

# TOWN OF KILL DEVIL HILLS

## **Town of Kill Devil Hills Boards and Committees Appointments. Guide.**

- All meetings of public bodies are public meetings.
- All meetings of public bodies are held in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road, unless otherwise scheduled.
- This book contains the regular meeting schedule for public bodies. Schedules may be amended.
- Regular meeting schedules for all appointed boards and committees, except the Board of Commissioners, Planning Board, and Board of Adjustment, will be published once in the local newspaper and thereafter meeting notices will be only posted on the Town's bulletin boards, website, and communicated through Facebook and the Town's electronic distribution lists.
- Terms that expire in a given month are valid through the last day of the month unless or until other action is taken by the body responsible for the appointment.

**TOWN OF KILL DEVIL HILLS**

The Board of Commissioners’ first meeting of each month is held on the second Monday at 5:30 p.m.; the second meeting of the month is held on the fourth Wednesday at 5:30 p.m. Each meeting date and time is subject to amendment as determined by the Board of Commissioners.

**BOARD OF COMMISSIONERS – Five Members**

Davies, Sheila F., <u>Mayor</u> (Daryl) 121 Porthole Court Kill Devil Hills, NC 27948	Home: 475-0033 Email: <a href="mailto:sdavies@kdhnc.com">sdavies@kdhnc.com</a> Term Expires: December 2017
Appleman, Travis, <u>Commissioner</u> (Katy) 509 Copley Drive Kill Devil Hills, NC 27948	Phone: 573-9971 Email: <a href="mailto:travis@kdhnc.com">travis@kdhnc.com</a> Term Expires: December 2017
Hogan, Mike, <u>Commissioner/Mayor Pro Tem</u> (Sue) 809 Sixth Avenue Kill Devil Hills, NC 27948	Cell: 252-256-0036 Email: <a href="mailto:mhogan@kdhnc.com">mhogan@kdhnc.com</a> Term Expires: December 2019
Midgette, Michael, <u>Commissioner</u> 608 West Holly Street Kill Devil Hills, NC 27948	Phone: 449-5300 Email: <a href="mailto:michael@kdhnc.com">michael@kdhnc.com</a> Term Expires: December 2017
Rheubottom, Brandi H., <u>Commissioner</u> (Jeff) 910 W. First Street Kill Devil Hills, NC 27948	Home: 449-8546 Email: <a href="mailto:brheubottom@kdhnc.com">brheubottom@kdhnc.com</a> Term Expires: December 2019

**Town Code, Chapter 30. Board of Commissioners.**

**§ 30.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

G.S. The North Carolina General Statute(s).

LOCAL NEWS MEDIA. Entities for the primary purpose of disseminating written or broadcast news information, having offices in the county and engaging in news dissemination at least twice weekly.

PUBLIC BODY (-IES). Any elected or appointed authority, board, commission, committee, council or other body of the town that is:

- (1) Composed of two or more members; and

## TOWN OF KILL DEVIL HILLS

(2) Exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative or advisory function. (Note: PUBLIC BODY does not include a meeting solely among the professional staff of the town.)

### **§ 30.02 PUBLIC BODIES TO HOLD OPEN MEETINGS.**

All public bodies as defined in § 30.01, and in G.S. § 143-318.10, shall forthwith and fully comply with the requirements of G.S. Ch. 143, Art. 33C, the Open Meetings Law.

### **§ 30.03 RULES OF PROCEDURE GENERALLY.**

Except where otherwise provided by law or ordinance, the rules of procedure of the Board of Commissioners and all other public bodies of the town shall be the Suggested Rules of Procedure for a City Council as published, and amended from time to time, by the Institute of Government of the University of North Carolina at Chapel Hill, and adopted and amended from time to time by the Board. (Note: The Suggested Rules of Procedure for a City Council includes but is not limited to procedures on conduct of meetings, meeting agendas, procedural duties of the Mayor and Mayor pro tempore, motions by and actions of the Board of Commissioners, introduction and adoption of ordinances and contracts, minutes, appointments and conduct of public hearings.)

### **§ 30.04 ELECTIONS.**

(A) Conduct of elections. Municipal elections of the town shall be conducted by the Dare County Board of Elections in accordance with the provisions of G.S. Ch. 163.

(B) Selection of plurality method. Members of the Board of Commissioners shall be elected on a non-partisan basis and the results determined by a plurality of the votes cast as provided by G.S. § 163-292.

(C) Absentee ballots. Absentee ballots shall be allowed in the regular town elections, including primaries, if applicable, and including run-off elections, if applicable, in accordance with the provisions of G.S. § 163-302.

### **§ 30.05 BOARD OF COMMISSIONERS.**

The Board of Commissioners shall hold such regular meetings as may be determined from time to time by amendment and adoption of the Suggested Rules of Procedure for a City Council. Unless otherwise scheduled, all meetings of the Board will be held in the meeting room of the administration building at 102 Town Hall Drive, off Colington Road.

### **§ 30.06 ORDINANCES AND RESOLUTIONS.**

(A) Official copies. For each and every ordinance, contract or resolution adopted by the Board of Commissioners in accordance with the provisions of the Suggested Rules of Procedure for a City Council:

(1) There shall be a true copy of every ordinance, or any other document which has the effect of ordinance, which has been duly enacted by the Board and signed by the Mayor

## TOWN OF KILL DEVIL HILLS

and the Town Clerk and which shall be known and recognized as an official copy of such ordinance.

(2) There shall be a true copy of every resolution which has been duly enacted by the Board and signed by the Mayor and the Town Clerk and which shall be known and recognized as an official copy of such resolution.

(B) Effective date. All ordinances and resolutions passed by the Board of Commissioners shall be in full force and effect from and after their ratification, unless the Board establishes a different effective date at the time of such ratification.

### **§ 30.07 FILLING OF VACANCIES.**

In case of death, disability or resignation or if a vacancy is created by any other means in the elected officials of the town, a successor shall be selected by a majority vote of the Board.

## TOWN OFFICERS

### **§ 30.20 APPOINTMENTS.**

At the first meeting of the Board of Commissioners after their election and qualification, or as soon thereafter as possible, they shall proceed to appoint the Town Manager and Town Attorney.

### **§ 30.21 TOWN MANAGER; TOWN ATTORNEY.**

(A) Town Manager. In addition to those outlined in the town code, and any such other duties and responsibilities that from time to time may be conferred on the Town Manager by the Board, the duties and powers of the Town Manager are found in the personnel policy of the town and in G.S. § 160A-148.

(B) Town Attorney. In addition to the duties and responsibilities outlined in the town code, and any such other duties and responsibilities that from time to time may be conferred on the Town Attorney by the Board, the Town Attorney shall:

- (1) Prosecute and defend suits against the town;
- (2) Advise the Mayor, Board, Town Manager or any other officer of the town in regard to matters connected with the town's business;
- (3) Attend meetings of the Board of Commissioners;
- (4) Draw such deeds, contracts, bonds, notes and other legal papers as may be required for the proper conduct of the town's business;
- (5) Draw such ordinances as may be directed by the Board or Town Manager;

## TOWN OF KILL DEVIL HILLS

- (6) Approve all ordinances as to form.

### **§ 30.22 DISPOSAL OF SURPLUS PERSONAL PROPERTY VALUED AT LESS THAN \$5,000.**

(A) The Town Manager is authorized pursuant to G.S. § 160A-266(c) to dispose of any surplus personal property owned by the town whenever it is determined at the Town Manager's discretion that:

- (1) The item or group of items has a fair market value of less than \$5,000;
- (2) The property is no longer necessary for the conduct of public business;
- (3) Sound property management principles and financial considerations indicate that the interests of the town would best be served by disposing of the property.

(B) The Town Manager shall determine the fair market value of the personal property for disposal and may dispose of any such personal property by any means which is judged reasonably calculated to yield the fair market value or the highest attainable prices in money or other consideration, including but not limited to the methods of sale provided in G.S. Ch. 160A, Art. 12. Such sale may be public or private and with or without notice and minimum waiting period.

(C) The surplus property shall be sold to the party who tenders the highest offer, or exchanged for any property or services useful to the town if greater value may be obtained in that manner and the Town Manager is authorized to execute and deliver any applicable title documents. If no offers are received within a reasonable time, the Town Manager may retain the property, obtain any reasonable available salvage value or cause it to be disposed of as waste material.

(D) The Town Manager shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold or with whom exchanged and the amount of money or other consideration received for each sale or exchange.

