

Minutes of the Monday, November 13, 2023, regular meeting of the Kill Devil Hills Board of Commissioners held at 6:00 p.m. in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills.

Members Participating: Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, Bernard “B.J.” McAvoy, and John Windley

Members Not Participating:

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

Call to Order

At 6:01 p.m., Mayor Ben Sproul opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present. He congratulated Commissioner John Windley on his recent election as KDH Mayor for the upcoming term, as well as Commissioners Ingram and McAvoy on their successful reelections.

Pledge of Allegiance and Moment of Silence

Agenda Approval

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

Public Hearings

It was noted that Town Attorney Casey Varnell was absent due to illness. Town Manager Debora Díaz read aloud the rules for public hearings and then opened each hearing.

Notice for the following items has been published in the *Coastland Times*, and posted on the Town’s bulletin boards, website at <https://www.kdhnc.com/1117/November-13-2023-Board-of-Commissioners->, and social media platforms, and has been disseminated through the Town’s electronic distribution list, meeting or exceeding the N.C.G.S. requirements for public hearings. The Planning Department’s attached memoranda highlight a proposed amendment to the Town Code and a Special Use Site Plan review. At its September 19, 2023, meeting, the Planning Board reviewed the following items:

- A. Zoning Amendment Request – 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement (Attached PH-1A)**

This zoning amendment request was submitted by Quible & Associates on behalf of Wright Shores Association Inc. The request is to amend 153.180(D) Exceptions to Commercial Zone Site Requirements, to allow uses listed on original subdivision plats be exempted from the Commercial Zone site requirement for a minimum lot area of 15,000 square feet. The proposed amendment would allow uses listed on original subdivision plats to be exempted from the Commercial Zone site requirements for a minimum lot area of 15,000 square feet.

At its September 19, 2023, meeting, the Planning Board forwarded this amendment to the BOC, unanimously recommending denial. Staff has also recommended denial.

Stuart Davis, 702 West Fifth St., Kill Devil Hills – Mr. Davis stated that he was president of the Wright Shores Association, representing 127 homeowners. He noted that as the Wright Shores subdivision was developed in the early 1970's, two parking areas were platted: one on the end of Fifth Street and one by Fourth Street, by the Jolly Roger Restaurant. Mr. Davis stated that he was unaware that a permit was needed for their work done at the Fourth Street lot. He noted that the lot had been cleared of trash and bushes. When the Town Code was amended in 1983, the square footage was changed from 7,500 to 15,000. He stated that in discussions with Town Staff, a variance application was not recommended, so they decided to pursue zoning text amendment. The association is working to stop vandalism to the sites, along with limit any liability for the properties; however, they cannot make changes to the lots. Mr. Davis asked if the zoning text amendment fee could be waived and that amount be allocated to a variance application fee.

Mayor Sproul stated ordinances change regularly; however, when Special Use site plans are approved, there is a one-year date from approval for the property owner. Commissioner Windley asked Staff to describe the difference between a zoning text amendment and a variance. Assistant Planning Director Cameron Ray replied that a text amendment would apply Town-wide to any property meeting the criteria. In this instance, any property in the Commercial Zone platted prior to 1983 would be affected. For a variance, it is a site specific relief from Town Code that is granted by the Board of Adjustment after a unique hardship is demonstrated, and runs with the property in perpetuity.

Mayor Sproul inquired about the potential of refunding the text amendment fee. Ms. Díaz replied that the fees are non-refundable through the Town's Budget Ordinance. Commissioner McAvoy inquired about the potential for waiving the fee. Ms. Díaz stated that the ordinance, as written, would not permit it. She also noted that the applicant had made more changes to the property than only remove bushes and garbage. Commissioner Gray expressed concern that this amendment would be town-wide, if approved. Commissioner Ingram inquired about the process in which Staff recommendations were made to the applicant. Mr. Ray stated that Staff had met with the property owner to discuss a property that was in violation, and how the situation could move forward to come into compliance: the options of zoning text amendment and variance application were explained to the applicant. Commissioner Windley stated that Staff had waived some fines incurred by the applicant regarding the property, noting that the Town had worked with the applicant over this issue.

