

Minutes of the Wednesday, April 26, 2023, regular meeting and public forum of the Kill Devil Hills Board of Commissioners held at 6:00 p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, Kill Devil Hills.

Members Participating: Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, and John Windley

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

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

Call to Order

At 6:02 p.m., Mayor Ben Sproul opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present. It was noted that Commissioner B.J. McAvoy was absent due to a conflicting commitment.

Pledge of Allegiance and Moment of Silence

Agenda Approval

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

Public Hearings

Town Attorney Casey Varnell read aloud the rules for public hearings and then opened each hearing.

Notice for the following items has been published in the *Coastland Times*, meeting or exceeding the N.C.G.S. requirements for public hearings. The notice has been posted on the Town’s bulletin boards, on the Town’s website at <https://www.kdhnc.com/1101/April-26-2023-Board-of-Commissioners-Mee>, and social media platforms, and has been disseminated through the Town’s electronic distribution list.

Assistant Planning Director Cameron Ray’s meeting memoranda highlighted the two proposed amendments to the Town Code, which were a result of the joint worksession of the Board of Commissioners and the Planning Board. Discussions at the worksession were to consider options to promote long-term housing in the community, while alleviating the existing housing issues. Staff recommended approval of both amendments.

At its March 21, 2023, meeting, the Planning Board recommended forwarding these amendments to the BOC with favorable recommendations. At its April 5, 2023, meeting, the BOC scheduled these public hearings.

A. Proposed Zoning Amendment — §153.211(B) Light Industrial Two Zone & §153.231(B) Light Industrial One Zone — Modify Mixed Use Development Setback Requirements (Attached PH-1A)

This proposed amendment will align mixed use setbacks in the Light Industrial 1 and Light Industrial 2 Zones to match existing commercial setbacks, unless the property abuts a Residential Low Zoning District. This will protect single family dwellings from a higher intensive land use.

Matt Walker, 439 West Walker Street, Kill Devil Hills, NC – Mr. Walker stated that his remarks were addressing both proposed amendments: he asked the Board to balance the increased density versus the actual assistance to housing issues. He stressed the need for affordable long-term housing but not increasing density that would compound the problem.

Planning Director Meredith Guns stated that the proposed amendment would change the setbacks for mixed use development, which currently meets residential setbacks standards. Commercial setbacks are set at 10 feet, so existing commercial structures cannot be converted to mixed use. She reported that the Staff has received inquiries about development of apartment housing over existing businesses. Ms. Guns said that requirements for the Commercial Zone had changed six to eight months ago, permitting such development in that zone. This would be extending the option for the Light Industrial Zones. It would provide a 10-foot mixed use setback, allowing for a conversion of existing commercial structures into mixed use and commercial structures, unless the commercial property abuts a Residential Low Zone. Ms. Guns stated the proposed amendment does not limit the development to long-term housing. Mayor Sproul stated that this opened up the potential for additional housing options in the Light Industrial Zones, but is also protective of residential areas.

Commissioner Windley moved to approve the amendment as presented, noting that §153.211(B) Light Industrial Two Zone & §153.231(B) Light Industrial One Zone — Modify Mixed Use Development Setback Requirements is consistent with all comprehensive plans and other official adopted plans of the Town of Kill Devil Hills that are applicable. The amendment is reasonable and in the public interest because it encourages mixed use development and provides additional housing options. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

B. Proposed Zoning Amendment — §153.315 (B) Accessory Dwelling Units, §153.116 (C) Low Density Residential Zone Permitted Uses, §153.156 (E) High Density Residential Zone Permitted Uses — Add Accessory Dwelling Units for Long Term Occupancy (Attached PH-1B)

This proposed amendment will categorize Accessory Dwelling Units (ADUs) as permitted uses in the High Density Residential and Low Density Residential Zones, and will only permit ADUs if used for long-term occupancy.

