

Minutes of the Monday, October 14, 2024, regular meeting and public forum 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, Ivy Ingram, and Bernard “B.J.” McAvoy

Members Not Participating:

Others Participating: Debora P. Díaz, Town Manager; Charlene Allen; Assistant Town Manager; Dana Harris, Assistant Police Chief; Meredith Guns, Planning Director; 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 John Windley opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present.

Pledge of Allegiance and Moment of Silence

Mayor Windley asked everyone to keep those affected by storms in western North Carolina and surrounding areas, along with those impacted in Florida, in their thoughts and prayers.

Agenda Approval

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

Public Comment

Julie Owens Robinson, 2019 South Virginia Dare Trail, Kill Devil Hills, NC – Ms. Robinson stated that she owned a historic designated cottage, and commended the Board of Commissioners and Town Staff for the proposed regulations on large single-family dwellings. She noted that her family had already been negatively impacted by construction of large event homes. Ms. Robinson hoped that other property owners would not have to deal with ongoing issues with these structures in the future. She supported designated access aisles, special use categorization, and increased setbacks. Stacked parking is dangerous, especially when vehicles are required to back onto the roadway to get out. She also supported regulation improvements to further address the aesthetics of the eastside of these developments, which would benefit the properties and their neighbors.

Jack McCombs, 3118 Bay Drive, Kill Devil Hills, NC – Mr. McCombs expressed his concern over e-bikes that often speed, coming up from behind in pedestrian areas, like the Bay Drive multi-use path. He supported continued educational outreach to promote awareness and safety for e-bike users and the public.

Donna Creef, Governmental Affairs Director, Outer Banks Association of Realtors – Ms. Creef stressed that if large single-family dwellings are categorized as a special use and a public hearing is required, it is a quasi-judicial hearing and, as a permitted use, the Board cannot deny the application if it meets the ordinance requirements.

Tom Stewart, Chief Operating Officer for Resort Realty, 5219 S Croatan Highway, Nags Head, NC – Mr. Stewart said that there is a need for the larger homes in the community, and that the market is returning to the traditional seasonal cycle. He encouraged discussion with homeowners, and supported fire sprinklers in larger homes.

Response to Public Comment

Mayor Windley thanked the speakers for their comments.

Ongoing Business

1. Regulatory Options – Ocean Impact Residential Zone: Review Density and Development Issues (large single-family dwellings): Presentation (Attached OB-1)

Assistant Planning Director Cameron Ray stated that following its June 8, 2024, retreat, the Board of Commissioners directed Staff to identify and develop options to limit density and development in the Ocean Impact Residential Zone (OIR). This is in addition to the measures previously taken by the Board to address large single-family dwellings, including landscaping and stormwater requirements, incentivized fire suppression systems and drive aisles, and more restrictive dune protection regulations. He noted that the N.C. Fire Code does not permit the Town to require sprinklers for a specific size of structural category; any ordinance requiring a fire suppression system for single-family dwellings would require all such structures, regardless of size, to have fire suppression.

Mr. Ray noted that the Planning Department presented five options for consideration at the Board's September 9, 2024, meeting:

1. Limit stacked parking not to exceed six vehicles to reduce long lines of cars that prevent access by emergency vehicles to the structure.
2. Remove exceptions to one access aisle designed to be open and unobstructed to the primary dwelling. Minimum access aisle width shall be ten feet within 20 feet of the front entrance.
3. Require 10% of the total vehicle accommodation area to include landscaping aisles established within the interior of the vehicle accommodation area (similar to commercial

development). Landscaping within the parking area will break up the large concrete areas and provide visual relief.

4. Increase setbacks for houses over a designated square footage. Similar to commercial requirements (153.181(C)(1)).
5. Designate large single-family dwellings a special use in the Ocean Impact Residential (OIR) Zone and define as a separate use.

Following discussion, the Board directed Staff to research the topics and return with a presentation highlighting some examples of how the proposed changes could affect the size and bulk of existing large single-family dwellings in the OIR. Mr. Ray and Planning Director Meredith Guns then shared a presentation that highlighted the potential application of Floor Area Ratio (FAR) on structures in the Ocean Impact Residential (OIR) Zone to regulate density. This density measurement is already utilized for hotel / motel and multi-family structures in the OIR, and uses in the Commercial and Light Industrial Zones. FAR measures the bulk of a structure's heated gross floor area against the size of the parcel; it is a tool to make house size proportional to the lot on which it is located. The presentation has been included with the meeting materials.

