

**Minutes of the Monday, February 5, 2024, 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 John Windley; Commissioners Terry Gray, Ivy Ingram, and Bernard “B.J.” McAvoy

**Members Not Participating:** Vacant Seat

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

**Call to Order**

At 6:00 p.m., Mayor Windley opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present.

**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, 4-0, vote.

**1. Public Hearings (Attached PH-1A and PH-1B)**

Mr. Starkey Sharp read aloud the public hearing rules and then opened each hearing. He stated that notice for the public hearings has been published in the *Coastland Times*, and posted on the Town’s bulletin boards, website, 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 meeting memoranda highlighted the proposed amendments to the Town Code. At its December 19, 2023, meeting, the Planning Board reviewed and forwarded the amendments below, recommending approval. At its January 15, 2024, meeting the BOC scheduled these two public hearings for this meeting. At the conclusion of each hearing, a motion will be in order to approve, disapprove, or table the item for further consideration.

**A. Proposed Zoning Amendment – 153.310 Cottage Courts & 153.311 Cluster Homes – Proposed modification to Cottage Court and Cluster Homes Regulations**

At its August 14, 2023, meeting, the BOC directed Staff to develop additional regulations for cottage courts and cluster homes. Staff recommended approval of the requested amendment, which reduces the maximum size of dwelling units, creates an additional front yard setback in the OIR, and creates a tiered separation of structures based on gross square footage and heights.

**Duke Geraghty, Outer Banks Home Builders Association** – Mr. Geraghty expressed concern about the proposed 1,500 square foot limitations would be too small for Cottage Courts and Cluster Home structures; he stated there would not be a return on the builder’s investment.

Commissioner Gray requested more time to review the amendment, and recommended tabling item and setting the public hearing for March 27, 2024, at 6:00 p.m. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 4-0, vote.

**B. Proposed Zoning Amendment – 153.073 Landscaping Requirements – Modify Buffer Requirements for Commercial Use(s)**

At its November 13, 2023, meeting, the BOC directed Staff to develop additional regulations for landscaping and buffer requirements for commercial uses. Staff recommended approval of the requested amendment, which increases minimum buffer areas for incompatible uses and zoning, and clarifies three different buffer categories: incompatible use, incompatible zoning, and compatible use / streets.

There were no public comments for this second hearing. Commissioner Ingram moved to approve the proposed zoning amendment to 153.073 Landscaping Requirements – Modify Buffer Requirements for Commercial Use(s), as presented with its consistency statement, noting that the Board of Commissioners finds that the amendment to Chapter 153 Zoning, 153.073 Landscaping Requirements – Modify Buffer Requirements for Commercial Use(s) is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it provides greater protection for our citizens between commercial and residential uses while preserving existing landscaping. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

Through consensus, the Board directed Staff to research and potentially develop special use ordinances to include increased sound dampening requirements for higher intensity commercial operations, such as those with larger square footage, 24 hour operations, late deliveries, et cetera.

## Public Comment

**Raymond Pate, 402 Angler Way, Kitty Hawk, NC** – Mr. Pate stated that several years ago, he had purchased a lot in KDH and as a part of a building permit, paid a \$6,000 system development fee. He said he never built on the lot, and water lines were never installed on the property but he was billed \$75 for water usage. He has since sold the lot, and received a final bill for monthly water usage, with a notice that if the bill was not paid within the seven-week time frame, there would be an additional fee.

**Dennis Pohl, 1205 West Fourth Street, Kill Devil Hills, NC** – Mr. Pohl noted that the 1998 Shoreline Access Report recommended the possible purchase of empty lots on the west side of NC 12 for additional public parking. He inquired whether the purchase of any empty lots have been considered. He also inquired about the shoreline access account, and whether those funds were utilized for beach accesses. He then highlighted grant options from the State of North Carolina, and inquired whether any considerations were made for potential KDH access improvement projects.

**Robert Woodard, 806 Harmony Lane, Kill Devil Hills, NC** – On behalf of the Dare County Board of Commissioners, Mr. Woodard thanked the BOC for the Town's participation in the Dare County Housing Taskforce, and for looking at potential areas in Town. He also expressed his appreciation to Commissioner Ingram for sharing concerns about the condition of the athletic fields in the First Flight schools complex. He stated that they were being addressed.

**Jeff Lane, 1506 Captains Lane, Kill Devil Hills, NC** – Mr. Lane expressed his appreciation to the Town for the road and drainage improvements that were completed a few years ago. He stated there was a 100% improvement in the neighborhood. He reminded the BOC that single-use plastic bags were banned for a time on the Outer Banks, and then the ban was rescinded. Mr. Lane hoped that they would be banned again. He also expressed his support for a salad bar at the area Publix grocery store.