### **§ 30.23 PURCHASE OF APPARATUS, SUPPLIES, MATERIALS OR EQUIPMENT.**

(A) Grant of authority. Subject to the restrictions and conditions hereinafter provided, when purchasing apparatus, supplies, materials or equipment for use by the town, in addition to such authority as may be provided by law and/or otherwise delegated by the Board of Commissioners, the Town Manager is authorized pursuant to G.S. § 143-129(a) to:

- (1) Prepare, or cause to be prepared, plans and/or specifications setting forth a complete description of the item(s) to be purchased and the characteristics, features and/or requirements therefor;

## TOWN OF KILL DEVIL HILLS

- (2) Include, where appropriate, in specifications for the item(s) to be purchased an opportunity for bidders to purchase as trade-in specified personal property owned by the town;
- (3) Advertise, or otherwise secure bids, for such item(s), if required under applicable law;
- (4) Award contracts for the purchase of the item(s) and, where applicable, award contracts for the purchase of the item(s) and the sale of trade-in property;
- (5) Reject bids;
- (6) Re-advertise to receive bids;
- (7) Waive bid bond or deposit requirements;
- (8) Waive performance and payment bond requirements; and
- (9) Execute and deliver the purchase contract(s).

(B) Report. At the first meeting of the Board of Commissioners following the award of any contract(s) pursuant to this section, the Town Manager shall submit a report to the Board of Commissioners summarizing the bids received and the contract(s) awarded. Such report shall be included in the minutes of the meeting at which it is received.

(C) Extent of authority. Except in cases of sole source purchases pursuant to G.S. § 143-129(f) and cases of purchases from established contracts pursuant to G.S. § 143-129(g), unless otherwise provided by law, the provisions of this section shall apply to the purchase of apparatus, supplies, materials or equipment required for use by the town.

(D) No limitation of other authority. The provisions of this section are not intended to limit, restrict or revoke in any manner authority otherwise granted and/or delegated to the Town Manager by statute, law or action of the Board of Commissioners.

(E) Appropriation required. No purchase shall be made by the Town Manager under authority of this section unless an appropriation for such purpose has been authorized in the annual budget, or by supplemental appropriation or budget appropriation amendment duly adopted by the Board of Commissioners.

(F) Application of general statutes. In acting pursuant to the authority delegated by this section, the Town Manager shall comply with the requirements of G.S. Ch. 143, Art. 8, as from time to time amended, modified, supplemented, revised or superseded, to the same extent as would have otherwise applied to the Board of Commissioners.

## TOWN OF KILL DEVIL HILLS

The Planning Board meets on the first and third Tuesday of each month at 5:30 p.m. The second meeting of the month is typically a planning session.

### PLANNING BOARD – Seven Regular Members

Clough, Stan, <u>Chair</u> 1104 Ninth Avenue Kill Devil Hills, NC 27948	Home: 441-3868 Term Expires: August 2018 Chair Expires: December 2018
Buchanan, Howard, <u>Vice Chair</u> 2058 Bay Drive Kill Devil Hills, NC 27948	Home: 757-737-1131 Term Expires: April 2019 Vice Chair Expires: December 2018
Almoney, James C. “Chip” 900 Ninth Avenue Kill Devil Hills, NC 27948	Home: 441-5389 Term Expires: August 2018
Jones, Skip 1508 Captain’s Lane Kill Devil Hills, NC 27948	Home: 441-7882 Term Expires: February 2020
Lowack, Michael 106 Porthole Court Kill Devil Hills, NC 27948	Home: 480-1568 Term Expires: March 2018
Valdivieso, Eddie 515 Wax Myrtle Court Kill Devil Hills, NC 27948	Phone: 449-5300 Term Expires: December 2017
Windley, John 1512 Small Court Kill Devil Hills, NC 27948	Home: 252-902-4345 Term Expires: September 2020

### Town Code. Chapter 31: Boards and Commissions

#### § 31.01 ESTABLISHED; JURISDICTION.

There is established a Board to be known as the Town Planning Board, whose jurisdiction shall include the area within the corporate limits of the town.

#### § 31.02 MEMBERSHIP; TERMS, VACANCY, ATTENDANCE.

(A) The Planning Board shall be composed of seven members, appointed by the Board of Commissioners, who shall be residents of the town. The members of the Planning Board shall be appointed for terms of one, two and three years, and their terms of office shall be designated at the time of their appointment. The successor members of the Planning Board, after those first serving under this section, shall be appointed for a term of three years. A member may be reappointed upon the expiration of his term. Vacancies occurring in the regular Board membership shall be filled by appointment by the Board of Commissioners.

## TOWN OF KILL DEVIL HILLS

(B) The Planning Board shall designate its Chairperson and Vice-Chairperson from its membership. The Deputy Town Clerk or designee shall provide secretarial duties for the Planning Board.

(C) The person acting as planning official for the town or Town Planner, by whatever name he may be designated, shall be an ex officio member of the Board in an advisory capacity and shall not be a voting member of the Board.

(D) Faithful attendance at the meetings of the Board is considered a prerequisite for the continuation of membership on the Board. The Board of Commissioners may take action to remove any Planning Board member who misses more than one-third of the meetings during any 12-month period.

### **§ 31.03 OFFICIAL RECORD; MEETINGS; QUORUM; VOTING.**

(A) By virtue of the duties assigned to the Planning Board and which may be hereafter assigned to the Planning Board, there shall be an official record kept by the Secretary of the Planning Board as a permanent record for the use and benefit of the public and the applicants appearing before the Board with respect to projects within the town requiring Planning Board approval. Such record shall be a public record and shall be maintained at the Town Clerk's Office.

(B) The Planning Board shall meet at a specific time each month in order that its recommendations may be recorded and forwarded to the next regular meeting of the Board of Commissioners, which presently is set as the second Monday of each month. If the Board of Commissioners changes its meeting schedule, the Planning Board shall adjust its schedule so that its recommendations may be available to the Board of Commissioners at its regular meeting.

(C) There shall be a quorum of at least four members of the Board, and in the event only four are present, it shall take a unanimous vote of the four for official action.

(D) The Chairperson of the Board shall vote only in the event of a tie vote on a specific issue or question.

### **§ 31.04 POWERS AND DUTIES; COMPREHENSIVE PLAN.**

(A) The Planning Board shall prepare plans and coordinate the plans of the municipality and those of others so as to bring about a coordinated and harmonious development of the area. The Planning Board is designated as the planning agency for the revision of the zoning code of the town under the authority of G.S. § 160A-387. In addition, the Planning Board is directed and authorized:

(1) To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area. The comprehensive plan shall be the Planning Board's recommendations to the Board of Commissioners for the development



## TOWN OF KILL DEVIL HILLS

of the town, including, among other things, the general location, character and extent of streets, bridges, parkways, playgrounds, parks and other public ways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities or terminals; and the most desirable pattern of land use within the area;

(2) To establish principles and policies and recommend their adoption to the Board of Commissioners for guiding the action of development in the area. The Planning Board may prepare a capital improvements program and report its recommendations to the Board of Commissioners upon the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties and on the establishment of building lines, mapped street lines and proposals to change existing street lines in order to insure that the goals of the comprehensive plan are furthered by a coordinated and efficient expenditure of public funds;

(3) To prepare and recommend amendments to existing ordinances promoting orderly development of the area along the lines indicated in the comprehensive plan, including a zoning ordinance and subdivision regulations. The Planning Board may initiate, from time to time, proposals for the amendment of the zoning code and the subdivision regulations based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the Board of Commissioners concerning all proposed amendments to the zoning code and subdivision regulations;

(4) To determine whether specific proposed developments referred to it by governmental or private agencies in the area conform to the principles and requirements of the comprehensive plan for the area and to make recommendations concerning them;

(5) To keep the Board of Commissioners and the general public informed and advised as to these matters and to make any other recommendations which it sees fit for improving the development of the area. In the development of these suggestions, the Planning Board shall acquire and maintain data and materials to show correlation of past, present and future needs and conditions;

(6) To perform any other duties, which may be lawfully assigned to it.

(B) The Planning Board is authorized to appoint such committees and employees and to authorize such expenditures as it may see fit, subject to limitation of funds provided for the Planning Board by the Board of Commissioners in the town's annual budget.

(C) The Planning Board may set up special committees to assist it in the study of specific problems.

(D) The Planning Board may perform any of the actions authorized for municipal planning boards by G.S. § 160A-387, as amended.