Commissioner Ingram moved to deny the Zoning Amendment Request – 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

B. Special Use Site Plan Review – Bermuda Bay P.U.D. - Section 200A – Amend Site Plan for Covered Pavilion with Storage Room (Attached PH-1B)

This special use application was submitted by SAGA Construction for a proposed plan for an addition of a 1,213 square-foot covered outdoor pavilion with enclosed storage room adjacent to the new Somerset Apartment Buildings, Section 200A. As the Planned Unit Development is a special use in the Government and Institutional Zone, this public hearing is required as a part of the Board’s consideration.

The Planning Board reviewed this request at its September 19, 2023, meeting, and voted unanimously to forward it to the BOC with a recommendation for approval. At its October 9, 2023, meeting, the BOC scheduled this quasi-judicial public hearing.

Town Manager Debora Díaz noted that this hearing was quasi-judicial in nature. All information should be evidentiary, and the following four standards apply:

1. The proposed use does not materially endanger the public health or safety.
2. The proposed use meets all required conditions and specifications of the Town’s ordinance.
3. The proposed use will not substantially injure the value of adjoining property, or, in some cases, the proposed use is a public necessity.
4. The proposed use will be in harmony in the area in which it is located, and otherwise be in general conformity with the local government’s comprehensive plan.

Town Clerk James Michael O’Dell noted that five members of the Board of Commissioners were present, constituting a quorum.

Mike Robinson, Cameron Ray, and Meredith Guns undertook a solemn oath.

With no objection, the Board accepted the Special Use application and meeting materials for this item into evidence.

Applicant

Mike Robinson, PE, was present, representing the applicant SAGA Construction, and stated he was prepared to answer any questions from the Board.

The Town

Planning Director Meredith Guns and Assistant Planning Director Cameron Ray were present, representing the Town. Both stated that they were prepared to answer any questions from the Board, and that the proposed site plan meets the requirements of the Town Code.

Adjoining Property Owner

None

Opposition

None

There were no other witnesses and Ms. Díaz then closed the evidentiary portion of the hearing.

Board of Commissioners Findings of Fact

The Board of Commissioners established the following findings of fact:

1. Does the proposed use materially endanger the public health or safety? The Board voted no in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: Town Staff has not submitted evidence that the proposed Special Use of the Covered Pavilion with Storage Room at this location would materially endanger the public health and safety. Such a Special Use must comply with all aspects of the N.C. Building Code, along with all requirements of the KDH Town Code, including §153.177(H) Town Staff has noted that this site plan meets the requirements of the Town Code.
2. Does the proposed use meet all required conditions and specifications of the Town's ordinance? The Board voted yes in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: Town Staff has conceded in its memorandum to the Board of Commissioners that by the September 19, 2023, Planning Board meeting, all required conditions have been met by the applicant for consideration to be granted a Special Use.
3. The proposed use will not substantially injure the value of adjoining property. The Board voted yes in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: No evidence has been submitted of any substantial injury to adjoining properties.
4. The proposed use will be in harmony in the area in which it is located, and otherwise be in general conformity with the local government's comprehensive plan. The Board voted

yes in a unanimous, 5-0, vote. This conclusion is based on the following FINDINGS OF FACT: Covered Pavilion with Storage Room is a permitted Special Use for this property located in the Government Institution – Private Ownership Zone under the KDH Town Code, which is in compliance with the Town’s Land Use Plan.

It is in the BOC’s discretion to include any restrictions on this Special Use. However, the BOC did not place any additional restrictions on the Special Use for Bermuda Bay P.U.D. - Section 200A.

With the standards being met, and supported by the findings of fact, Commissioner Ingram moved to approve the Special Use application to amend the Bermuda Bay P.U.D. - Section 200A Site Plan for a Covered Pavilion with Storage Room. Commissioner Windley seconded the motion, which was passed by a unanimous, 5-0 move.

