

Minutes of the Monday, December 13, 2021, regular meeting of the Kill Devil Hills Board of Commissioners held at 6:00 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Participating: Commissioners Terry Gray, Ivy Ingram, Bernard "B.J." McAvoy, and John Windley

Members Not Participating: Mayor Ben Sproul

Others Participating: Debora P. Díaz, Town Manager; Meredith Guns, Planning Director; and James Michael O'Dell, Deputy Town Clerk

Call to Order

At 6:02 p.m., Mayor Pro Tem Ivy Ingram opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present. She shared that Mayor Sproul was out of the area traveling for the holidays.

Pledge of Allegiance and Moment of Silence

Agenda Approval

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

Public Hearing

1. Recommended local historic designation (Attached PH-1A)

A. 3208 North Virginia Dare Trail – Wolcott Cottage

Ms. Díaz read aloud the rules for the public hearing and then opened the hearing. Notice for the following item has been published in the *Coastland Times*, meeting or exceeding the N.C.G.S. requirements for public hearings, posted on the Town's bulletin boards, website at <https://www.kdhnc.com/951/December-13-2021-Board-of-Commissioners->, and social media platforms, and had been disseminated through the town's electronic distribution list.

This Local Historic Designation was considered by the Historic Landmarks Commission (HLC) at its November 3, 2021, meeting, at which time the HLC voted to recommend it for public hearing by the Board of Commissioners. The Board of Commissioners set its own public hearing at the November 13, 2021, meeting. The property's owners are in support of the property designation.

Commissioner Windley moved to approve the ordinance designating the property located at 3208 North Virginia Dare Trail, known as the Wolcott Cottage, as a Local Historic

Designation. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

Public Comment

Commissioner Gray, in his role with the Dare County Motorsports Group, highlighted the 2021 Dare County Toy Run, which provides funding for Christmas gifts for children throughout Dare County. He acknowledged the assistance of the Kill Devil Hills Police Department, which assisted in this year's event, and presented a plaque highlighting their efforts.

Response to Public Comment

Introductions and Presentations

1. 2021-2022 Community Appearance Awards (Attached IP-1)

Community Appearance Commission (CAC) Chairperson Sue Kelly detailed the group's goals and process in selecting the commercial establishments that achieved recognition in the Town's biennial Community Appearance Awards. She and Commissioner Windley presented certificates and awards to the local businesses.

2021-2022 Community Appearance Award – Most Improved

Winner: Swells'a Brewing Beer Company

Nominees: The Beach Music Shop; For the Dogs, LLC, building; and The Holistic Pet Shop.

2021-2022 Community Appearance Award – Multi-Unit Complex

Winner: Max's Italian Restaurant & Pizzeria

Nominees: Beach Fitness; The Beach Music Shop; Hang 12 Art Studio; and Holy Cow Creamery

2021-2022 Community Appearance Award

Winner: Professor Hacker's Lost Treasure Golf

Nominees: Ashley's Espresso Parlour & All-Time Roasting Company; Outer Banks Presbyterian Church; and Rose, Harrison, Gilreath & Powers, PC.

Old Business

New Business

1. **Organizational Meeting: Certification of election results, oaths of office, and organizational items (Attached NB-1A, NB-1B and NB-1C)**

A. **Certification of election results**

Deputy Town Clerk Michael O'Dell certified for the record of this meeting the results of the November 2, 2021, municipal election for the Town of Kill Devil Hills.

Ben Sproul – Mayor – 490 votes

Terrance (Terry) Gray – Commissioner – 437 votes

John Windley – Commissioner – 438 votes

B. **Oaths of office**

[Clerks Note: Mayor Sproul was out of town and unable to attend this meeting. His oath of office will be administered at a later date; however, the remaining oaths were administered in this organizational meeting.]

Mr. O'Dell administered oaths of office to Commissioner Terry Gray and Commissioner John Windley.