## TOWN OF KILL DEVIL HILLS

The Street Improvement and Special Projects Committee (SISPC) meets on an as-needed basis, usually prior to a Planning Board meeting, on either the first or third Tuesday of the month.

### **Street Improvement and Special Projects Committee – Five Regular Members, One Alternate Member**

Hogan, Mike, Commissioner, <u>Chair</u> 809 Sixth Avenue Kill Devil Hills, NC 27948	Cell: 252-256-0036
Clough, Stan, <u>Regular Member</u> 1104 Ninth Avenue Kill Devil Hills, NC 27948 (Planning Board Representative)	Home: 441-3868 Chair Expires: December 2017
Cox, Kevin P., <u>Regular Member</u> 523 First Flight Lane P. O. Box 2435 Kill Devil Hills, NC 27948	Home: 441-6389
Froehlich, Jerry A., <u>Regular Member</u> 414 Wallace Street P. O. Box 1005 Kill Devil Hills, NC 27948	Home: 480-3488
Jones, Jr., Nelson “Skip”, <u>Regular Member</u> 1508 Captains Lane Kill Devil Hills, NC 27948	Home: 441-7882
Christopher Stoessner, <u>Alternate Member</u> 314 W. Arch Street Kill Devil Hills, NC 27948	Home: 757-508-2011

### **STAFF SUPPORT**

<i>Planning and Inspections Department</i>	449-5318
Planning Director Meredith Guns	
 <i>Public Services Department</i>	 480-4080
Public Services Director Steve Albright	

## TOWN OF KILL DEVIL HILLS

The Street Improvement and Special Projects Subcommittee's (SISPC) parent group is the Planning Board. The SISPC is tasked with:

1. Providing the Planning Board with a recommended list of streets and drainage improvements for each fiscal year. The Planning Board finalizes the list, which is then sent to the Board of Commissioners with a recommendation.
2. Updating the Street Improvements Master Plan, which is the guide document for upgrading and improving the Town's street system on a "pay-as-you-go" basis.
3. Updating the Town's Stormwater Management Plan.
4. Serving as the Town's Floodplain Management Committee and updating the Floodplain Management Plan. When acting as the Floodplain Management Committee (FMC), all SISPC members and all Staff Support persons comprise the FMC.
5. Such other special projects as may be assigned by the Board of Commissioners.

The Planning Board Chairman selects the Planning Board representative on the SISPC; a member of the Board of Commissioners serves as the de facto chair of the SISPC. The BOC member is selected by action of the BOC as a matter of organization or on an as-determined basis. The SISPC selects its vice-chair annually. There are no term limits established for the SISPC. The SISPC meets on an as-needed basis.

**TOWN OF KILL DEVIL HILLS**

The Zoning Board of Adjustment meets on an as-needed basis, scheduled as much as possible without creating a burden on the applicant, for the last Tuesday of the month, at 6:00 p.m.

**ZONING BOARD OF ADJUSTMENT – Five Regular Members, Three Alternate Members**

Cox, Kevin P., <u>Regular Member</u> 523 First Flight Lane PO Box 2435 Kill Devil Hills, NC 27948	Home: 441-6389 Term Expires: May 2020
Culpepper, Blake, <u>Alternate Member</u> 510 First Street Kill Devil Hills, NC 27948	Home: 441-7241 Term Expires: May 2018
Dorn, Myra “Toni,” <u>Regular Member</u> 601 Indian Drive Kill Devil Hills, NC 27948	Cell: 757-510-0965 Term Expires: June 2018
Lowack, Michael, <u>Regular Member</u> Vice Chairperson 106 Porthole Court Kill Devil Hills, NC 27948	Home: 480-1568 Term Expires: May 2020 Vice-Chair Term Expires: June 2018
Rollason, III, Robert E., <u>Regular Member</u> Chairperson 706 Seventh Avenue Kill Devil Hills, NC 27948	Home: 475-0002 Term Expires: October 2019 Chair Term Expires: June 2018
Seidman, II, Ronald J. “Ron” <u>Regular Member</u> 504 West Landing Drive Kill Devil Hills, NC 27948	Home: 202-8936 Regular Term Expires: May 2018
Natalie Painter, <u>Alternate Member</u> 308 W. Helga Street Kill Devil Hills, NC 27948	Home: 757-354-5013 Term Expires: July 2020
Self, Jason, <u>Alternate Member</u> 319 Truxton Street Kill Devil Hills, NC 27948	Cell: 252-423-2337 Term Expires: October 2019

# TOWN OF KILL DEVIL HILLS

## Chapter 153. Zoning. Board of Adjustment.

**§ 31.49 through 31.59. Reserved.**

**§ 31.60. Board of Adjustment Established.**

Pursuant to G.S. § 160A-388, the Board of Commissioners establishes a Board of Adjustment for the purpose of hearing matters as provided for in the enabling act of the General Assembly.

*Statutory reference:*

*Board of Adjustment, see G.S § 160A-388*

**§ 31.61. Composition; Attendance; Meetings.**

(A) The Board of Adjustment shall consist of five members who shall be residents of the town and shall be appointed by the Board of Commissioners. In addition, three alternate members shall be appointed by the Board of Commissioners. Alternate members shall serve on the board in the absence or temporary disqualification of any regular member or fill a vacancy pending appointment of a member. Each alternate serving on behalf of any regular member has all the powers and duties of a regular member.

(B) Each regular member of the Board of Adjustment shall notify the secretary at least five days in advance of every regular meeting in the event he cannot attend such meeting. The Secretary shall then immediately notify an alternate member to attend this meeting.

(C) All meetings of the board shall be held at a regular place and shall be open to the public. A quorum of four members shall be present at the designated meeting place before a vote is taken or final disposal of any appeal is made upon which the board is required to pass.

(D) The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact; and the final disposition of appeals and variances shall be recorded resolution indicating the reasons of the board therefor all of which shall be a public record.

**§ 31.62. Term.**

The term of office of the members of the Board of Adjustment shall be three years and appointment shall be made for terms of one year, two years and three years initially to the end that the Board of Adjustment shall have continuity, and upon the expiration of the initial one- and two-year terms each person thereafter appointed shall serve for three years. This shall be effective upon the expiration of any existing term of office.

**§ 31.63. Compensation.**

The Board of Commissioners shall provide, from time to time, compensation to the members of the Board of Adjustment based on attendance at meetings. Alternate members serving at regular or special meetings shall be compensated in the same manner as if they were regular members.

**§ 31.64. Vacancies.**

Vacancies on the Board of Adjustment, from time to time, shall be filled for the unexpired term of the member being replaced to the end that there shall be continuity upon the Board.

## TOWN OF KILL DEVIL HILLS

### § 31.65. Removal.

Any member or alternate may be removed in accordance with the personnel policy of the town.

### § 31.66. Offices.

The Board of Adjustment shall make the appointment for the Chairperson and the Vice-Chairperson from within its own membership, annually.

### § 153.320 INTENT.

It is the intention of this ordinance that all questions arising in connection with the enforcement of this chapter shall be presented first to the town planner for consideration and that such questions shall be presented to the Board of Adjustment only on appeal from a decision of an administrative official charged with the enforcement of this chapter, and that from the decision of the Board of Adjustment, recourse shall be had to the courts, as provided by law. It is further the intention of this division that appeals from a decision of the Zoning Administrator or other administrative official, related to this chapter but not pertaining to the state building code or state building laws, shall be taken to the Board of Adjustment, and that from the decision of the Board of Adjustment, recourse shall be had to the courts, as provided by law; except that it shall be the duty of the board of commissioners to consider any amendments to this chapter, applications for conditional use or special use permits or site plans as provided by this chapter and any other duty not specifically delegated to the Board of Adjustment herein.

### §153.321 DUTIES AND RESPONSIBILITIES OF THE BOARD OF ADJUSTMENT.

(A) *Interpretations.* The board shall interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of this chapter. The board shall hear and decide all matters referred to it or upon which it is required to pass under this chapter.

(B) *Administrative Review; Appeals.* Pursuant to its powers and duties, the Board of Adjustment shall hear and decide appeals to decisions of administrative officials charged with the enforcement of this chapter, where it is alleged there is an error in any order, decision, determination or interpretation made by the Zoning Administrator or such other designated administrative officer in the enforcement of Chapter 153, Zoning of the Kill Devil Hills Town Code. As used in this section, the term "decision" includes any final and binding order, requirement, or determination.

(C) *Variances.* To authorize upon appeal in specific cases, variances from the terms of the Zoning Ordinance according to the standards and procedures herein so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.