**Katie Morgan, 101 Maddox Crossing, Kill Devil Hills, NC (Colington)** – Ms. Morgan thanked the Town for working with other Dare County localities and initiating a lawsuit challenging the validity of HB 259, a portion of the state budget that permits Dare County-approved affordable housing vendors to be exempt from local zoning requirements. She noted that the State had moved to dismiss the challenge, and inquired about the next step in the process.

## Response to Public Comment

Mayor Windley thanked all of the speakers for their comments. Commissioner McAvoy noted that the BOC could not address pending litigation, but that the Board was in full support of the local municipalities' position and their legal representation. He also spoke about improvements to the Fourth and Fifth Street accesses, and supported improvements to all of the

Town's beach accesses. Commissioner Gray inquired about whether access improvement recommendations would be included in the Shoreline Access Plan, which is currently being updated. Town Manager Debora Díaz replied that recommendations for all accesses would be included.

Mayor Windley stated that Staff would follow up with Mr. Pate's concerns. He also stated that the BOC encouraged everyone to share their concerns, questions, and comments with the Board at the two public comment periods, along with the two annual public fora, at the meetings. Mayor Windley also thanked Commissioner Ingram and Mr. Woodard for their work in improving the athletic fields at the First Flight schools complex.

Commissioner Ingram noted that the plastic bag ban was in place in coastal areas, but was reversed by former Senator Bill Cook. She also encouraged everyone to share public comment regarding Jockey's Ridge area of environmental concern (AEC) rules, and to access the Friends of Jockey's Ridge site as the public comment period ends February 22, 2024. Commissioner Ingram also reaffirmed the BOC's appreciation for the public sharing its thoughts and concerns, but did note that there are times when the BOC may not immediately act on an issue, even though it may be important, because it may be part of a larger, long-term plan or schedule, or may need to be funded in a future budget.

## Ongoing Business

### New Business

#### 1. **Consideration of applications for, and possible appointment to, a vacant seat on the Board of Commissioners (Attached NB-1)**

At its December 11, 2023, meeting, the Board of Commissioners agreed on the process that would be followed for the acceptance of applications for the Commissioner vacancy created when then Commissioner Windley was elected Mayor. The process was as follows:

- Applications will be accepted by the Office of the Town Clerk until 5:00 p.m. on Tuesday, January 16, 2024.
  - Applications may be submitted on-line, and a résumé may be submitted with a completed application.
- The Town Clerk would forward applications to the BOC by January 22, 2024.
- Between January 22, 2024, and the February 5, 2024, BOC regular meeting, members reviewed the applications and had the opportunity to contact applicants to obtain additional information or clarify any information submitted.
- During the February 5, 2024, meeting, the BOC would use the nomination method to fill the vacant seat from the eligible candidates submitting applications.

All applications received by the Office of the Town Clerk were verified as town residents and forwarded to the Board of Commissioners on January 22, 2024, and are available for public

inspection at Town Hall, 102 Town Hall Drive, Kill Devil Hills, during business hours. The following have submitted applications for consideration:

- Timothy Dillon Heikens
- Harvey K. Hess, Jr.
- Kim James
- Nelson (Skip) V. Jones, Jr.
- Mary Louise (Sandie) Markland
- Sterling D. Sadler
- Ronald Seidman II
- Ann Wood

Pursuant to N.C.G.S. 143-318 and the BOC's adopted rules of procedure, and following UNC School of Government recommendations, Staff has recommended that the Board pursue the following process for filling the vacancy at this meeting:

1. The Board will be provided with a printed ballot that includes all names of the eligible applicants for consideration. Members will vote for (1) one person on the list, and sign the ballot. The *Suggested Rules of Procedure for a City Council (4<sup>th</sup> ed.)* by Trey Allen, which the BOC readopted at its December 11, 2023, meeting, does not permit a secret ballot. The Office of the Clerk will make the signed ballots available for public inspection immediately and remain available for inspection until the meeting minutes are approved at the next meeting (at that time, the ballots may be destroyed).
2. The ballots are collected by the Town Clerk and votes are tabulated, and announced.
3. If an applicant receives a vote by the majority of the Board, the Town Clerk will announce that the applicant has received a vote of the majority and will entertain a motion (and a second) to appoint that nominee to the Board of Commissioners.
  - a. If no applicant receives a majority, a second ballot (identical to the first) will be provided to the Board for a second vote, and the process repeats.
  - b. If there is a tie, the two applicants will be asked if they would consent to a toss of a coin. In this process, the Town Manager or designee will present the nominees with straws. Whoever draws the short straw has the right to call "heads" or "tails" during the coin toss, which will be conducted by the Town Attorney or Assistant Chief of Police. A motion and second to appoint the winning applicant to the Board will be conducted.
4. The appointed nominee will be invested at the BOC's next regular meeting, which is Wednesday, March 6, 2024.