In the presentation, Ms. Guns highlighted a sampling of large single-family dwellings in the OIR, with specifications such as lot size and width, number of bedrooms, year built, and the FAR ratio. She noted that Kill Devil Hills does have larger oceanfront structures than other Dare localities due to the deeper and wider lot sizes. A sample of large parking layouts for structures over 6,000 square feet in the OIR was also reviewed in the presentation. Ms. Guns shared that these parking layouts realistically were not followed by the occupants of the large homes, and other parking areas, like the Town's beach accesses, which were being used as overflow parking.

Mr. Ray noted that the Board has previously stated concerns with the large single-family dwellings included safety and structural bulk, along with shear walls and large parking areas. He highlighted the potential issue of future tax revenues by limiting the large single-family dwelling bulk in the OIR, but stated that any regulation would affect future development, not the existing stock of homes.

Ms. Guns then highlighted recommended ordinance changes:

- Define large single-family dwelling as a structure over 6,000 square feet.
- Require an emergency access lane on all structures over 11 bedrooms; currently, it is an incentive.
- Establish a Floor Area Ratio (FAR) for large single-family dwellings in the OIR.

Staff recommended a lower FAR measurement for large single-family dwellings because residential use is less intensive than commercial, and residential construction has less design regulations and building code requirements. Planning recommended the following tiered approach:

- Large single-family dwelling FAR to be set at 0.25, with the following options:
 - Increased to 0.30 if stacked parking is limited to four vehicles per stack.

- Increased to 0.35 if side yard setbacks are increased two feet on each side and stacked parking requirement of four vehicles per stack is met.
- Establish a required access aisle for all large single-family dwellings.

The Board expressed its appreciation to Staff for the comprehensive research and presentation. Commissioner Heikens stated that this appeared to be a fair approach, and would reset the de facto definition of a large single-family dwelling to a relative measure, and not an arbitrary number. Commissioner Ingram stated that density on the beach is also an issue to monitor, with the occupants of large single-family dwellings on the beach, placing numerous tents and using up public parking at the Town's beach accesses, to the detriment of residents. She said that these recommendations address these issues, and that even with the application of FAR to large single-family dwellings in the OIR, they will continue to be very large structures. Commissioner Gray stated that a required access aisle for emergency equipment was necessary at any cost. He also supported the categorization of large single-family dwellings in the OIR as a separate use.

Commissioner Gray inquired whether a down-zoning liability would be created if the recommendations were approved. Town Attorney Casey Varnell replied that under N.C.G.S. 160D, down-zoning would occur if regulations lessened or restricted the uses of a property, which is not occurring in this instance. He noted that no neighboring property can make a petition or zoning text amendment that down-zones another's property; however, this statute does not apply to an amendment initiated by a local government. Mr. Varnell said that Planning Staff had confirmed with UNC School of Government representatives that municipalities can regulate bulk. Commissioner Gray asked whether the recommendations would increase nonconformities in Kill Devil Hills. Ms. Guns replied in the affirmative, but noted that Town ordinances, if a nonconforming use was destroyed by a natural disaster, it could be rebuilt 100 percent prior to the disaster. With single-family dwellings, the 50 percent rule is based upon 50 percent of the value of the structure for repairs or additions.

Commissioner McAvoy expressed his concern at arriving at a FAR threshold number, noting that he preferred a higher ratio number. He supported a required access aisle, noting that it was common sense approach for safety. Commissioner McAvoy inquired whether the additional stacked parking, setback tiers, and access aisle would further reduce from the FAR standard. Guns replied that she did not believe that the additional proposed requirements would result in further decreases in bulk, but that home designers will always maximize the square footage, parking, and setback options available to them. Mayor Windley stated that when considering the potential impact these proposed regulations would have on the property owner, the Board needed to also consider the impact on the adjoining property owners.

Through consensus, the Board directed Staff to move forward with the recommended options.

New Business

1. Street Improvement Recommendation 2025-26 Fiscal Year (FY) and 2026-27 Fiscal Year (Plan Year) (Attached NB-1)

DRAFT Minutes

October 14, 2024

Board of Commissioners Meeting & Public Forum

Page 4 of 12

At its September 23, 2024, meeting, the Street Improvement and Special Projects Committee (SISPC) met with Town Engineers Pete Burkheimer and Patrick Lewis of American Engineering to review the annual update of the Street Conditions Rating Study and to discuss the street project recommendations for the 2025-2026 Fiscal Year and the 2026-2027 Plan Year.