(1) The Board of Adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance.

(a) A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.

(2) The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

(D) *Chapter 151, Flood Damage Prevention Ordinance.* Pursuant to the terms, conditions and procedures contained in Chapter 151, Flood Damage Prevention Ordinance, the Board of Adjustment shall act as the appeal board and shall hear and decide requests for variances of the provisions of that chapter; and, shall hear appeals and modify or affirm the corrective order issued by the Floodplain Administrator.

### § 153.322 APPEALS.

(A) *Appeals procedures.*

## TOWN OF KILL DEVIL HILLS

- (1) An appeal may be initiated by any aggrieved party or by any officer or the Board of Commissioners of the Town of Kill Devil Hills.
- (2) The Board of Adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or flood damage prevention ordinance, pursuant to all of the following:
  - (a) Any person who has standing under G.S. 160A-393(d) or the Town of Kill Devil Hills may appeal a decision to the Board of Adjustment. A written notice of appeal stating the grounds for the appeal must be filed with the town clerk.
  - (b) The official who made the decision must give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice must be delivered by personal delivery, electronic mail, or by first-class mail.
  - (c) The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
  - (d) The official who made the decision must transmit to the board all the documents and exhibits constituting the record upon which the action appealed was taken. The official must also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
  - (e) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this chapter. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment must meet to hear the appeal within fifteen (15) days after such request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this chapter shall not stay the further review of an application for permits or permissions to use such property. In these situations, the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
  - (f) The Board of Adjustment must hear and decide the appeal within a reasonable time.
  - (g) Notice of the public hearing must be mailed to, the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is the subject of the hearing; and to any other persons entitled to receive notice at least ten (10) days, but not more than twenty-five (25) days, prior to the hearing for any appeal. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the

## TOWN OF KILL DEVIL HILLS

contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to be mailed notice.

(1) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact a Kill Devil Hills official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of the sign shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the Kill Devil Hills official who made the decision.

(h) The official who made the decision must be present at the hearing as a witness.

(i) The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(j) When hearing an appeal pursuant to NCGS 160A-400.9(c) or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in NCGS 160A-393(k).

(3) *Standards for granting an appeal.*

(a) The Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.

(b) In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

### §153.322 VARIANCES.

(A) *Procedures.*

(1) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

(2) When unnecessary hardships would result from carrying out the strict letter of this chapter, the Board of Adjustment shall vary any of the provisions upon a showing of all of the following:

(a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.



## TOWN OF KILL DEVIL HILLS

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

1. The Board of Adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance, which include, as appropriate, requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities.

2. A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.

3. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

### (3) *Restrictions.*

(a) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in the district.

(b) The existence of a non-conforming use of neighboring land, buildings, or structures in the same district, or of permitted or non-conforming uses in other districts, shall not constitute sufficient reason for granting the requested variance.

(c) The fact that property may be utilized more profitably will not be considered adequate to justify the Board of Adjustment in granting a variance.

### (4) *Notice and public hearing.*

(a) Notice of the public hearing shall be posted on the subject property at least ten (10) days, but not more than twenty-five (25) days, in advance of the public hearing at which the board is to consider the variance. Notice of the public hearing must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is subject of the hearing; and to any other persons entitled to receive notice at least ten (10) days, but not more than twenty-five (25) days, prior to the hearing for any variance. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the Town may rely on Dare County tax listings to determine owners of the property entitled to be mailed notice.

### **§153.323 ACTION BY THE BOARD OF ADJUSTMENT.**

(A) A concurring vote of four-fifths (4/5's) of the board members shall be required to grant a variance. The board may grant the variance as requested, deny the variance, or grant the variance with conditions. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. The Board of Adjustment shall grant or deny the variance or shall reverse, affirm, or modify the order, decision, determination, or interpretation under appeal by recording in the minutes of the meeting the reasons that the Board of Adjustment used and the findings of fact and conclusions of law made by the Board of Adjustment to reach its decision. For purposes of this subsection,

## TOWN OF KILL DEVIL HILLS

vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority majority if there are no qualified alternates available to take the place of such members.

(B) A member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(C) *Quasi-judicial decisions.* The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent material and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair, or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board, or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(D) *Oaths.* The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(E) *Subpoenas.* The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

### **§153.324 EFFECT OF GRANTING OF VARIANCE OR REVERSAL OR MODIFICATION OF ADMINISTRATIVE DECISION.**

(A) After the Board of Adjustment approves a variance, or reverses or modifies an order, decision, determination, or interpretation of an administrative officer, the appellant or petitioner shall be responsible for a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board of Adjustment.

## TOWN OF KILL DEVIL HILLS

(B) *Rehearing.* The Board of Adjustment shall refuse to hear an appeal or variance petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

(C) *Appeal from Board of Adjustment.* Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with subsection \_\_\_\_ . When first class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

### § 153.325 FEES.

A fee established by the Board of Commissioners shall be paid by the applicant, property owner, or appellant to the town at the time of filing of any proceeding for hearing before the Board of Adjustment.

## TOWN OF KILL DEVIL HILLS

The Kill Devil Hills Historic Landmarks Commission regularly scheduled meetings are held on the second Wednesday of each month, at 8:30 a.m. All meetings are open to the public.

### HISTORIC LANDMARKS COMMISSION – Five Regular Members

Young, Tanya, <u>Chair</u> 518 Parkwood Drive Kill Devil Hills, NC 27948	Home: 423-0099 Term Expires: August 2018 Chair Term Expires: February 2019
Markland, Sandie 2013 Hampton Street P.O. Box 7539 Kill Devil Hills, NC 27948	Home: 441-1947 Term Expires: September 2019
Dorn, Myra “Toni” 601 Indian Drive Kill Devil Hills, NC 27948	Cell: 757-510-0965 Term Expires: October 2018
Farless, Jerry 223 W. Aycock Street P. O. Box 1194 Kill Devil Hills, NC 27948	Home: 619-6540 Term Expires: August 2018 Vice Chair Term Expires: October 2018
Simpson, Mary K. 3210 Bay Drive Kill Devil Hills, NC 27948	Home: 441-6368 Term Expires: September 2019

### Town Code. Chapter 31. Boards and Commissions.

#### § 31.40 ESTABLISHED; MEMBERSHIP; TERMS.

(A) There is hereby established a Kill Devil Hills Historic Landmarks Commission ("Commission") under the authority of Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes.

(B) The Commission shall consist of five members appointed by the Board of Commissioners. All members shall reside within the planning and zoning jurisdiction of Kill Devil Hills. A majority of the members of the Commission shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields. The Commission may appoint advisory bodies and committees as appropriate.

(C) Members of the Commission shall serve terms of three years. Terms shall be staggered.

(D) The Historic Landmarks Commission shall designate its Chairperson and Vice-Chairperson from its membership to serve a two year term.

## TOWN OF KILL DEVIL HILLS

### § 31.41 POWERS AND DUTIES.

(A) The powers of the Historic Landmarks Commission are as follows:

- (1) Undertake an inventory of properties of historical, prehistoric, architectural and/or cultural significance.
- (2) Recommend to the Board of Commissioners individual structures, buildings, sites, areas or objects to be designated by ordinance as "Landmarks".
- (3) Recommend to the Board of Commissioners that designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause.
- (4) Review and act upon proposals for the alteration or demolition of designated landmarks.
- (5) Conduct an educational program with respect to historic landmarks within its jurisdiction.
- (6) Cooperate with the state, federal and local government in pursuance of the purpose of this subchapter; to offer or request assistance, aid, guidance or advice concerning matters under its purview or mutual interest. The Board of Commissioners, or the Commission when authorized by the Board of Commissioners, may contract with the State or the United States, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.
- (7) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the Commission may enter any private building or structure without express consent of the owner or occupant thereof.
- (8) Prepare and recommend the official adoption of a preservation element as part of the Town of Kill Devil Hills comprehensive plan.
- (9) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to any such properties designated as landmarks; to hold, manage, preserve, restore and improve the same; and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property.
- (10) Restore, preserve and operate historic properties.

## TOWN OF KILL DEVIL HILLS

The Personnel Board meets on an as-needed basis, initially in public meeting and then in closed session. Two members shall constitute a quorum. The Town Clerk serves as ex officio secretary to the Personnel Board.