Public Comment

Dennis Pohl, 1205 West Fourth Street, Kill Devil Hills, NC – Mr. Pohl referenced the Fourth Street Access, requesting the Town replace the walkway, establish a walkway and flyover, and possible asphalt parking area. He shared that he had met with a porta-john provider, who indicated that a unit could be placed and regularly serviced at the Fourth Street Access. He also recommended push-button automated showers at Fourth and Fifth Street Accesses.

Response to Public Comment

Mayor Sproul thanked Mr. Pohl for his comments. Commissioner Windley inquired about the timeline for the Shoreline Access Plan update. Ms. Guns replied that it would be in late spring 2024. Staff is currently reviewing all areas and cataloging all features, and will be developing recommendations of potential upgrades to each access for BOC consideration.

Introductions and Presentations

1. North Carolina League of Municipalities Commemorative Resolutions Presentation (Attached IP-1)

At the 2023 North Carolina League of Municipalities Conference, commemorative resolutions were adopted, honoring the service of municipal public servants in Kill Devil Hills and across the state. Included in the retirement resolutions were the following Town employees:

- Marion Henry “AB” Donski, Water Plant Operator
- Golet Jennette, Jr., Sanitation Equipment Operator
- Beverly Kissinger, Finance Director
- Derwood Lee Twiddy, Jr., Police Sergeant
- Joseph Michael “Mike” Wilson, Sanitation Team Leader

At the same conference, the following memorial resolution was adopted:

- Mary Elizabeth Quidley, Town Clerk

Mayor Sproul and the Board of Commissioners honored each of these Town employees and their service to our community.

2. **2022-2023 Community Appearance Awards**

The Administration Department's meeting memorandum detailed the goals and process by which the Community Appearance Commission (CAC) selected the commercial establishments that achieved recognition in the Town's biennial Community Appearance Awards.

The Mayor and CAC Chairperson Sue Kelly presented the nominee certificates and award winners. Representatives of all nominees, along with CAC members, were invited to attend for this recognition by the Board.

2022-2023 Most Improved – nominees: Avalon Pier, Outer Banks Motor Lodge, Starbucks, Target, John Yancey Oceanfront Inn Winner: Starbucks

2022-2023 Multi-Unit Complex – nominees: Atlantic Dance, Beach Road Bottle Shop, Hang 12 Art, Honey & Hive Boutique, Proof Bakery, Sun Shack Tanning Salon Winner: Honey and Hive Boutique

2022-2023 Best Overall – nominees: Nags Head Hammocks, Noosa Beach Grille, Outer Banks Presbyterian Church, Pigman's Bar-B-Que, Rose Harrison Gilreath & Powers, P.C. Winner: Rose Harrison Gilreath & Powers, PC

The Town saluted and congratulated the nominees and winners. These Kill Devil Hills businesses are all appealing and attractive, and embody a sense of community and pride: outstanding qualities for others to emulate.

Ongoing Business

New Business

1. **Considerations for additional landscaping and buffer requirements for commercial use(s) (Attached NB-1)**

Following public input, the Board of Commissioners requested Staff review of existing landscaping and buffer requirements for commercial uses, particularly between compatible uses. Town Code §153.073 addresses Landscaping Requirements, which are intended to provide

separation of uses, promote aesthetic character, and promote public health and safety through noise, air, and visual pollution reduction.

The Planning Department's meeting memorandum highlighted the current regulations for buffers between incompatible uses, noting the concerns regarding commercial uses with greater intensity. Staff has provided options to address some concerns:

- Increased minimum buffer depth. Depth could be graduated based on land use or based on floor area ratio / density.
- Require fencing material to be a wood, block, or engineered sound wall.
- Create additional buffer requirements for commercial developments abutting the Residential Low (RL) Zone.

