

Minutes of the Wednesday, March 27, 2024, 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 John Windley; Commissioners Terry Gray, T. Dillon Heikens, and Ivy Ingram

Members Not Participating: Bernard “B.J.” McAvoy

Others Participating: Debora P. Díaz, Town Manager; Cameron Ray, Assistant Planning Director; Casey Varnell, Town Attorney; and James Michael O’Dell, Town Clerk

Call to Order

At 6:00 p.m., Mayor Windley opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present. He noted that Commissioner McAvoy was absent due to a travel conflict.

Pledge of Allegiance and Moment of Silence

Agenda Approval

Commissioner Ingram moved to approve the agenda, as presented. Commissioner Heikens seconded the motion, which passed by a unanimous, 4-0, vote.

Public Hearings

Town Attorney Casey Varnell read aloud the public hearing rules and then opened each hearing. He stated that notice for the following items has been published in the *Coastland Times*, and posted on the Town’s bulletin boards, website at <https://www.kdhnc.com/1125/March-27-2024-Board-of-Commissioners-Mee> and social media platforms, and has been disseminated through the Town’s electronic distribution list, meeting or exceeding the N.C.G.S. requirements for public hearings. The Planning Department’s attached memoranda highlight proposed amendments to the Town Code.

1. Amendments to the Town Code (Attached PH-1A, PH-1B, and PH-1C)

- A. Town Code Amendment - §153.310 Cottage Courts & §153.311 Cluster Homes – Proposed modification to regulations, specifically to include 1,800 square foot maximum per structure, with a 20-foot separation between each structure, in Ocean Impact Residential and Commercial Zones**

Duke Geraghty, Outer Banks Homebuilders Association – Mr. Geraghty supported 2,000 square feet maximum per structure, rather than the proposed 1,800 square feet, and he supported the 20 foot separation between structures.

Lorianne Freeman, 1717 Bobby Lee Trail, Kill Devil Hills, NC – Ms. Freeman inquired about allowable lot coverage for the ongoing cottage court development on NC 12 versus her residential neighborhood. She expressed concerns about the narrowness of the lanes, especially with the potential traffic risks to children and service employees like housekeeping and house inspectors. She supported a smaller footprint for these developments.

Assistant Planning Director Cameron Ray explained that the parcel being developed was extremely large, measured from the first line of stable, natural vegetation to the front property line. Additionally, a larger lot coverage was permitted in the oceanfront and the developer took advantage of lot coverage incentives by utilizing permeable pavement.

Alan Creech, 308 Holly Street, Kill Devil Hills, NC – Mr. Creech supported the earlier proposed 1,500 square foot maximum coverage for cluster home and cottage court developments. He noted that there was a strong market for that size home, and that citizens had been vocal about their preference.

Rick Pittenger, 515 Copley Drive, Kill Devil Hills, NC – Mr. Pittenger supported the smaller square footage limitations.

Colleen Almoney, 1627 Village Lane, Kill Devil Hills, NC – Ms. Almoney expressed concerns about the narrowness of the lanes and difficulties for fire department support regarding the ongoing cottage court development. She also had concerns about pedestrian safety and housekeeping services.

Mr. Ray said that ordinances permitting cottage courts and cluster homes were established as an alternative development option to the large single-family structures. He shared that at its August 14, 2023, meeting, the Board of Commissioners directed Staff to develop additional regulations for cottage courts and cluster homes, a direct response to citizen concerns of these developments being perceived as too large. Staff developed a Town Code amendment that reduced the maximum size of dwelling units, created an additional front yard setback in the Ocean Impact Residential Zone (OIR), and created a tiered separation of structures based on gross square footage and heights. Currently, the maximum square footage for this type of development is 2,500 square feet of gross floor area.

During its December 19, 2023, review, the Planning Board reduced the amendment's proposed maximum square footage for these structures from 2,000 square feet to 1,500 square feet of gross floor area, before forwarding it for BOC consideration.