Mr. O'Dell distributed the written ballots, and the BOC members voted. Mr. O'Dell announced the following vote:

Timothy Dillon Heikens – one vote, Commissioner McAvoy  
 Timothy Dillon Heikens – one vote, Commissioner Gray  
 Timothy Dillon Heikens – one vote, Mayor Windley  
 Ron Seidman, II – one vote, Commissioner Ingram

With a majority of votes cast for one nominee, Mr. O'Dell entertained a motion to appoint Timothy Dillon Heikens to the Kill Devil Hills Board of Commissioners. Mayor Windley moved to appoint Timothy Dillon Heikens to fill the vacancy on the Board of Commissioners, with a term expiring December 2025. Commissioner Gray seconded the motion, which was approved by a unanimous, 4-0, vote.

The members congratulated Mr. Heikens and also expressed their appreciation to all those who had submitted applications for consideration, noting that all candidates were highly qualified. All were encouraged to submit an application for the Town's various boards and committees.

### **Committee Reports**

Dare County Tourism Board (DCTB) Commissioner Gray reported that he had been appointed to three DCTB committees Budget & Finance, Marketing, and Personnel.

Community Appearance Commission (CAC) – Chairperson Sue Kelly shared the group's upcoming meeting scheduled and provided an overview of the Live Oak Tree giveaway program. She also highlighted the Town's Trash Attack! community clean up event.

### **Commissioners' Agenda**

#### Commissioner McAvoy

Board applicants Commissioner McAvoy thanked the applicants for their interest in the Board position, and noted that it was a difficult selection because everyone was highly qualified and cares about the community.

#### Commissioner Gray

Cook-Out Restaurant Commissioner Gray inquired about the Cook-Out restaurant development and whether there was any update. Assistant Planning Director Cameron Ray replied that in autumn 2023, the developer submitted an administrative review for a small, rear addition and exterior improvements, but have not followed up to address Staff review comments. There is really nothing new to report.

Commissioner Ingram

State of the Child Commissioner Ingram shared that the State of the Child event would be held in March, and focus areas would include child care, child well-being, and recreation. The event is held every four to six years, and registration is open.

**Mayor's Agenda**

Valentine's Heart at Aviation Park Mayor Windley noted that the Town's Buildings and Grounds crew has installed the popular lighted Valentine's Day heart by the Frog Pond.

**Town Manager's Agenda**

**Town Attorney's Agenda**

**Consent Agenda**

**1. Minutes (Attached CA-1A)**

A. January 24, 2024

**2. Monthly Report (Attached CA-2A)**

A. December 2023

**3. Resolutions Designating Public Depository and Authorizing Withdrawals of Municipal Public Moneys (Attached CA-3)**

At its January 15, 2024, meeting, the Board of Commissioners considered its New Business item 1. Designation of Official Bank Depositories, and adopted a *Resolution to Designate the Town of Kill Devil Hills Official Bank Depositories* and authorized Staff to execute all necessary service agreements with the institutions. TowneBank, the designated official depository, has submitted additional resolutions that detail specific authority for the Town's services and transactions; these resolutions require BOC approval.

Approval of the Consent Agenda will record the Board's approval of the attached resolutions.

**4. Performance Indicator: Response to Local Government Commission (Attached CA-4)**

At its January 24, 2024, meeting, the Board of Commissioners received a presentation from the Town's auditor, Potter & Company. The Town received an unmodified opinion, the highest that can be issued. Finance Director Angell Doughtie then shared that the Local

Government Commission (LGC) had noted a performance indicator to which the Town would need to respond. It concerned the water/wastewater condition of assets ratio, which is a newly implemented benchmark requirement that calculates the estimated remaining life of all water and wastewater assets. The State has set the benchmark at 0.5 or higher, indicating that half the useful life remains in the systems' assets: the Town's rating was 0.49. It was noted that this calculation does not take into account the condition of the assets; the Town contracts with an engineer to conduct an evaluation every 10 years of the water and wastewater systems, and develop a 10-year capital improvement plan. The most recent plan was completed in January 2022, and the review noted that the Town's water and wastewater systems were in excellent condition, both physically and financially. The LGC requires a response, and the letter included in the meeting materials addresses the Board's position.

Approval of the Consent Agenda will record the Board's approval of the response to the LGC, and authorize its execution and submission.

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, 4-0, vote.

### Public Comment

**Sandie Markland, 2013 Hampton Street, Kill Devil Hills, NC** – Ms. Markland congratulated Mr. Heikens on his appointment, and thanked the Board for their consideration. In her role with elections, she noted that the 2024 Primary Early Voting period would be from Thursday, February 15 (8:00 a.m. to 7:30 p.m., M-F) to Saturday, March 2 (8:00 a.m. to 3:00 p.m.). The Town Hall Meeting Room serves as one of three Early Voting sites in Dare County. On March 5, Primary Election Day, polling stations will be open 6:30 a.m. to 7:30 p.m.

### Response to Public Comment

### Adjournment

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

The time was 6:51 p.m.



Submitted by:

  
James Michael O'Dell  
Town Clerk

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These minutes were approved by the Board of Commissioners on March 6, 2024.



John Windley  
Mayor