Assistant Planning Director Cameron Ray provided an overview of the current ordinance, noting that they do not address more intense uses. Buffer depth could be increased, and vary depending upon the uses. Fencing material was also an issue, as was the often stark transitions between the Commercial and Residential Low (RL) Zones.

Ms. Guns further noted that the first option was looking at uses, with a scale of intensity of use abutting a residence. The third option makes the buffer greater between the RL and Commercial Zones, affecting the entirety of the zones. If both options are incorporated, a large number of nonconforming properties would be created.

Commissioner Gray stated that the issue was depth and height, noting that a six foot fence would not be effective against some commercial sites. Mr. Ray noted that when buffer depth is considered, it also addresses setbacks that can affect parking spaces and drive aisles as well. Commissioners McAvoy and Gray said that the height of a fence is important, especially depending upon intensity. Mr. Ray said that a gradual scale could be based upon categories of intensity of the businesses, noted the differences between professional buildings, restaurants, 24-hour operations, and warehouses. Ms. Guns stated that Staff also strives to not create non-conforming properties.

Staff will make proposals for a graduated scale for Commercial and RL Zone borders, with an increase in height and depth, along with updates to fencing materials requirements. The Board directed Staff to submit options for consideration directly to the Planning Board.

2. Site Plan Review – 901 Tenth Avenue in the Light Industrial Two Zone – Proposed 33 Unit Multi-Family Apartment Building and associated site improvements (Attached NB-2)

Run Hill Commons, LLC has submitted a proposed site plan for the construction of a 33-unit multi-family apartment building, consisting of 27 two-bedroom units, 6 three-bedroom units, 75 parking spaces, and associated site improvements. The Planning Department's meeting memorandum, site plans, and associated materials detailed the request, which is a permitted use in the Light Industrial Two (LR2) Zone.

At its September 19, 2023, meeting, the Planning Board voted to forward this site plan to the Board of Commissioners, recommending approval pending several conditions, which have

been addressed by the applicant. Staff recommended approval of the site plan as presented, and a motion is in order.

Mike Robinson, PE, representing the applicant, was present for any questions. Commissioner Ingram inquired about a STOP sign on the intersection of Tenth Avenue and Corrigan Street. Ms. Díaz stated that Town Staff can review it and make a determination on a potential placement of a STOP sign. Commissioner Windley inquired about the conveyance of the units, and whether they will be long-term rentals. Mr. Robinson replied that he expected that it would be a mix of ownerships and rental terms. Commissioner Gray inquired about the potential for stormwater runoff. Mr. Robinson replied that the plan has been reviewed by Public Services and the Town Engineer.

Commissioner Ingram moved to approve the proposed site plan for 901 Tenth Avenue in the Light Industrial Two Zone – Proposed 33 Unit Multi-Family Apartment Building and associated site improvements, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

3. Site Plan Review – 1208 Swan Street in the Light Industrial 2 Zone Proposed 5 Unit Multi-Family Townhouse and Associated Site Improvements (Attached NB-3)

Group Holdings, LLC has submitted a proposed site plan for the construction of a 5-unit multi-family townhome building, consisting of 5 three-bedroom units, 15 parking spaces, and associated site improvements. The Planning Department's meeting memorandum, site plans, and associated materials detailed the request, which is a permitted use in the Light Industrial Two (LR2) Zone.

At its October 17, 2023, meeting, the Planning Board voted to forward this site plan to the Board of Commissioners, recommending approval pending several conditions, which have been addressed by the applicant. Staff recommended approval of the site plan as presented, and a motion is in order. Michael Strader, PE, representing the applicant, was present to answer questions.

Commissioner McAvoy moved to approve the proposed site plan at 1208 Swan Street in the Light Industrial 2 Zone Proposed 5 Unit Multi-Family Townhouse and Associated Site Improvements, as presented. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

4. Appointment

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.