Donna Creef, Governmental Affairs Director, Outer Banks Association of Realtors (OBAR) – Ms. Creef stated that OBAR’s housing policy statements support the development of Accessory Dwelling Units. She had previously submitted written comments for the public hearing, which have been included with the record of the meeting.

Mayor Sproul highlighted that the Board had been discussing this option for some time, and that the Accessory Dwelling Units would be permitted, but that restrictions would be in place as they could only be developed for long-term housing. Commissioner Windley noted that this would only apply to lots large enough to not only sustain the dwellings but also the septic capacity. He said the proposed amendment provided housing opportunities but does not create long-term harm. The Board thanked Staff for its work on developing the amendments.

Commissioner Windley moved to approved the amendment as presented, noting that §153.315 (B) Accessory Dwelling Units, §153.116 (C) Low Density Residential Zone Permitted Uses, §153.156 (E) High Density Residential Zone Permitted Uses — Add Accessory Dwelling Units for Long Term Occupancy is consistent with all comprehensive plans and other official adopted plans of the Town of Kill Devil Hills that are applicable. The amendment is reasonable and in the public interest because it provides additional development options to alleviate long-term housing needs. Commissioner Ingram seconded the motion, which was approved by a unanimous, 4-0, vote.

Public Comment

Response to Public Comment

Ongoing Business

New Business

1. Appointments

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

A. Board of Adjustment

Kevin Cox’s and Michael Lowack’s terms as regular members of the Board of Adjustment expire May 2023; both have expressed a desire for reappointment.

Commissioner Windley moved to reappoint both Kevin Cox and Michael Lowack as regular members to the Board of Adjustment for terms that will expire May 2026.

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

B. Dangerous Animal Appeal Board

Sue Kelly's term as a member of the Dangerous Animal Appeals Board expires June 2023. She has expressed a desire to be considered for reappointment.

Commissioner Ingram moved to reappoint Sue Kelly to the Dangerous Animal Appeals Board for a term that will expire June 2026. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

Committee Reports

Community Appearance Commission (CAC) Chairperson Kelly shared the meeting schedule for the group, and also highlighted the biennial Community Appearance Awards for outstanding businesses. The group will be conducting a Live Oak tree giveaway this year; twenty-six trees were distributed last year.

Dare County Tourism Bureau (DCTB) Commissioner Ingram shared that the Board of Tourism met recently and reviewed the annual budget, along with the long-range tourism plan.

Commissioners' Agenda

Commissioner Gray

Bulk Item Collection – Commissioner Gray expressed appreciation to Staff for the great work on the Town's bulk item collection.

Commissioner Ingram

Outer Banks Forever Commissioner Ingram stated that she had recently joined the Outer Banks Forever organization.

Commissioner Windley

Coastal Resource Advisory Council (CRAC) Commissioner Windley shared he had recently attended the CRAC meeting held in Manteo. He noted there were updated CAMA rules on new or replacement septic systems east of shoreline dunes, which will be going to public comment.

Mayor's Agenda

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

A. Proclamation Declaring April 30 – May 6, 2023, as Hurricane Preparedness Week

Preparation plays a critical role in our coastal environment. With the upcoming storm season, our Emergency Management Director Fire Chief Troy Tilley and Public Information Officer Rachel Tackett remind all of us that preparation for storm events, or even for a visit to our beaches, is the key to weathering the storms that all too often affect our communities or threaten our families.

Mayor Sproul moved that the Board of Commissioners adopt the Proclamation Declaring April 30 – May 6, 2023, as Hurricane Preparedness Week, as presented. Commissioner Ingram seconded the motion, which was adopted by a unanimous, 4-0, vote.

Mayor Sproul also shared information on the following items:

Love Your Live Oak Month Mayor Sproul noted that May is Love Your Live Oak Month in Kill Devil Hills. He noted that the public will be seeing blue bows placed on live oaks around Town Hall and the community to bring attention to our beloved Town tree.