At its February 5, 2024, Public Hearing, the BOC tabled the amendment for further review. During its March 6, 2024, meeting, the BOC scheduled a public hearing for this meeting, with the amendment to specifically include a 1,800 square feet allowable maximum, and a 20 foot separation on each structure, only in OIR and Commercial Zones, with the Residential Low Zone remaining 1,500 square feet of gross floor area.

Mr. Ray stated that the approach had been to keep these types of developments as a feasible development tool for the community, but also reel in some of the unforeseen effects of the current ordinance requirements.

Commissioner Gray inquired about the 20-foot separation requirement, and whether anything could be placed in that area. Mr. Ray replied that the distance requirement was between each dwelling units; however, pools, parking areas, and other accessories were permitted. Commissioner Heikens noted that the amendment was a fair compromise.

Commissioner Ingram moved to approve this amendment, noting that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, 153.310 Cottage Courts & 153.311 Cluster Homes – Proposed modification to regulations, specifically to include 1,800 square foot maximum per structure, with a 20-foot separation between each structure, in Ocean Impact Residential and Commercial Zones is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable and in the public interest because it refines regulations for the Town's vision. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

B. Town Code Amendment - 153.355(A) Site Plan Requirements & 153.357 Site Plan Review Process for Commercial, Multi-Family, and Special Use Applications: Revise Number of Copies Required for Site Plan Review

Mr. Ray noted that at the BOC's January 24, 2024, meeting, the Town Clerk presented a memorandum on approaches the Town was implementing for the Board's goal to decrease the Town's carbon footprint. One recommendation included decreasing the number of paper copies required for site plan review. As a result, the BOC directed Staff develop an amendment to decrease the required number of site plans for submittal to five, accompanied by an electronic copy.

At its February 13, 2024, meeting, the Planning Board reviewed and forwarded the amendment, recommending approval. At its March 6, 2024, meeting, the BOC scheduled a public hearing for this meeting.

Mayor Windley inquired how many paper site plans are currently required for site plan review. Mr. Ray replied that 15 are currently required for each review round, including 15 for each of two Staff reviews, a Planning Board review, and a BOC review. Mayor Windley noted that it would result in a substantial savings for applicants.

Commissioner Gray moved to approve this amendment, noting that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, 153.355(A) Site Plan Requirements & 153.357 Site Plan Review Process for Commercial, Multi-Family, and Special Use Applications: Revise Number of Copies Required for Site Plan Review was consistent with

all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it reduces the Town's carbon footprint while meeting the Town's record retention policy. Commissioner Heikens seconded the motion, which was approved by a unanimous, 4-0, vote.

C. Town Code Amendment - Chapters 10, General Provisions; Chapter 150, Building Regulations; Chapter 151, Flood Damage Prevention; Chapter 152, Subdivisions; and Chapter 153, Zoning: Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Procedures

The proposed amendment, prepared in consultation with the Town Attorney, would modify the Town's notice of violation, civil penalties, and appeals procedures for clarification. The amendments to Chapters 10 General Provisions, 150 Building Regulations, 151 Flood Damage Prevention, 152 Subdivisions, and 153 Zoning will clarify the appeals process, resulting in a more efficient and user-friendly appeals system.

At its February 13, 2024, meeting, the Planning Board reviewed and forwarded the amendment, which was subsequently scheduled for this public hearing by the BOC at its March 6, 2024, meeting.

Commissioner Heikens moved to approve the amendment, noting that the Board of Commissioners finds that the amendment to Chapters 10, General Provisions; Chapter 150, Building Regulations; Chapter 151, Flood Damage Prevention; Chapter 152, Subdivisions; and Chapter 153, Zoning: Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Procedures is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it provides consistency and clarity to the Town's violation procedures. Commissioner Ingram seconded the motion, which was approved by a unanimous, 4-0, vote.

Public Comment

Rick Pittenger, 515 Copley Drive, Kill Devil Hills, NC – Mr. Pittenger expressed concern about the pavement condition of Ocean Acres Drive.