### PERSONNEL BOARD – Three Regular Members

Ricks-Sample, Jacqueline, <u>Chair</u> P. O. Box 1367 Kill Devil Hills, NC 27948	Home: 441-4367 Term Expires: August 2019
Kelly, Susanne D. (Sue) 211 Sea Village Lane Kill Devil Hills P. O. Box 743 Kitty Hawk, NC 27949	Home: 441-7795 Term Expires: January 2020
Stafford, Christine 412 Truxton Street Kill Devil Hills, NC 27948	Home: 441-7323 Term Expires: April 2019

### Personnel Policy. Article IX. Grievance Procedure.

#### Section 1. Policy

It is the policy of the Town to provide a just procedure for the presentation, consideration, and disposition of employee grievances. The purpose of this article is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

Employees utilizing the grievance procedures shall not be subjected to retaliation or any form of harassment from supervisors or employees for exercising their rights under this policy. Supervisors or other employees who violate this policy shall be subject to disciplinary action up to and including dismissal from Town service.

#### Section 2. Organization of Personnel Board

The Board of Commissioners may appoint a Personnel Board consisting of three members. Members of the Personnel Board shall serve three-year staggered terms. Members shall be appointed by the Board of Commissioners at their first regular meeting in January of each year. A member of the Personnel Board may be removed by the Board of Commissioners only for cause and after being given a written statement of the charges and a public hearing thereon, if so requested. Vacancies in an unexpired term shall be filled by the Board of Commissioners by appointment for the remainder of the term.

Each member of the Personnel Board shall be a qualified voter of the Town and shall be known to be in sympathy with the merit principle of personnel administration. No person who has actively participated in the immediately preceding municipal election by seeking office, soliciting funds or votes, either by letter, telephone, personal contact or speeches, in behalf of any candidate for municipal office, and no Town employee or officer shall be eligible to serve on the Personnel Board. One member of the Personnel Board shall have

## TOWN OF KILL DEVIL HILLS

experience in public or private personnel administration. Any member of the Personnel Board who becomes a candidate for political office or actively participates in town elections, in the manner hereinbefore set forth, shall be deemed to have vacated his/her position as a member of the Personnel Board.

In the event there exists a relationship of any kind between any member of the Personnel Board and an employee, group of employees or a witness appearing before the Personnel Board, the remainder of the members of the Personnel Board not affected, by majority vote, shall determine whether or not the affected Personnel Board member has a conflict of interest and whether he/she be allowed to sit in at the hearing and determination.

As necessary, the Personnel Board shall elect one of its members as chairperson, who shall preside at all meetings and shall be responsible for calling all such meetings. Meetings shall be held from time to time as necessary, and two members shall constitute a quorum. Members of the Personnel Board shall serve without compensation. The Town Clerk shall serve as official secretary to the Personnel Board and shall perform such duties as the Personnel Board may direct.

The Personnel Board shall:

- A) Advise the Board of Commissioners and the Town Manager on municipal problems;
- B) Conduct a hearing, either public or private at the employee's request, upon the request of discharged, suspended or demoted town employees. The Personnel Board shall have all powers necessary to complete investigation of the action taken, including the power to call and examine witnesses and papers. The Personnel Board shall inform the employee and the Town Manager in writing of its findings and recommendations; and
- C) Keep an adequate record of all proceedings, findings, and recommendations.

## TOWN OF KILL DEVIL HILLS

The Dangerous Animal Appeal Board meets on an as-needed basis in the Meeting Room of the Administration Building, at 102 Town Hall Drive, off Colington Road. The Chair is elected by the membership. (The Chair position is vacant at this time. 10.15.2012)

### **DANGEROUS ANIMAL APPEAL BOARD – Three Regular Members, One Alternate Member**

Farless, Jerry, <u>Alternate</u> 223 W. Aycock Street P. O. Box 1194 Kill Devil Hills, NC 27948	Cell: 619-6540 Term Expires: October 2018
Heggie, Temple 909 Cedar Drive Kill Devil Hills, NC 27948	Home: 441-2616 Term Expires: June 2018
Kelly, Susanne D. (Sue) 211 Sea Village Lane Kill Devil Hills P. O. Box 743 Kitty Hawk, NC 27949	Home: 441-7795 Term Expires: June 2020
Stafford, Christine 412 Truxton Street Kill Devil Hills, NC 27948	Home: 441-7323 Term Expires: May 2018

### **Town Code. Chapter 94. Animals. Section 94.20. Dangerous and Potentially Dangerous Animals.**

(A) The Chief of Police is the person designated to determine when a dog or an animal is dangerous or potentially dangerous under the provisions of NCGS 67-4.1 and to determine when an animal is dangerous or potentially dangerous as defined herein. The Kill Devil Hills Board of Commissioners shall designate as needed, three members to serve as the Dangerous Animal Appeal Board to hear appeals from the Police Chief's determination that a dog or an animal is dangerous or potentially dangerous.



**TOWN OF KILL DEVIL HILLS**

**COMMUNITY APPEARANCE COMMISSION – Seven regular members**

Charalambous, Bambos 530 W. Aycock Street Kill Devil Hills, NC 27948	Home: 252-715-0511 Term Expires: October 2020
Jones, Skip 1508 Captain's Lane Kill Devil Hills, NC 27948	Home: 441-7882 Term Expires: October 2018
Kelly, Susanne D. (Sue), <u>Chair</u> 211 Sea Village Lane Kill Devil Hills P. O. Box 743 Kitty Hawk, NC 27949	Home: 441-7795 Term Expires: October 2018 Chair Term expires: January 2018
Marik, Chris 929 W. Kitty Hawk Road PO Box 424 Kitty Hawk NC, 27949	Home: 449-4015 Term Expires: October 2018
Markland, Sandie 2013 Hampton Street P.O. Box 7539 Kill Devil Hills, NC 27948	Home: 441-1947 Term Expires: October 2017
Mogowski, Melinda 1515 Captain's Lane Kill Devil Hills, NC 27948	Home: 441-7195 Term Expires: October 2018
Painter, Natalie, <u>Vice-Chair</u> 308 W. Helga Street Kill Devil Hills, NC 27948	Home: 757-354-5013 Term Expires: October 2020 Vice-Chair Term expires: January 2018
Almoney, James C. "Chip" 113 Porthole Court Kill Devil Hills, NC 27948 (Planning Board Representative)	Home: 441-5389 Term Expires: May 2018
Midgett, Michael, <u>Commissioner</u> 608 West Holly Street Kill Devil Hills, NC 27948	Phone: 449-5300 Elected Official Seat

# TOWN OF KILL DEVIL HILLS

## Town Code. Chapter 31. Boards and Commissions.

### Section 31.20 Appearance commission established.

(A) There is hereby established a commission to be known as the Kill Devil Hills Community Appearance Commission.

(B) The Community Appearance Commission shall consist of seven members, including the chairperson, all of whom shall be residents, property owners, or business owners of the town. At least three members shall represent the town's business community (and they may reside in- or out-of-town) being Kill Devil Hills business owners; at least three members shall represent the town's residential community being either in- or out-of-town residential property owners; at least one member shall be a year-round resident of the Town of Kill Devil Hills and who does not necessarily own property in Kill Devil Hills. Desirable training and experience for members of the Community Appearance Commission includes a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field; however, interest, commitment, and enthusiasm are characteristics required of all potential appointees.

(C) The members of the Community Appearance Commission shall be appointed by the Board of Commissioners to serve terms of three years each; provided, however, that the initial members shall serve staggered terms. If a vacancy occurs in the membership of the Commission, the Board of Commissioners shall appoint a successor to fill the unexpired term. All members of the Commission shall serve at the pleasure of the Board of Commissioners and may be removed by the Board with or without cause.

(1) A member of the Board of Commissioners.

(2) A member of the Planning Board, appointed by the membership of the Planning Board, shall serve in an ex officio status on the Community Appearance Commission; this position shall have no vote on matters before the Community Appearance Commission. The Planning Board representative shall provide assistance and guidance on issues and matters under consideration by the Planning Board that may have pertinent bearing on issues and matters before the Community Appearance Commission.

(3) The Town Manager shall assign such staff members to provide support to the Community Appearance Commission as deemed necessary and appropriate.

(4) No member of the Community Appearance Commission shall be eligible to serve more than two full terms consecutively, but may serve two three-year terms and a portion of a third term before sitting out at least one three-year term prior to seeking reappointment to the Community Appearance Commission.

(D) At its organizational meeting, the Community Appearance Commission shall select a Chairman and Vice-Chairman. Thereafter, at its first meeting during a new calendar

## TOWN OF KILL DEVIL HILLS

year the Community Appearance Commission shall select a Chairman and Vice-Chairman. The officers shall be eligible to succeed themselves.