Bulk Item Collection The Town's Bulk Item Collection has just completed. Mayor Sproul and the Board expressed its appreciation to all of Public Services Department crews for the spectacular job they did during the collection.

Groundbreaking Mayor Sproul announced the groundbreaking ceremony for the joint KDH Fire and Dare County EMS Station will be held on Wednesday, May 10, 2023, at 2:00 p.m. He noted that the facility is the result of a great partnership between KDH and the County, and will better serve the citizens of Kill Devil Hills for decades to come. The Town will be sending out more information about the event.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. April 5, 2023

2. Resolution to Establish Materiality Threshold for Recognition of Subscription-Based Information Technology Arrangements (“SBITAs”) under GASB Statement No. 96 (Attached CA-2)

The Governmental Accounting Standards Board (GASB) is an independent, private-sector organization that establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles. GASB regularly develops and issues accounting standards intended to promote financial reporting that provides information to taxpayers, public officials, investors, and others. This resolution addresses software subscription costs and establishes a \$3,000 materiality threshold for subscription-based IT arrangements, or SBITAs.

Approval of the Consent Agenda will authorize the execution of the above resolution.

3. Partnership Reports (Attached CA-3A)

A. Community Care Clinic of Dare

The Town supports four partnership organizations that serve the citizens of Kill Devil Hills: the Community Care Clinic of Dare, Interfaith Community Outreach, Outer Banks YMCA, and Nags Head Woods Ecological Preserve. A requirement of the Town’s partnership is an annual report of the organization’s activities and service to the community. Executive Director Lyn Jenkins submitted the clinic’s annual report, which highlighted the services directly provided to Kill Devil Hills citizens.

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

Commissioner Ingram moved to approve the Consent Agenda, as presented.

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

Public Forum

The following persons provided electronically submitted comments for the Public Forum, which were forwarded to the Board and have been included with the record of the meeting:

Jean R. Basnight, 119, East Carlton Avenue, Kill Devil Hills – Ms. Basnight expressed concern over trash cans left on the curb for long periods.

Randy Burak, 208 David Lane, Kill Devil Hills – Mr. Burak shared his concerns over the commercial development abutting his neighborhood at 1900 North Croatan Highway, which is to be the site of a Wawa convenience store and fuel station. He noted blowing litter and sand from the site, along with sand-blocked drains.

Rob Mitstifer, 914 Console Lane, Kill Devil Hills – Mr. Mitstifer highlighted his concern over pedestrian and cyclist infrastructure in town, and inquired about the Town’s plans for increased pedestrian opportunities.

Mayor Sproul stated that the Board strived to involve the public several times a year to receive feedback on how to make life better for the citizens and visitors of our community. He invited anyone present to share their comments.

Katie Morgan, 101 Maddox Crossing, Kill Devil Hills (Colington) – Ms. Morgan operates OBX Tree Doc, a tree service company. She expressed concern about the development of properties when they are clear cut. She supported more stringent regulations regulating tree services and also maintaining existing and promoting healthy tree growth. She also suggested presentations to share how to best maintain tree health. Commissioner Windley suggested that Ms. Morgan could present at a future Community Appearance Commission meeting. Commissioner Ingram suggested a public course on sustainable care and maintenance of trees. Mayor Sproul also suggested short videos for the public.

Rob Mitstifer, 914 Console Lane, Kill Devil Hills, NC – Mr. Mitstifer noted that he had already submitted electronic comments, but shared his concern about pedestrian opportunities in the community, sharing that a friend had recently died while attempting to cross US 158 on a bicycle. [Clerk’s note: Mr. Mitstifer’s electronic comments have been included in the record of the meeting.]