Allen Creech, 308 Holly Street, Kill Devil Hills, NC – Mr. Creech also noted the poor condition of Ocean Acres Drive.

Response to Public Comment

Mayor Windley thanked the speakers and noted that Staff would contact them regarding their concerns.

Ongoing Business

New Business

1. **Town Code Amendment – Chapter 71, Traffic Regulations, §71.25 No Through Traffic Permitted on Certain Streets or Intersections within the Town – elimination of Code section to remove inconsistent or outdated ordinances (Attached NB-1)**

Town Manager Debora P. Díaz noted that Staff regularly reviews the Town Code to update or remove ordinances that may become outdated to better serve the citizens in our community and promote safety. The Town Clerk's meeting memorandum highlights examples in Chapter 71, Traffic Regulations. Section 71.25, No Through Traffic Permitted on Certain Streets or Intersections within the Town, is not effective due to inconsistencies for the following intersections:

Intersection of Landing Drive and Porthole Court Under the current ordinance, residents may drive out of their neighborhood via Landing Drive, but are technically not permitted to return.

Intersection of Sixth Avenue and W. Baum Street Although a full three-way intersection was recommended during the development of the First Flight Schools Complex, only northbound traffic from 6th Avenue is permitted due to the concern of increased traffic in the undeveloped area. With the development of single-family dwellings in the immediate area, full utilization of 6th Avenue for north and southbound traffic would increase safety and the potential for improved emergency response times.

With this proposed amendment addressing Chapter 71, Traffic Regulations, no public hearing was required for changes to be considered. Staff recommended approval of the proposed amendment.

Commissioner Gray expressed concern about traffic exiting the First Flight Schools Complex and potentially driving south onto Sixth Avenue. He suggested the BOC schedule a public hearing. Mr. Varnell and Ms. Díaz noted that although a public hearing was not required, the BOC was welcome to schedule one, and that the Town would provide notice, following the statutory requirements. Commissioner Ingram expressed her concern about property owners on the north side of the three-way street on Veterans Drive having difficulty accessing their driveways. She estimated that at least half or more of all motorists in that area access Swan Street, rather than utilize Baum Street. Board members noted that motorists often disregarded the three-way stop and travel south onto Sixth Avenue from the three-way stop.

Commissioner Gray moved to approve a section of the Town Code Amendment – Chapter 71, Traffic Regulations, §71.25 No Through Traffic Permitted on Certain Streets or Intersections within the Town – elimination of Code section to remove inconsistent or outdated ordinances, specifically §71.25(A) Intersection of Landing Drive and Porthole Court, and in lieu of a vote at this meeting, to schedule a public hearing for §71.25(B) Intersection of Sixth Avenue and W. Baum Street, for Wednesday, April 24, 2024, at 6:00 p.m. Commissioner Ingram seconded the motion, which was approved by a unanimous, 4-0, vote.

2. Appointments

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

A. Planning Board

With Commissioner Heikens' appointment to the Board of Commissioners, a position on the Planning Board has become available for appointment. Additionally, longtime member Mike Lowack's term has expired and he does not wish to be reappointed. These terms expire November 2026 and April 2027, respectively.

Commissioner Ingram nominated Phillip Wayland to the Planning Board for a term that will expire November 2026, and moved to table the second appointment until the April 24, 2024, meeting. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

B. Board of Adjustment – Alternate Member

With Commissioner Heikens' appointment to the Board of Commissioners, an alternate member position on the Board of Adjustment has become available for appointment, for a term that will expire in October 2025.

Commissioner Gray nominated Grant Fletcher to the Board of Adjustment – alternate member, for a term that will expire October 2025. Commissioner Heikens seconded the motion, which was approved by a unanimous, 4-0, vote.

C. Historic Landmark Commission

With Commissioner Heikens' appointment to the Board of Commissioners, a position on the Historic Landmarks Commission has become available for appointment, for a term that will expire in August 2024.