The Planning Department's meeting memorandum highlighted the recommendations, along with Mr. Lewis' memorandum, past project highlights, and listing of the remaining streets categorized as "Poor."

Mr. Lewis presented the SISPC recommendations, which were as follows:

2025-2026 Fiscal Year Project

West Martin Street (with sidewalk and sidewalk on Swan Street from West Martin to Baum Street:

- Street and drainage improvements on West Martin Street from US158 to Ninth Ave, including a detached sidewalk along the north side of the right-of-way and a detached sidewalk on the west side of Swan Street from Martin Street to Baum Street. The sidewalks were included in the recommendation as alternatives based on grant funding.
- Staff recommended applying for a grant that would include the entire sidewalk project in conjunction with the street project.
- Estimated cost: \$792,000 for street and drainage and \$496,000 for sidewalks for a total project cost of \$1,288,000.
- West Ocean Acres Drive - Spring project for pavement replacement along West Ocean Acres Drive, from Gunas Drive to Burns Drive, to address pavement categorized as "poor." There was no drainage or waterline work proposed in the project. Total project cost for West Ocean Acres repaving is \$210,000.

2025-2026 West Martin St Project	Streets & Drainage	Sidewalks	Engineer	Total
West Martin Street + sidewalks (grant dependent)	\$792,000	\$496,000	-	\$1,288,000
West Ocean Acres Drive (spring)	\$210,000	-	-	\$ 210,000
Project Design, Engineering & Bidding	-	-	118,040	\$ 118,040
Grand Total				\$1,616,040

2026-2027 Fiscal Year Project

East and West First Street (including detached sidewalks):

- Waterline replacement and pavement resurfacing and drainage improvements.
- The detached sidewalk included on the westside is from Publix to Canal Drive, connecting to the multi-use path and on the eastside is from US158 to NC12.
- Estimated cost: \$554,000 for streets drainage, \$612,000 for water funding, and \$396,000 for sidewalks for a total project cost of \$1,562,000.

2026-2027 East & West First St Project	Streets & Drainage	Water	Sidewalks	Total
West Martin Street + sidewalks	\$554,000	\$612,000	\$396,000	\$1,562,000
Grand Total				\$1,562,000

Through consensus by email, the Board of Commissioners authorized staff to apply for a Tourism Impact Grant through the Dare County Visitors Bureau for the sidewalk portion of the West Martin Street and Swan Street Project. The grant application was submitted on September 27, 2024 and the Town will be notified about the grant in late November/early December.

Commissioner Gray inquired why drainage work was not included on the Ocean Acres Drive project. Mr. Lewis replied that drainage improvements had been done on prior projects. However, he said he would be available to discuss and follow up on any citizen concerns about potential flooding in the area.

Commissioner Ingram moved that the Board of Commissioners approve the following Staff recommendations, as presented:

- 2025-2026 Fiscal Year Project
 - West Martin Street (with sidewalk and sidewalk on Swan Street from West Martin to Baum Street)
 - West Ocean Acres Drive (Spring project) for pavement replacement along West Ocean Acres Drive from Gunas Drive to Burns Drive.
- 2026-2027 Fiscal Year Project
 - East and West First Street (including detached sidewalks), to allow Staff to pursue grant funding for sidewalk portion.
- Engineering, Design & Bidding
 - Authorization for the Town Manager to execute the attached contract with American Engineering Associates – Southwest PA, Inc for design, engineer and

bidding of the 2025-26 Fall and Spring Project, in the amount of \$118,040, as outlined above and the execution of necessary budget amendments for these projects.

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

2. Appointments and Nominations (Attached NB-2)

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. Appointment histories, as necessary, were included in the meeting packet materials. Town Staff has continued its outreach through print and electronic media, social media, and the KDH website to encourage interested members of the public to submit applications for consideration.

A. Planning Board – one position

Natalie Painter's term on the Planning Board expired in September 2024, and she was ineligible to be reappointed due to relocating her residency to another community. At its August 12, 2024, meeting, the Board, through consensus, opted to delay an appointment until members could further interview potential candidates.

Commissioner Gray moved to appoint Billy Dorn to the Planning Board for a term that will expire October 2027. Commissioner Heikens seconded the motion, which was approved by a unanimous, 5-0, vote.