(E) Faithful attendance at the meetings of the Commission is considered a prerequisite for the continuation of membership on the Commission. A majority of the Commission members may recommend to the Board of Commissioners, for action, the removal of any member who misses more than one-third of the meetings during any 12-month period.

### **Section 31.21 Duties of the Appearance Commission**

The Community Appearance Commission shall serve the Board of Commissioners in an advisory capacity. The Commission's responsibilities may include, but are not necessarily limited to:

(A) Studying the visual needs of the town and recommending plans to carry out programs that will, in accordance with the powers herein granted, enhance and improve the visual quality and aesthetic characteristics of the town;

(B) Initiating, promoting and assisting in the implementation of programs of general community beautification in the town;

(C) Coordinating the activities of individuals, agencies and organizations, public and private, whose plans, activities and programs bear upon the appearance of the town;

(D) Preparing both general and specific plans for the improved appearance of the town. These plans may include the entire town or any part thereof, and may include private and public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the town or any part thereof within its area of planning and zoning jurisdiction, including public ways and areas, open spaces and public and private buildings and projects;

(E) Participating in the implementation of the plans it develops;

(F) Formulating and recommending to the Planning Board and Board of Commissioners the adoption or amendment of ordinances, including the zoning code, subdivision regulations and other local ordinances proposing to regulate the use of property to enhance the appearance of the town;

(G) Directing the attention of town officials to necessary enforcement of any ordinance that may improve the appearance of the town;

(H) Seeking voluntary adherence to the standards and policies of the plans developed by the Community Appearance Commission;

(I) Promoting public interest in and an understanding of its recommendations, studies and plans;

## TOWN OF KILL DEVIL HILLS

### **Section 31.22 Meetings of the Community Appearance Commission**

(A) The Community Appearance Commission is a public body and as such shall use *Suggested Rules of Procedure for Small Local Government Boards* as its official procedural guide. It shall keep an accurate record of the business transacted before it, which records shall be open to the public. A record of the attendance of its members shall be kept.

(B) The Community Appearance Commission may meet monthly, but shall meet at least once quarterly; all meetings shall be open to the public in accordance with the North Carolina Open Meetings Law, G.S. 143-318. Special meetings, at the call of the chairman, shall be held as necessary. A quorum shall consist of four members of the Community Appearance Commission.

### **Section 31.23 Staff Services; Advisory Council**

The Community Appearance Commission may recommend to the Board of Commissioners suitable arrangements for the procurement or provision of staff or technical services for the Commission and the Board may appropriate such amount as it deems necessary to carry out the purposes for which the Commission was created. The Commission may establish an advisory council or other committees.

### **Section 31.25 Receipt and Expenditure of Funds**

The Board of Commissioners may receive contributions from private agencies, foundations, organizations, individuals, the state or federal government or any other source for the purposes of this section. The Community Appearance Commission may disburse these funds for any purpose within the scope of its authority as specified in this subchapter in the Community Appearance Commission's annual budget as approved by the Board of Commissioners. However, all expenditures by the Community Appearance Commission shall be recorded in the monthly minutes of the regular Board meetings for the expenditures of the previous month. All sums appropriated by the town to further the work and purposes of the Commission are deemed to be for a public purpose and a necessary expense.

**TOWN OF KILL DEVIL HILLS**

**BAUM TRACT SITE STUDY COMMITTEE – Ten Regular Members, Nine Voting/Chair is Non-Voting**

Hogan, Mike <u>Commissioner/Mayor Pro Tem/Chair, BTSSC</u> 809 Sixth Avenue Kill Devil Hills, NC 27948	Home: 252-256-0036
Dail, Derek 803 Seventh Avenue Kill Devil Hills, NC 27948	Home: 489-9285
Davies, Daryl 121 Porthole Court Kill Devil Hills, NC 27948	Home: 384-3494
Froehlich, Jerry 414 Wallace Street P.O. Box 1005 Kill Devil Hills, NC 27948	Home: 480-3488
Harris, Jackie 902 Swan Street P.O. Box 3301 Kill Devil Hills, NC 27948	Home: 441-3718
McAvoy, Bernard 1810 Bay Drive Kill Devil Hills, NC 27948	Phone: 256-2986
Miller, Jim 700 S. Memorial Boulevard Kill Devil Hills, NC 27948	Home: (252) 402-7682
Rollason, III, Robert E. 706 Seventh Avenue Kill Devil Hills, NC 27948	Home: 475-0002
Young, Tanya 518 Parkwood Drive Kill Devil Hills, NC 27948	Home: 423-0099

**Baum Tract Site Study Committee. Grounds Rules for Procedure.**

The BTSSC was established by a public body and is therefore subject to the North Carolina Open Meetings Law (Chapter 143, Article 33C of the General Statutes, attached).

## TOWN OF KILL DEVIL HILLS

Members of the BTSSC are appointed for a finite term that will expire when their task is completed.

Meetings of the BTSSC shall be held at \_\_\_\_\_ .m. on the \_\_\_\_\_ day of each month. The group may hold special meetings on an as-needed basis to accomplish its business.

The purpose of these ground rules is:

- To enable the group to transact business expeditiously and efficiently;
- To preserve a spirit of cooperation; and
- To preserve the pleasure of the group on any matter.

### **PARTICIPANTS AND PARTICIPATION**

1. The BTSSC is comprised of voting members who will fully and directly engage in group deliberations.
2. The BTSSC is chaired by Commissioner Mike Hogan of the Board of Commissioners. The Chair will manage discussions, using more or less structure depending on the nature of the discussions.
3. The BTSSC shall consist of 10 members, including the chairperson, all of whom shall be residents of the Town. Members are desired to represent a mix of Kill Devil Hills' business and residential communities and candidates need not own property in Kill Devil Hills to be considered for appointment. While experience in land usage, recreation, land development, engineering, etc., are all useful and desirable characteristics, they are not required. Community interest, commitment, and enthusiasm are characteristics required of all potential appointees.
3. To assure an effective process, members agree to make every effort to attend all meetings and to stay current with information provided and BTSSC decisions. Voting members may not designate alternates for any group meeting.
4. The public is welcome to attend all meetings, and while public comment will be sought and is welcome, members of the audience are not participants in the group's deliberations. The attending public will be offered an opportunity to comment by the chair, as they may deem appropriate. Written comments of any length are welcome throughout the process and will be included with the minutes and packet materials for the meeting at which they are submitted.

### **MEETING DISCUSSIONS AND PROCEDURES**

1. Each group member agrees to honest and direct communications. Participants are expected to support the process and its concept, and, through the group

## **TOWN OF KILL DEVIL HILLS**

process, in good faith collaborate toward completion of its task as charged by the Board of Commissioners.

2. Participants are encouraged to frame observations in terms of needs and interests.
3. Decisions will be made during meetings by majority vote of the membership present.
4. Minutes of the meetings will be prepared which will serve as a summary of the issues. Observations contained in the minutes may not necessarily be individually attributed. If members desire, they may submit attributed information and/or written comments directly to the Town Clerk for inclusion with the minutes of each meeting. All minutes, packet materials, attributions and other information pertinent to the discussions and decision-making process will be made available for public inspection.

### **DECISION-MAKING AND DESIRED OUTCOMES**

1. All group members are equal during the deliberation process.
2. Only one subject may claim the attention of the group at one time.
3. Each item presented for consideration is entitled to full and free discussion.
4. All group members will engage directly in the entire process. Discussions will strive to identify common ground among all participants to deliver the most powerful collective statement possible. When common ground cannot be identified, the opinions of individual participants will be respected and documented as they emerge. Participants are expected to provide objective fact-based comments and alternatives during discussions.
5. All final recommendation will be supported by a group vote.

# TOWN OF KILL DEVIL HILLS

## OTHER KILL DEVIL HILLS APPOINTMENTS

By the Dare County Board of Commissioners (**DCBOC**)  
By the Kill Devil Hills Board of Commissioners (**KDHBOC**)

### **DARE COUNTY TOURISM BOARD (Nominated by KDHBOC, Appointed by DCBOC)**

Commissioner Mike Hogan

As funding increased because of newly ratified tax legislation, the Dare County Tourism Board was reorganized in 1991 to place more responsibility on the Dare County local governments to regulate and control usage of public funds. The Dare County Board of Commissioners selects the elected officials to serve on the Tourism Board from nominations submitted by the Dare County municipalities.