C. **Appointment of Mayor Pro Tem**

Commissioner Gray nominated Ivy Ingram as Mayor Pro Tem for the Town of Kill Devil Hills. Commissioner Windley seconded the nomination. With a unanimous, 4-0, vote, Ingram was re-appointed as the Mayor Pro Tem. Mr. O'Dell then administered the oath of office.

At 6:32 p.m., a brief break in the proceedings was called and everyone was invited to stay for refreshments.

The meeting reconvened at 6:36 p.m.

2. **Beach driving ordinance amendment (Attached NB-2)**

Mayor Pro Tem Ingram stated Kill Devil Hills and Nags Head have a reciprocal agreement with their respective beach driving programs in which vehicles with a KDH permit are recognized and permitted on Nags Head beaches, and vice versa.

In 2021, the General Assembly approved legislation that permits licensed and registered modified utility vehicles (MUTVs) on certain roadways, which could include on the Town's beaches. At its November 3, 2021, meeting, the Nags Head Board of Commissioners amended its town ordinances to classify MUTVS as ineligible for beach driving.

In order to avoid confusion and maintain consistency with beach driving programs, the Police Department has recommended identical language for inclusion into the Town Code.

Commissioner Gray moved to adopt this ordinance as presented. Commissioner Windley seconded the motion, which was approved by a unanimous, 4-0, vote.

Committee Reports

Commissioners' Agenda

Commissioner McAvoy

First Flight Middle School Concert Band Commissioner McAvoy shared that the high school and middle school concert band would perform a holiday concert together on December 16. He encouraged everyone to attend.

Santa Claus neighborhood visits He thanked the Police and Fire Departments for assisting Santa Claus with his visits to KDH neighborhoods.

Third Street infrastructure improvements He recognized the Public Services Department and contractors for the work on the Third Street improvements.

Mayor Pro Tem Ingram

Aviation Park decorations and First Flight Holiday Markets Mayor Pro Tem Ingram expressed appreciation to the Buildings and Grounds Division for its hard work on holiday decorations at Aviation Park. She also thanked Town Staff for its work with the holiday markets.

Mayor's Agenda

Town Manager's Agenda

1. Proposed 2022 Board of Commissioners meeting schedule

Ms. Díaz highlighted the proposed BOC meeting schedule and noted that schedule changes may be made at any time. Two open comment public forums are scheduled: the spring forum on April 27 and the autumn forum on October 10. She stated that with a recent determination by the N.C. Supreme Court, the North Carolina Primary has been moved from March to May 17, 2022, with an early voting session scheduled from April 28 to May 14. Town Hall serves as an early voting and polling location.

The tentative BOC meeting schedule reflected a meeting schedule in response to the Court's decision, and was recommended as follows:

Monday, January 10	Monday, June 13
Wednesday, January 26	<u>Wednesday, June 22 June 27 – potential scheduling conflict, for discussion</u>
Monday, February 7	Monday, July 11
Monday, March 7	Monday, August 8
Monday, April 11	Monday, September 12
Wednesday, April 27 (public forum)	Monday, October 10 (public forum)
Monday, May 9 May 16	Monday, November 14
Wednesday, May 25	Monday, December 12

Following discussion, members proposed May 16 and June 27 as regular meeting dates.

Commissioner Gray moved to approve the 2022 Board of Commissioners meeting schedule as presented, including May 16 and June 27 meeting dates. Commissioner Windley seconded the motion, which was approved by a unanimous, 4-0, vote.

2. Board of Commissioners Retreat

The BOC has expressed a desire to hold a half-day retreat for discussion of general topics in the meeting room at Town Hall. Mayor Sproul has previously indicated his availability on three Saturdays in January: January 8, 15, or 22.

Commissioner Windley moved to schedule the BOC retreat for January 8, 2022, at 9:00 a.m. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 4-0, vote.

[Clerk's note: following scheduling conflicts, the Board, through consensus, postponed its retreat and determined to select a new date at its January 10, 2022, meeting.]

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. November 8, 2021

2. Monthly report (Attached CA-2A)

A. October 2021

3. Budget Amendment (Attached CA-3A)

- A. BA #8 – to pay for the installation of new in-car systems for Police Department patrol division fleet.