B. Historic Landmarks Commission – one position

Toni Dorn's term expires October 2024, and she has expressed a desire for reappointment. A motion will be in order to make a three-year appointment to the Historic Landmarks Commission that will expire in October 2027.

Commissioner Gray moved to reappoint Toni Dorn to the Historic Landmarks Commission for a term that will expire October 2027. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

C. Community Appearance Commission – four positions

Jenniffer Albanese, Sue Kelly, Billy Dorn, and Melinda Mogowski are currently serving terms that expire October 2024. Ms. Albanese and Ms. Kelly have expressed a desire for reappointment. Longtime members Dorn and Mogowski do not seek reappointment.

Commissioner Gray moved to reappoint Jenniffer Albanese and Sue Kelly, and appoint Amy Scarborough and Maria Hester, respectively, to the Community Appearance Commission for terms that will expire in October 2027.

D. Coastal Resource Advisory Council (CRAC) nomination

Originally appointed in September 2022, Mayor Windley's term as a member of the North Carolina Coastal Resources Advisory Council (CRAC) concluded September 2024. The group works in conjunction with the N.C. Coastal Resources Commission (CRC) by fostering protection and measured development guided by the N.C. Coastal Area Management Act (CAMA). It is timely for the Board to submit a nomination for consideration by the CRC.

Mayor Windley moved to nominate Mayor *Pro Tem* Ingram to the Coastal Resources Advisory Council. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Committee Reports

Commissioners' Agenda

Commissioner Ingram

Historic Landmark Homes Tour Commissioner Ingram expressed her appreciation to the Historic Landmarks Commission (HLC), HLC Chairperson Sandie Markland, and Town Staff for the recent Historic Landmark Homes Tour. Everyone enjoyed the premiere of the video that highlighted a large number of the historic homes in Kill Devil Hills.

Commissioner McAvoy

Dog Day at the Splash Pad Commissioner McAvoy thanked Staff for the Dog Day at the Splash Pad event. He shared that the community really enjoys the event.

Mayor's Agenda

1. Resolutions and Proclamations (Attached MA-1A, MA-1B, and MA-1C)

- A. Resolution in Support of Reinstating an Area of Environmental Concern (AEC) Designation for Jockey's Ridge State Park
- B. Proclamation Honoring North Carolina Veterans and Active Service Members in Operation Green Light
- C. Alzheimer's Disease Awareness Month Proclamation

The three items share our support for a vital designation and protections for our coastal state park, demonstrate our continued support for our veterans and active service members, and heighten awareness of a disease affecting 6.9 million Americans.

Mayor Windley moved to approve the resolution and proclamations as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Fire Department Open House Mayor Windley shared that the community had enjoyed the Fire Department Open House on Tuesday, October 8, 2024. He noted that it was a fantastic turnout, and the Police Department did a great job with the grilling.

Dog Day at the Splash Pad Mayor Windley thanked everyone involved with the activity, which also donated funds for Humane Society efforts to assist animals in need following Hurricane Helene.

Historic Homes Tour Almost 100 people attended our HLC designation ceremony and Historic Designated Homes Tour this past Friday. Mayor Windley also thanked the property owners that took the time to open their historic homes to the public.

Breast Cancer Awareness Ribbon in Aviation Park With October being Breast Cancer Awareness Month, Mayor Windley encouraged everyone to stop by Aviation Park. Buildings and Grounds staff has installed a giant pink ribbon at the Frog Pond to commemorate this observance and to support everyone battling with breast cancer.

Early Voting The Town has again volunteered our Town Hall Meeting Room to serve as a site for early voting for all of the voters of Dare County. Mayor Windley shared that Early Voting will begin on Thursday, October 17:

- 8:00 a.m. – 7:30 p.m. weekdays (Monday-Friday, October 17- November 1)
- 8:00 a.m. – 3:00 p.m. on November 2 (only Saturday Early Voting session)

He noted that the Town is not involved in the voting process. If anyone has questions about voting, registration, etc., please contact the Dare County Elections Office.