Legislation Creating Dare County Tourism Board: ...The Tourism Board shall consist of 13 members appointed by the board of commissioners as provided below. Members of the tourism board must be residents of Dare County. Members shall serve two-year terms except as provided below. No member may serve more than two successive two-year terms.

[...]

- (5) Five members shall be one member from each of the town boards of Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo, who shall serve initial terms respectively of one year, two years, one year, two years, and one year, and who shall be selected from nominees submitted by each of the respected town boards.

[...]

The board of commissioners may remove a member of the tourism board only for good cause. Members shall serve the full term for which appointed regardless whether the member is no longer a member of the appropriate board designated above. ...

### **DARE COUNTY LAND TRANSFER TAX APPEALS BOARD (Nominated by KDHBOC, Appointed by DCBOC)**

Jacqueline Ricks-Sample  
P. O. Box 1367  
Kill Devil Hills, NC 27948

Established in 1985 when Dare County implemented the Land Transfer Tax, representatives on this board are nominated by the municipalities and appointed by the Dare County Board of Commissioners.



## TOWN OF KILL DEVIL HILLS

### **TOWN MANAGER (KDHBOC)**

Debora P. Díaz

#### **§ 160A-147. Appointment of city manager; dual office holding.**

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of the manager's executive and administrative qualifications. The manager need not be a resident of the city or State at the time of appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution... (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1989, c. 49; 1997-25, s. 1; 2009-321, s. 1.)

### **TOWN ATTORNEY (KDHBOC)**

Casey C. Varnell, Attorney at Law  
Sharp, Graham, Baker & Varnell, PLLC  
P. O. Drawer 1027  
Kitty Hawk, NC 27949

#### **§ 160A-173. City attorney; appointment and duties.**

The council shall appoint a city attorney to serve at its pleasure and to be its legal adviser. (1971, c. 698, s. 1.)

### **GOVERNMENT EDUCATION ACCESS CHANNELS COMMITTEE (KDHBOC)**

Mayor Sheila F. Davies

Oversight of the two government/education channels (Gov-Ed TV) is the responsibility of the Government Education Access Channels Committee composed of all the Dare County local governments and three education entities (COA, the Board of Education & UNC CSI). The committee meets monthly / bi-monthly on the fourth Thursday of the month at 3:30 p.m. at the Dare County Administration Building in Manteo. Administration and coordination of Gov-Ed TV is through the Dare County Public Information Office under direction of the committee. The Town's representative on this committee is required to be a member of the Board of Commissioners.

### **DARE COUNTY SHORELINE MANAGEMENT COMMISSION (KDHBOC) -**

Commissioner Brandi Rheubottom

In March 2005 the Dare County Board of Commissioners requested an appointment from the KDH Board for one of its members to sit on a new Shoreline Management Commission, the purpose of which was to oversee and advocate the preservation of and restoration of the shorelines of Dare County. This appointment must be an elected official.

## TOWN OF KILL DEVIL HILLS

### Appendix. Resource. North Carolina General Statutes.

#### § 128 1.1. Dual office holding allowed.

(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions.

(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county board of elections under the supervision of the State Board of Elections. (1971, c. 697, s. 2; 1975, c. 174; 1987, c. 427, s. 10; 2006 259, s. 24(a); 2011 31, s. 13.)

### Appendix. Resource. Joseph P. Knapp School of Government, University of North Carolina at Chapel Hill.

#### **Wearing Several Hats: Multiple and Ex Officio Office-Holding By Fleming Bell On April 20, 2010 @ 4:05 PM In Board Structure & Procedures, Ethics & Conflicts |**

In an earlier blog [1], I discussed the meaning of “public office.” As promised, I will now examine multiple and ex officio office-holding.

North Carolina has long had a state policy against concentrating too much government power in the hands of one individual. Reflecting this concern, all of the state’s constitutions until 1971 banned the holding of more than one elective or appointed office at one time, and the current law generally limits any one person to one elective and one appointive office, or two appointive offices, at the same time. G.S. 128-1.1 [2].

Ex Officio Service. Perhaps because of the harshness of the pre-1971 rule, the courts developed the doctrine of ex officio office-holding, which is still important today. Even the current office-holding rules may still seem unduly restrictive at times, and that is where the ex officio concept comes into play.

## TOWN OF KILL DEVIL HILLS

**Ex officio** is a Latin term meaning “of or from the office.” A person holding one office is said to be serving ex officio in a second office if she or he holds the second by virtue of holding the first. For example, a city clerk might serve ex officio as the city’s finance officer, if the finance officer’s duties are included in the clerk’s job description, or a county commissioner might serve ex officio on the county’s airport authority if the commissioner’s duties are considered to include that service.

A person who holds an office ex officio has all of the same rights, powers, and obligations as any other office-holder. If the ex officio office is service on a board, the ex officio board member has the same right to vote as any other board member. There are only two differences between ex officio and “regular” office-holding. The first and obvious one is the method of appointment. The second difference is the subject of this blog—offices held ex officio are not counted for multiple office-holding purposes.

The statutes explicitly recognize the concept of ex officio service. For example, G.S. 130A-35(b) [3], and 130A-37(b) [4], require county commissioner representation on local boards of health. This additional service is part of the duties of office for the commissioner-members.

The most important statute allowing for ex officio service is G.S. 128-1.2 [5]. It specifies that whenever a city council or a board of county commissioners appoints one of its members or certain other local officials to another board or commission, the individual appointed is considered to be serving on the other board as part of the person’s duties of office and is not to be considered to be serving in a separate office, unless the resolution of appointment provides otherwise.

An Illustration. An inquiry that I recently received illustrates how the rules for multiple and ex officio office-holding work. I was asked for advice about the following situation.

Mr. A is a member of the jurisdiction’s governing board. That is clearly one office. Mr. A is also active in a non-profit organization that promotes sporting activities in the community. The non-profit was formed by joint city-county action, it receives funding from both the city and the county, and its board of directors is appointed by the city and the county. Is that a second office for Mr. A?

The governing board is now thinking about appointing Mr. A to a tourism development authority that was authorized by a local legislative act. It is a public authority under the Local Government Budget and Fiscal Control Act. Would that be a third office? Finally, Mr. A also serves as the governing board’s liaison to the planning board and as a member of the jurisdiction’s transportation advisory committee. Are these fourth and fifth offices? Is there a multiple office-holding violation?

### **Analysis**

Non-Profit Corporation Board. Non-profit corporation board members are generally not considered to be public officers, since they serve a private corporation rather than the government. Thus, they are generally not subject to multiple office-holding laws at all.

## TOWN OF KILL DEVIL HILLS

However, this situation is a bit different, in that there are significant ties between the non-profit and the city and county. In some cases, the courts have been willing to treat non-profits as government departments if they have sufficiently strong connections to the government. The fact that the non-profit's board is appointed by the city and county, together with the roles of the city and county in creating and funding the non-profit, might lead a court to such a conclusion here.

Tourism Development Authority. A tourism development authority member probably holds a public office, especially if the authority has the power to do such things as hire staff, budget and spend money, contract, hold title to property, and sued and be sued. Public offices are positions that involve the exercise of a portion of the sovereign's power, and the exercise of discretion in carrying out the types of tasks listed probably qualifies.

Liaison to the Planning Board. While the position of liaison is no doubt quite important, carrying out this assignment likely does not involve the exercise of significant independent decision-making power or discretion, so the position is most likely not a public office.

Transportation Advisory Committee. Members of advisory groups are not public officers, since they, like the liaison, do not have discretionary decision-making powers. They only give advice.

Conclusions. Without the law on ex officio office-holding, I would conclude that Mr. A (1) holds one elective office (board member); (2) probably holds one appointive office (member of the board of a non-profit corporation with substantial ties to the government); and (3) holds two advisory positions that are not public offices (planning board liaison and transportation advisory committee member). I would caution that Mr. A was probably already holding the maximum of two public offices, and could not be appointed to another office (tourism development authority member) without giving up one of the two current offices. I could not be completely sure of this answer, however, since I would not know definitely how a court would treat the non-profit board membership.

In the midst of this uncertainty, the ex officio statute, G.S. 128-1.2 [1], comes to the rescue. Recall that under its provisions, whenever a governing board appoints one of its members to another board, that member is considered to be serving in the other position as part of the member's duties of office as a governing board member and not to be holding a separate office, unless the appointment resolution provides otherwise.