A. Planning Board

T. Dillon Heikens' term on the Planning Board is concluding, and he has expressed an interest in reappointment.

Commissioner Ingram moved to appoint T. Dillon Heikens to a three-year appointment to the Planning Board for a term that will expire in November 2026. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Committee Reports

Community Appearance Commission (CAC) Commissioner Windley expressed his appreciation to Chair Sue Kelly and the Commission for its work. Ms. Kelly provided the group's upcoming meeting schedule.

Dare County Tourism Bureau Commissioner Ingram shared that the recent tourism summit was great and well-attended. She also highlighted Raw OBX, the new advertising campaign to attract conscientious to the Outer Banks who care about the area's resources and are cognizant about local resources.

Commissioners' Agenda

Commissioner Gray

The "Wall that Heals" Exhibit The "Wall that Heals," a traveling three-quarter scale replica of the Vietnam Veterans Memorial, will be escorted from Columbia to the Soundside Event Center in Nags Head. Four hundred motorcyclists have expressed interest in the event. The Wall will be in Dare County from Thursday, November 16, 2023 to Sunday, November 19, 2023, and open 24 hours a day.

Commissioner Ingram

Dare County Board of Elections Commissioner Ingram thanked the Board of Elections and elections staff, especially Sandie Markland and her staff, who did an incredible job. Members of the Board concurred and expressed their appreciation for all of the hard work for this last election.

Mayor's Agenda

First Flight Holiday Markets Mayor Sproul highlighted the dates of the upcoming First Flight Holiday Markets at Aviation Park, and encouraged everyone to attend and support local vendors.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. October 9, 2023

2. Monthly Report (Attached CA-2A)

A. September 2023

3. Budget Amendments and Transfers (Attached CA-3A, CA-3B, CA-3C, and CA-3D)

- A. #3 – To appropriate proceeds from UPS for the purchase of a replacement air bag lost in transit.
- B. #4 – To appropriate funds for the water system development and connection of the new fire station
- C. #5 – To appropriate grant proceeds from the US Department of Justice for bulletproof vests
- D. #6 – To appropriate funds from the sale of a vehicle obtained through the 1208/1033 Federal Excess Property Program to the Police Department

4. Schedule Public Hearing (Attached CA-4A)

The Planning Department's attached memorandum highlighted a candidate property for Local Historic Landmark designation:

A. Historic Landmark Designation – 500 West Avalon Drive: Sharp Cottage

At its November 1, 2023, public hearing, the Historic Landmarks Commission (HLC) reviewed the property's designation report and State comments, and voted to unanimously recommend the designation, along with a request for the Board to schedule a public hearing. Staff recommended scheduling this public hearing for Monday, December 11, 2023, at 6:00 p.m. Approval of the Consent Agenda will schedule this item for public hearing.

5. Recommendation for the acceptance of street improvements to East Corrigan Street; and adoption of the Official Traffic Map and Powell Bill Map for the Town of Kill Devil Hills to reflect the improvements (Attached CA-5)

With the recent completion of street and right-of-way improvements to East Corrigan Street, the developer has petitioned the Board of Commissioners for these improvements to be accepted into the Town's public street systems.

Approval of the Consent Agenda will adopt the attached resolution, which:

1. Accepts the street and right-of-way improvements for East Corrigan Street into the Town's public streets and water systems;
2. Revises and adopts the Official Traffic Map of the Town of Kill Devil Hills, reflecting these improvements;
3. Revises and adopts the Powell Bill Map, reflecting the improvements.

The Official Traffic Map and Powell Bill Map were posted in the Meeting Room prior to the meeting, and included with the electronic packet on the Town's website, www.kdhnc.com.

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

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

Public Comment

Response to Public Comment

Adjournment

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

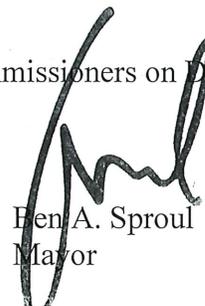
The time was 7:26 p.m.



Submitted by:


James Michael O'Dell
Town Clerk

These minutes were approved by the Board of Commissioners on December 11, 2023.


Ben A. Sproul
Mayor