proposed plan for an addition of a 1,213 square-foot covered outdoor pavilion with enclosed storage room adjacent to the new Somerset Apartment Buildings, Section 200-A. As the Planned Unit Development is a special use in the Government and Institutional Zone, a public hearing is required as a part of the Board’s consideration.

Staff recommended scheduling two public hearings for Monday, November 13, 2023, at 6:00 p.m. Approval of the Consent Agenda will schedule these items for public hearings.

**5. Legislative Restriction on Zoning Response**

With the passage of the Appropriations Bill of 2023 (HB 259), the legislation included a local bill under Section 24.8, with the following language:

**“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.”

In response, the Board of Commissioners approved a *Resolution in Support of Maintaining Local Governmental Authority in Affordable Housing* in opposition of the

legislation. In addition, the Board, through consensus on September 25, 2023, directed the Town Manager and Town Attorney to join the other Dare County municipalities in filing a legal complaint with regard to the legislation.

Approval of the Consent Agenda will record the Board's action in the minutes of this meeting.

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

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

Mr. Varnell left the meeting at 6:27 p.m.

### **Public Forum**

Mayor Sproul noted that the Board of Commissioners encourages public input as it considers topics that may directly impact the Town of Kill Devil Hills and its residents, property owners, businesses, and visitors. As a part of that commitment, the Board established public fora twice a year to hear about matters important to our community. Community members have been invited to attend this forum and also been given the opportunity to request specific items to be included with this agenda item. Any submitted public forum topics were provided to the Board for consideration and discussion.

**Matt Jamer, 103 East Oregon Avenue, Kill Devil Hills, NC** – Mr. Jamer shared that he had contacted Town Hall about some construction debris at the newly paved parking area on East Oregon Avenue. He had spoken to the Public Services Department, which addressed the issue within the hour; he shared his appreciation for Staff's quick response. Mr. Jamer inquired about the Oregon Avenue beach access, and how crosswalk lines could be added across NC 12 for the access. He suggested beautification of the access, along with potential upgrades. Mr. Jamer also expressed concern about the growth and development in the community.

Mayor Sproul shared some of the history of the Town's planning ordinances, noting that the Town has been working diligently to find creative methods to address developments, including increased setbacks, height limitations, incentives for fire suppression systems, and cottage court developments. He stated that the recent cottage court ordinances and resulting structures were not what the Town had expected or intended.

Commissioner Windley suggested that the North Carolina Department of Transportation (NCDOT) could be contacted about the crosswalk lines across NC 12 since it is a state road. He stated that the Town's beach access sites were reviewed prior to the addition of bathroom facilities at the Prospect Street access. Planning Director Meredith Guns stated that Town Staff was working to update and combine the Recreational Facilities and Shoreline Access Plans. She hoped that this project would be completed in Spring 2024, so improvement projects could be prioritized among all facilities and coordinated with grant and budgeting timelines. Ms. Guns noted that Oregon Street access was categorized as an unimproved facility that is primarily used as an emergency beach access. Mr. Jamer inquired about how to encourage businesses to clean

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up and beautify their properties. Commissioner Ingram stated that the Community Appearance Commission (CAC) conducts the Town's biennial Community Appearance Awards. Commissioner Windley noted that the CAC had been reaching out to local businesses to make them aware of CAC initiatives and to encourage them to take pride in the appearance of their businesses. As a part of community beautification, Mayor Sproul shared about the additional trimming and mowing along US 158 funded by the Town that supplements work by NCDOT.

**Dennis Pohl, 1205 West Fourth Street, Kill Devil Hills, NC** – Mr. Pohl shared his experiences with NCDOT in securing crosswalk lines on NC 12 at the Fourth Street beach access. He noted that in April 2023, the Town condemned the Fourth Street access and later removed the structure. He inquired whether there was a plan to replace it and what timeline would be involved. Mr. Pohl stated that neither Fourth nor Fifth Street beach accesses had shower or bathroom facilities. He inquired whether there was any possibility for a port-a-john and / or shower placement for either access. He suggested the installation of push-button showers at Town facilities, similar to units installed at Coquina Beach, to conserve water.

Mr. Pohl inquired about motorized vehicles on multi-use paths on Bay Drive, Canal Drive, and First Street. Assistant Police Chief Harris shared that electric assisted bicycles (e-bikes) are considered bicycles and not considered motor vehicles under state law; however, gas-powered bicycles and golf carts are considered a motor vehicle. A moped is not considered a motor vehicle, but under Town Code, it is not permitted on multi-use paths. Commissioner Windley noted that the different categories in state law make enforcement very difficult for the Police Department. He noted that the Town is working on an education campaign in conjunction with other Dare County local governments to address e-bikes and their use.

Mayor Sproul said that Town Staff is updating its long-range plans to prioritize maintenance and upgrades to all of its recreational facilities, including the beach accesses. Ms. Guns stated that the Town has utilized port-a-johns at several of its larger accesses, but pointed out that space needed to place and service them was often a challenge at smaller accesses. Commissioner McAvoy stated that it would be extremely difficult to place and service port-a-johns at small accesses, including Fifth Street. Mr. Pohl disagreed and suggested that it would be possible for trucks to service port-a-johns placed at Fourth and Fifth Street accesses. Ms. Guns stated that the Fourth Street access had been repaired multiple times following storm events; with the shift of the dunes, Town Staff could not repair it any further, so the structure above the dune was removed. It is purely a neighborhood pedestrian access only, without designated access parking. Any future improvements to Fourth Street access will be integrated into the combined Recreational Facilities and Shoreline Access Plan.

Commissioner Gray stated that the development of the Shoreline Access Plan would assist the Board and Staff in prioritizing maintenance and upgrades of all of the beach accesses, and that public input was available. Ms. Guns stated that Staff will provide recommendations for the Board to consider and prioritize.

**Robert M. Eure, Jr., 104 East Oregon Avenue, Kill Devil Hills, NC** – Mr. Eure stated that he has seen Oregon Avenue change over the time that he has lived in the community. He shared that he liked that the Town focuses on what is presented to people on the beach. He also

supported more public areas on the east side of US 158, and encouraged beautifully maintained beaches.

The Board of Commissioners expressed its appreciation to all the members of the public who had attended the public forum.

### Adjournment

There being no further business appearing before the BOC at this time, Commissioner McAvoy moved to adjourn the meeting. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

The time was 7:20 p.m.



Submitted by:

  
James Michael O'Dell  
Town Clerk

These minutes were approved by the Board of Commissioners on November 13, 2023.

  
Ben A. Sproul  
Mayor