Because of the doctrine of ex officio office-holding as expressed in this statute, Mr. A can hold a position on the tourism development authority as part of his duties as a governing board member. In addition, Mr. A need not be concerned about whether the non-profit corporation that promotes sporting activities might be considered to be a part of the government. Even if membership on the non-profit's board were found to be a public office, Mr. A could serve on the board ex officio.

### **What's a "Public Office"?**

**By Fleming Bell On February 17, 2010 @ 1:27 PM In Board Structure & Procedures, Ethics & Conflicts, Open Government |**

## TOWN OF KILL DEVIL HILLS

### What's a "Public Office"?

I am often asked to explain what it means to hold a public office. The questioner is sometimes trying to decide whether a particular person must take an oath, which is required of public office-holders. Or, the person may be trying to determine whether certain positions may be held simultaneously under North Carolina's constitutional and statutory multiple office-holding restrictions.

North Carolina's case law on office-holding is both venerable and extensive. Indeed, most of the rules that we follow today were originally developed in the late 1800s and the early 1900s.

Interest in office-holding probably arose because of a provision in North Carolina's pre-1971 constitutions that allowed a person to hold only one "office or place of trust or profit" at a time. ("Office" and "place of trust or profit" have basically the same meaning.) Perhaps because of this rule's strictness, questions often arose about two issues.

First, it was important to know the meaning of the term "office or place of trust or profit" because the ban did not apply to positions that were not such "offices" or "places." Second, questions arose about the distinction, if any, between holding an office and performing the duties of an office as part of the responsibilities of another office, in order to avoid violating the ban. This practice is called *ex officio* office-holding. Both of these issues remain important today, even though the present multiple office-holding rules are somewhat more liberal.

In this post, I will explore the meaning of the term "public office," and will explain generally what are and are not public offices.

In a later post, I will examine North Carolina's rules about holding multiple public offices, including the doctrine of *ex officio* office-holding.

If this subject interests you, you may also wish to consult David Lawrence's earlier posts on oaths (Oaths of Office: How Many and By Whom? [1] and Filing oaths of office [2]) and on city and county attorneys as public officers (City and County Attorneys as Public Officers — Possible Downsides [3], and City and County Attorneys as Public Officers — A Possible Upside [4]).

Several factors must be taken into account in deciding whether a particular position is a public office. Does the position in question involve the exercise of independent decision-making power on behalf of the state or a duly constituted state subdivision such as a city or county, rather than being merely advisory? Is that power given by constitution or statute and does its exercise involve the carrying out of an important part of the executive, legislative, or judicial functions of government? Does the occupier of the position have significant legal power to make enforceable decisions concerning people's life, liberty, or property? Affirmative answers to one or more of these questions are a good indication that the position under consideration is indeed a public office.

## TOWN OF KILL DEVIL HILLS

Although most public officers are required to take oaths and most receive a salary or fees, these items “are mere incidents and constitute no part of the office.” If no salary or fees are involved, “it is a naked office—honorary—and is supposed to be accepted merely for the public good.” Further, a public office does not have to be continuing in nature. An office could involve doing only one act or it could be held for several years. *State ex rel. Clark v. Stanley*, 66 N.C. 60, 63-64 (1872).

The dividing line between public offices and public employment generally is often hard to draw. In one case, the North Carolina Supreme Court explained that “[t]he true test of a public office seems to be that it is parcel of the administration of government, civil or military, or is itself created by the law-making power.” *Eliason v. Cooper*, 86 N.C. 236, 240-41 (1882) In another decision, it stated that an office involves “a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public, by which it is distinguished from employment or contract.” *State ex rel. Barnhill v. Thompson*, 122 N.C. 493, 495-96, 29 S.E. 720, 721 (1898).

Here are two other examples. One case involved a person who served on the Raleigh Board of Aldermen at the same time that he was employed as the night watchman for the federal courthouse under an appointment from the United States Treasury department. The supreme court concluded that while the position of alderman was a public office, the position of night watchman was not. It explained that the watchman was “employed in a specific service having none of the attributes to raise it to the dignity of the constitutional disqualification.” *Doyle v. Aldermen of Raleigh*, 89 N.C. 133, 135–36 (1883).

In a later case, the court concluded that the city government position of sinking fund commissioner was an office, rather than a “mere public employment,” due to several characteristics of the position. It “was not of a temporary character, and the duties were continuous and not intermittent. The incumbent was required to perform continuous public service for a definite period and of a very responsible character.” *Borden v. City of Goldsboro*, 173 N.C. 661, 662, 92 S.E. 694, 695 (1917).

Unfortunately, most parts of these definitions are not particularly useful. A great many public jobs are concerned in some way with the administration of government. Most are permanent rather than temporary, with continuous, non-intermittent duties. All public positions by their very nature involve public service and are exercised for the benefit of the public. And what specific attributes raise a public position to the “dignity” of a public office? Do not all public positions derive their legitimacy from the sovereign and hence involve “sovereign functions”?

Public offices are positions that involve significant responsibility and discretion under the law. The one characteristic that might provide a useful distinction is the last one mentioned in the cases above: public offices involve public service of “a very responsible character.” This trait of great responsibility may well be what the Eliason court had in mind when it explained that a portion of a country’s (or state’s) sovereignty attaches for the time being to a

## TOWN OF KILL DEVIL HILLS

public office. *Eliason v. Cooper*, 86 N.C. at 239-40. Perhaps another way to state the same idea is to say that public officers have a good deal of independent decision-making power involving the exercise of discretion.

Thus, the fact that someone holds a public job does not alone make that person a public officer for multiple office-holding purposes. But the more discretion, responsibility, and power to make decisions that a position involves, the more likely that courts will see that position as a public office rather than as “mere employment.” And this may be particularly true if the position involves the relatively direct exercise of the State’s authority.

The position of city or county manager provides a good example. Managers can be characterized as public officers due to the amount of independent discretion that they exercise, discretion that they have been delegated by the state. See *Leete v. County of Warren*, 341 N.C. 116, 119, 462 S.E.2d 476, 478 (1995) (county manager); *State ex rel. Grimes v. Holmes*, 207 N.C. 293, 298, 176 S.E. 746, 748 (1934) (city manager); and *Ratcliff v. County of Buncombe*, 663 F. Supp. 1003, 1009–10 (W.D.N.C. 1987) (county manager) for examples of how the courts have treated the manager position.

A 1965 supreme court case supports this view. In that case, the court examined the question of whether police chiefs and police officers are public officers or public employees for purposes of G.S. 14-230 [5], which deals with willful failure by public officers to discharge official duties. The court pointed out that what determines a police officer’s status is “the nature and extent of his duties and responsibilities with which he is charged under the law.” In language similar to that found in multiple office-holding cases, it referred to the position’s creation by the sovereign power and its exercise of part of that power as distinguishing an office from employment. *State v. Hord*, 264 N.C. 149, 155, 141 S.E.2d 241, 245 (1965) (citation omitted). The court held that duly appointed chiefs of police, as well as police officers, are public officers rather than mere employees within the meaning of G.S. 14-230. *Id.*

In determining whether a position is an office, North Carolina’s courts will look at whether the powers attached to the position are those of a public office, not at whether those powers are actually being exercised. If the position has the powers of an office, it is an office. Similarly, the term of the position is unimportant.

Positions that do not actually involve the exercise of sovereign power but are merely advisory are not public offices. No matter how wise or extensive one’s advice may be, nor how much it is listened to by others, a position is not a public office if one can only advise and not decide.

Thus, for example, the members of a local planning board are not public officers if they only make recommendations to the governing body concerning re-zonings and subdivision plats. But if the planning board is given the responsibility of approving subdivision plats, so that a plat cannot be recorded in the register of deeds office without that approval, the position of planning board member is probably an office. Decisions about governmental recognition of

## TOWN OF KILL DEVIL HILLS

a particular scheme for dividing land involve discretion and the exercise of a fair amount of sovereign governmental power.

A position that involves the wielding of significant legal control over people's lives is generally a public office. This test for a public office is suggested by the last example. As noted above, if I want to record a subdivision plat, I may be required by law to go to the planning board for its approval. As another example, certain types of transactions will not be recognized in a court of law unless the parties' signatures are notarized. The notary public is a public officer, N.C. Constitution, art. VI, § 9(2) [6]; *State ex rel. Attorney-General v. Knight*, 169 N.C. 333, 353, 85 S.E. 418, 428 (1915), just as the members of a planning board with plat approval authority probably are. Both types of officials may have received that designation as much because of the legal power that they have over people's lives as because of the amount of independent discretion that they exercise.