Planning and Inspections Staff Deployment Mayor Windley recognized Building Inspector Marty Shaw, who had been recently deployed as a volunteer to assist in damage assessment teams in western North Carolina following Hurricane Helene. Ms. Guns shared that all of the Town's building inspectors had registered to volunteer to assist in storm-affected communities, and that Mr. Shaw had been the first staff member called into service.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. September 9, 2024

2. Monthly Report (Attached CA-2A)

A. August 2024

3. Recommended Resolution Authorizing the Sale of Unclaimed and Found Property (Attached CA-3)

On occasion, the Police Department must dispose of items that have been turned in or found and unclaimed by their rightful owners. The Police Department's meeting memorandum highlighted the personal property that was seized as part of a felony investigation in 2020, and requested Board approval for the publication of a notice of found and unclaimed property distribution, along with a resolution authorizing the sale of this property, pending judicial authorization. The Town of Kill Devil Hills utilizes GovDeals.com for surplus and found or unclaimed property.

Approval of the Consent Agenda will record the Board's authorization for Staff to dispose of the property through sale with proper notice, including execution of the *Resolution Authorizing the Sale of Unclaimed / Found Property* and Public Notice of Found and Unclaimed Property Distribution, in accordance with the requirements of the North Carolina General Statutes.

4. Schedule Public Hearings (Attached CA-4A, CA-4B, and CA-4C)

A. Zoning Amendment Request — §153.315(B)(4) Accessory Dwelling Units — Modify Accessory Dwelling Unit (ADU) Site Requirements

The Planning Department's memorandum detailed the proposed amendment to the Town's Code of Ordinances, specifically Chapter 153, Zoning, §153.315(B)(4) Accessory Dwelling Units, which will eliminate the site requirement for the 50% of required parking being outside the footprint on all lots greater than one acre in the Low Density Residential Zone. At its September 17, 2024, meeting, the Planning Board reviewed and forwarded the amendment, recommending approval.

Staff recommended approval of the proposed amendment and to schedule a public hearing for Monday, November 18, 2024, at 6:00 p.m. Approval of the Consent Agenda will schedule this item for public hearing.

Historic Landmark Designations

At its October 9, 2024, public hearings, the Historic Landmarks Commission (HLC) reviewed the following property designation reports and State comments, and voted to unanimously recommend these designations, along with a request for the Board to schedule two public hearings. Staff recommended scheduling these two public hearings for Monday, November 18, 2024, at 6:00 p.m. Approval of the Consent Agenda will schedule each of these items for public hearing:

- A. Local Historic Landmark Designation – 2025 New Bern Street: Harris / Blanchard Cottage**
- B. Local Historic Landmark Designation – 606 N. Memorial Blvd: Diane Baum Cottage**

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

Commissioner Gray noted that in the August 2024 Monthly Report there had been a 22% increase in the total number of incidents to which the Fire Department had responded. He encouraged continued outreach by the Town to recruit volunteer firefighters.

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

Public Forum

Mayor Windley stated 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 these public fora 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. No public forum topics have been submitted by the public to the Board for consideration and discussion.

Jack McCombs, 3118 Bay Drive, Kill Devil Hills, NC – Mr. McCombs shared the history of the annual Monument to Monument (M2M) cycling event, and expressed his appreciation to Town Staff for its assistance over the years, including Mayor Windley, who spoke at the recent annual event. Beginning with 80 cyclists in 2021, the event has grown to over 200 cyclists traveling from the Wright Brothers Memorial to the U.S. Airforce Memorial in Arlington, Virginia. The plan is to eventually build the participation to 10,000 cyclists, and Mr. McCombs stressed the positive economic impact to the community.

E-bikes Mayor Windley asked Assistant Chief Dana Harris how the e-bikes are classified under North Carolina Statute. Assistant Chief Harris noted that e-bikes are categorized as bikes, so, for example, the Town could not ban e-bikes from sidewalks unless it also banned bicycles. Through Town ordinance, the Police Department could stop someone for being reckless on sidewalks, but it would be difficult to enforce any particular speed limit. Mayor Windley noted that it was difficult to address e-bikes because of the categorization with bicycles. He said it was a statewide issue.

Assistant Town Manager Charlene Allen stated that five months ago, the Town had developed an e-bike safety video, the first in Dare County, and has been distributing it on the Town's website, social media outlets, and through its electronic distribution.

Julie Owens Robinson, 2019 South Virginia Dare Trail, Kill Devil Hills, NC – Ms. Robinson thanked the Board and Town Staff for all of their work in addressing large single-family dwellings.

Meredith Crockett, Baum Bay, Kill Devil Hills (Colington) – Ms. Crockett thanked the Board and Staff for examining additional regulations for large single-family dwellings.

Adjournment

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

The time was 7:34 p.m.

Submitted by:

James Michael O'Dell
Town Clerk