4. An Ordinance Enacting and Adopting Supplement #17 to the Code of Ordinances for the Town of Kill Devil Hills (Attached CA-4)

The Town recently received Supplement #17 to the Town Code and the ordinance is presented at this time for adoption, which was completed by American Legal Publishing Corporation. The action reinforces the Board's earlier actions in adopting the individual ordinances that comprise this supplement. Supplement #17 has been reviewed and found to be accurate to the Board's actions.

Approval of the Consent Agenda records approval of this ordinance.

5. Dare County Tourism Board nominations – to record consensus of BOC for nominations

Members of the Dare County Tourism Board (DCTB) serve a two-year term and are appointed by the Dare County Board of Commissioners; each municipality has a representative. Mayor Pro Tem Ingram is completing her first term as the Town's DCTB representative. The Dare County BOC requested that the Town submit the names of three members of the BOC for consideration for appointment. Town nominees could not be submitted prior to the certification of the municipal election, and the Dare BOC's consideration of DCTB nominees was prior to this BOC meeting. Through consensus, the following nominees were submitted (in order): Mayor Pro Tem Ingram, Commissioner Windley, and Commissioner McAvoy.

Approval of the Consent Agenda records the Town's DCTB nominee slate by the Board of Commissioners.

[Clerk's Note: The Dare County Board of Commissioners appointed Mayor Pro Tem Ingram for a second term on the Tourism Board at its December 6, 2021, meeting.]

6. Coastal Studies Institute: C-CoAST research program letter of commitment (Attached CA-6)

Coastal Studies Institute Executive Director Reide Corbett recently contacted the Town, requesting a letter of commitment (LOC) for its Collaboratory for Coastal Adaptation over Space and Time (C-CoAST) project, which will be a "community engagement effort led by mutual resilience of communities, ecosystems, and landscapes," focusing on coastal areas in Dare and Hyde Counties. In applying for National Science Foundation funding, the C-CoAST project requires proof of support by the local governments in the proposal.

Approval of the Consent Agenda records the Board's consensus for the Town's letter of commitment.

7. Resolution Opposing any Changes to N.C. Shrimp Fisheries Management Plan (Attached CA-7)

Recently, the Marine Fisheries Commission considered Amendment 2 to its Shrimp Fisheries Management Plan (FMP), which would have established a permanent closure to commercial shrimp trawling in areas of the sound that would have mostly eliminated shrimping in Dare County waters.

Approval of the Consent Agenda records the BOC's consensus and enters the resolution into the meeting's record.

8. Consensus approval of joint Dare County/KDH infrastructure improvements (Attached CA-8)

The Town and Dare County have been considering the construction of a joint public safety/emergency response complex on the former Mako's Restaurant site, south of the current Fire Station. Architects for the County have developed a preliminary plan accommodating current and future needs of Dare EMS and KDH Fire Departments.

Approval of the Consent Agenda records the BOC's consensus to continue the Town's cooperative efforts to construct a joint EMS/Fire facility as outlined in the Town Manager's memorandum, along with related budget planning topics.

9. Schedule Public Hearings

Public hearings are required for each of the following items. Staff recommended the BOC schedule each for public hearing on Monday, January 10, 2022 at 6:00 p.m.

A. Special Use Application (Attached CA-9A)

1. 2003 S. Croatan Hwy in the Commercial Zone – to add Outdoor Dining Activity Area

This special use application was submitted by Noosa Beach Grille for an Outdoor Dining Activity Area at 2003 N. Croatan Highway within the Commercial Zone. As a Special Use accessory to a restaurant, there are 12 applicable conditions in Subsection §153.177(H), which are attached, along with the commercial site plan application, proposed site plan, and Dare County Health Department approval.

The Planning Board reviewed this request at its October 12, 2021, meeting and agreed to forward it to the BOC with a recommendation for approval, subject to one condition, which has since been satisfied. Staff agreed with the Planning Board's recommendation.