Commissioner Ingram nominated Amy Scarborough to the Historic Landmarks Commission for a term to expire in August 2024. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

Committee Reports

Commissioners' Agenda

Commissioner Gray

State of the Child Conference Commissioner Gray thanked Commissioner Ingram for her work with the recent State of the Child Conference, and Mayor Windley for volunteering at the event. The BOC shared its appreciation to Commissioner Ingram.

Commissioner Ingram

Trash Attack! Community Clean Up Commissioner Ingram noted that the date for the Trash Attack! Community Clean Up had been postponed due to poor weather. The new date and time are Saturday, April 6, 2024, from 9:00 a.m. to 12:00 p.m. at Aviation Park.

Mayor's Agenda

1. Proclamations and Resolutions (Attached MA-1A)

A. Proclamation Declaring April 2024 as Child Abuse Prevention Month

Mayor Windley stated that Kill Devil Hills annually partners with the Children and Youth Partnership to highlight Child Abuse Prevention Month every April. As part of that partnership, the Fire Department hosts the "Because Someone Cared" display of multi-colored cut outs of children. Each cut out represents one or more real children who received protective services in Dare County. Interspersed with the cut outs are pinwheels, which represent an effort to focus on community activities that support families and public policies that prioritize prevention to make sure child abuse and neglect never occur, giving all of our children a bright future.

He noted that North Carolina's N.C.G.S. 7B-301 is a mandatory reporting law that requires any person who suspects that a child has been abused or neglected report to the Division of Social Services where that juvenile is located. Reports can be made by contacting the Dare County Department of Health & Human Services - Social Services Division at (252) 475-5500, from 8:30 a.m. to 5:00 p.m., Monday through Friday, or by calling 911 if it is an emergency.

Mayor Windley moved to adopt *the Proclamation Declaring April 2024 as Child Abuse Prevention Month*. Commissioner Ingram seconded the motion, which was approved by a unanimous, 4-0, vote.

Dare County Housing Taskforce Mayor Windley expressed his appreciation for Commissioner Ingram attending the March session of the Dare County Housing Taskforce in his place, and also Senior Planner Ryan Lang for his attendance.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. March 6, 2024

2. Budget Amendments and Transfers (Attached CA-2A)

A. Budget Amendment #8 – to appropriate FY 2023/2024 Local Programming Development Initiative Grant funds from the Government Education Access Channels Committee

3. Proclamations and resolutions (Attached CA-3A)

A. Reimbursement Resolution for Fiscal Year 2023/2024 Declaring the Intention to Reimburse the Cost of Certain Expenditures

United States Treasury Regulations require a declaration of intent as a part of the process of financing some expenditures. This resolution declares the Town's official intent to reimburse expenditures for vehicles and equipment as identified as follows:

Buildings and Grounds Toyota Tacoma	\$ 40,434
(2) Planning F150 Pickup Trucks	88,197
(4) Police Pickup Trucks	261,290
Vehicle Extrication Equipment	39,350
Fire Ford Expedition	75,274
Fire Dodge Ram	65,521
Ocean Rescue Dodge Ram 2500	85,522
Streets Bobcat Excavator	73,335
Streets US Jetting Trailer Jetter	99,140
Streets Ford F450 Mini Dump Truck	71,338
(2) Solid Waste Residential Garbage Trucks	801,326
Solid Waste Peterbilt Roll-Off Truck	242,549
Solid Waste Ford F250	48,447
Dump Body Insert	<u>26,750</u>
	\$ 2,018,473

Approval of the Consent Agenda will approve the *Reimbursement Resolution for Fiscal Year 2023/2024 Declaring the Intention to Reimburse the Cost of Certain Expenditures* and

allow the Town to reimburse itself for costs incurred for the purchase of the above items with loan proceeds.

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, 4-0, vote.

Public Comment

Response to Public Comment

Adjournment

There being no further business appearing before the BOC at this time, Commissioner Heikens moved to adjourn the meeting. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

The time was 6:45 p.m.

Submitted by:

James Michael O'Dell
Town Clerk