Mayor Sproul provided an overview of the Town’s longtime systematic approach to roadway maintenance and upgrades, noting that all infrastructure was considered in any project, including the roadway, drainage, and sidewalks / multi-use paths. He highlighted the Town’s development of the Bay Drive Multi-Use Path, the Centennial Paths, and the ongoing sidewalk project along US 158, from Landing Drive to Colington Road, in front of the Wright Brothers Memorial. Mayor Sproul said that decades ago, the Board of Commissioners made the commitment to develop pedestrian opportunities alongside street upgrades and also as independent project. Planning Director Meredith Guns stated that the Town committed \$100,000 a year in the Town’s budget, and regularly spends significantly more. She stated that the Town has an adopted Pedestrian Plan, and that sidewalks have been included in almost all streets improvements projects. She noted sidewalks at East Eden and Third Streets. With the completion of the Wright Brothers Phase V sidewalk project, the sidewalk system on the west side of US 158 will be complete. She noted that when the Street Improvement and Special Projects Committee (SISPC) meets to discuss and recommend streets improvements projects, sidewalks are often recommended in addition to the roadway changes. With regard to pedestrian crosswalks, Ms. Guns highlighted Staff’s work on the motion-sensor crosswalk lighting along NC 12. All crosswalks along US 158 are governed by the N.C. Department of Transportation (NCDOT), and the Town does not have jurisdiction: the Town can request pedestrian crossings, and regularly does.

Mr. Mitstifer inquired whether the Town had ever considered the development of a pedestrian crossover over US 158. Ms. Guns replied that the Town had considered the option,

but that due to Americans with Disabilities Act (ADA) requirements, it is prohibitive because the structure's switchbacks would reach onto private property. She noted that the Town had studied the option over US 158 at Ocean Bay Boulevard. With ever-changing technologies, it could be feasible in the future, and Staff will continue to consider the option.

Commissioner Ingram suggested the Town boards and committees application for anyone interested.

Luke Baer, 1700 Bay Drive, Canal, Kill Devil Hills, NC – Mr. Baer shared that the pedestrian infrastructure on Bay Drive is a wonderful asset to the community. He noted that where Bay Drive turns into Canal Drive, it is a close turn. He noted that vehicles have ended up in the lot on Canal Drive, and that his mailbox has been clipped several times. He suggested the Board consider the potential for a lowered speed limit for the residential neighborhood. Mr. Baer shared he noticed numerous golf cart-style vehicles on the roads and he expressed concern about them.

Mayor Sproul replied that the Board had previously discussed the lowering of speed limits in the town's residential areas, but that the Board's direction was to pursue additional stationary electronic speed recording devices, which assist the Police Department in providing additional enforcement in more targeted areas. He stated that Low Speed Vehicles (LSVs) are permitted by the State and are licensed. However, regular golf carts are not permitted on roadways.

Mr. Walker inquired about additional STOP signs on some residential neighborhood intersections. Commissioner Ingram shared that the Town Engineer noted studies that indicate STOP signs, especially for four-way intersections, result in higher numbers of accidents. Ms. Guns stated that almost 20 years ago, the Board of Commissioners adopted the Manual on Uniform Traffic Control Devices (MUTCD), which provides nationally engineered standards on traffic signage, including STOP signs.

Commercial buffer zones Commissioner Windley inquired about buffer zones between commercial and residential zones. Ms. Guns stated that Staff could bring some ideas for Board consideration. Mayor Sproul supported incentive options. Ms. Díaz stated that Staff had been studying the issue, but was working diligently to identify unintended consequences. Assistant Planning Director Cameron Ray stated there are a lot of commercial uses, noting the difference between a commercial office building and a 24-hour gas station. Staff strives to avoid creating a large number of non-conforming properties across town as the result of well-intended requirements that might only address one location. Commissioner Gray inquired whether a property's use is considered when determining buffer requirements. Mr. Ray replied that this has been in effect. Ms. Guns stated that Staff will return with options for the Board's consideration.

Jamie Wegener, 257 Wax Myrtle Trail, Southern Shores – Ms. Wegener complimented the Town about the Public Forum and the high visibility of the meeting and forum information, through notices and social media.

Adjournment

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

The time was 7:24 p.m.

Submitted by:

James Michael O'Dell
Town Clerk