The public hearing that will be conducted for this Item will be quasi-judicial in nature. §153.362 of the Zoning Ordinance outlines the details of Special Use applications and the required quasi-judicial/evidentiary hearing and that information is included with the meeting materials for this Special Use request.

B. Zoning Amendments Requests (Attached CA-9B1, 9B2, 9B3, 9B4, and 9B5)

1. §153.210(C) Light Industrial Two Zone – to increase Floor Area Ratio (FAR) for multi-family development

If approved, this requested amendment to regulations within the Light Industrial Two Zone will allow multi-family development projects to utilize FAR for density requirements in a manner similar to existing requirements in the Ocean Impact Residential Zone and Commercial Zone. A graduated FAR has been proposed: from a base of 0.50 to 0.55 if the developer increases the side yard setbacks; and, in addition to the increased setbacks, if the developer increases the side yard buffer by two feet, the maximum FAR factor would be 0.60.

On November 16, 2021, the Planning Board voted to recommend approval of this ordinance. Staff agreed with the Planning Board's recommendation.

2. §153.076(D) Off Street Parking and Loading – to reduce parking requirements for multi-family development in Light Industrial Two Zone

This request to modify off-street parking and loading requirements for multi-family dwelling developments would require a staggered parking reduction depending on how many actual units are proposed, and only if they are not stacking the parking.

At its November 16, 2021 meeting the Planning Board voted to deny recommendation for approval of this request to amend §153.076(D). Staff agreed with the recommendation from the Planning Board; however, the applicant is entitled to the public hearing as part of the overall review process.

[Clerk's note: On December 13, 2021, and prior to this meeting, the applicant notified Staff in writing of his intention to withdraw his application for this request. The notification has been included with the record of this meeting.]

Ms. Díaz noted that the applicant for item 9(B)(2) §153.076(D) Off Street Parking and Loading – to reduce parking requirements for multi-family development in Light Industrial Two Zone, had withdrawn his request and that a public hearing would not be scheduled.

3. §153.310(A) and §153.311(A) Cottage Courts & Cluster Homes – to remove requirement to abut NC12 in the Commercial and Ocean Impact Residential Zones

This requested amendment to sections §153.310(A) and §153.311(A), would remove the requirement for Cottage Courts & Cluster Home developments to abut NC 12 in the Commercial and Ocean Impact Residential Zones.

At is November 16, 2021, meeting, the Planning Board voted to recommend approval by the BOC of the language contained in the Planning Department's attached memorandum dated December 13, 2021.

4. §153.100(D) Ocean Impact Residential Zone and §153.180(C) Commercial Zone - to add density requirements for Cottage Courts & Cluster Homes

Proposed by Staff to establish density requirements for Cluster Homes & Cottages, which were inadvertently overlooked in 2018 when these uses were originally approved, this amendment would add these two uses to the density requirements within the zoning districts in which they are allowed: the Ocean Impact Residential and Commercial Zones. The full ordinance language appears in the Assistant Planning Director's December 13, 2021 memorandum for this item.

5. §153.076(A)(13) Off Street Parking and Loading - to add sidewalk requirements for Cottage Courts & Cluster Homes

If adopted, this proposed amendment will clarify that sidewalk construction/installation will be required of all Cottage Courts & Cluster Homes developments along US 158, similar to all other multi-family and commercial developments.

The Planning Board voted to recommend this amendment, which is fully detailed in the Assistant Planning Director's December 13, 2021 memorandum, for public hearing by the BOC.

Ms. Díaz presented the Consent Agenda and recommended approval.

Commissioner Windley moved to approve the Consent Agenda, omitting item CA-9B2. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

Public Comment

CAC Chairperson Sue Kelly shared the group's meeting schedule and that the CAC would be present at the upcoming First Flight Holiday Market.

Response to Public Comment

Adjournment

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

The time was 6:59 p.m.



Submitted by:

James Michael O'Dell
Deputy Town Clerk

These minutes were approved by the Board of Commissioners on January 10, 2022.

Ben Sproul
Mayor