

**Minutes of the Wednesday, March 6, 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, T. Dillon Heikens, Ivy Ingram, and Bernard “B.J.” McAvoy

**Members Not Participating:**

**Others Participating:** Debora P. Díaz, Town Manager; Dana Harris, Assistant Police Chief; Meredith Guns, Planning Director; Cameron Ray, Assistant Planning Director; Casey Varnell, Town Attorney; 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**

Mayor Windley asked everyone to remember the family of former Assistant Fire Chief Tommy Lee, who served our community for over 50 years. Assistant Chief Lee passed away recently.

**Agenda Approval**

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

**Public Comment**

**Debbie Swick, 59 Deer Path Lane, Southern Shores, NC** – Ms. Swick requested a ban against helium balloon releases, and stressed that any ordinance would be different than a litter ordinance. The problem is that helium balloons can become “unretrievable” litter and float about 1,300 miles out to sea, potentially harming ocean life. She supported an ordinance that also included any balloon sales to include weights.

**Response to Public Comment**

Mayor Windley thanked Ms. Swick for her comments, and invited the Police Department to share its thoughts. Assistant Police Chief Dana Harris noted that the difficulty would be with enforcement because litter ordinances can be enforced when an item falls to the ground, which is

a stark contrast to floating balloons. Commissioner McAvoy suggested that this issue was more a state-level issue. Mayor Windley said that the issue needed more study, and the Board would consider the item in the future.

### **Ongoing Business**

#### **1. Town Code Amendment - §153.310 Cottage Courts & §153.311 Cluster Homes – Proposed modification to Cottage Court and Cluster Homes Regulations (Attached OB-1)**

At its August 14, 2023, meeting, the Board of Commissioners directed Staff to develop additional regulations for cottage courts and cluster homes. Staff developed a Town Code amendment that reduced the maximum size of dwelling units, created an additional front yard setback in the Ocean Impact Residential Zone (OIR), and created a tiered separation of structures based on gross square footage and heights. Currently, the maximum square footage for this type of development is 2,500 square feet of gross floor area.

During the Planning Board's December 19, 2023, review, it reduced the amendment's proposed maximum square footage for these structures from 2,000 square feet to 1,500 square feet of gross floor area, before forwarding it for BOC consideration.

At its February 5, 2024, Public Hearing, the BOC tabled the amendment for further review and set the public hearing for March 27, 2024, at 6:00 p.m. At the Board's request, the amendment is part of this meeting's agenda for consideration.

If the Board would make any substantive changes to the amendment, a motion will be in order to approve the change(s) and to schedule the public hearing for Wednesday, March 27, 2024 at 6:00 p.m.

Commissioner Gray noted that Staff's original proposal was 2,000 square feet, and the Planning Board decreased it to 1,500 square feet. He proposed 1,800 square feet, with a 20 foot separation, only in OIR and Commercial Districts. Residential Low would remain at 1,500 square feet.

Commissioner Gray moved to schedule a public hearing for Wednesday, March 27, 2024, at 6:00 p.m. to consider §153.310 Cottage Courts & §153.311 Cluster Homes – Proposed modification to Cottage Court and Cluster Homes Regulations specifically to include 1,800 square feet maximum allowable, with a 20 foot separation on each structure, only in OIR and Commercial Zones, with Residential Low Zone remaining 1,500 square feet. Commissioner Ingram seconded the motion, which was approved by a unanimous, 4-0, vote.

### **New Business**

#### **1. Investiture of new Board of Commissioners Member – T. Dillon Heikens**

As a result of the November 7, 2024, municipal election, a vacancy on the Board of Commissioners was created when then Commissioner Windley was elected as Mayor. At its

December 11, 2023, meeting, the BOC agreed on the process for the acceptance of applications to fill the vacancy, which concluded January 16, 2024.

Following application review, the BOC unanimously approved the appointment of Timothy Dillon Heikens at its February 5, 2024, meeting to fill the vacant Board of Commissioners position term, which concludes in December 2025.

Mr. Heikens has resigned from his Town-appointed positions on the Planning Board, Historic Landmarks Commission, and the Board of Adjustment (alternate member). The BOC will consider those vacancies at its March 27, 2024, meeting.

Town Clerk James Michael O'Dell administered the oath of office for Commissioner T. Dillon Heikens. The Board and Staff congratulated Commissioner Heikens.

At 6:16 p.m., Mayor Windley called a break in proceedings for refreshments to honor Commissioner Heikens and celebrate the 71<sup>st</sup> anniversary of the Town's incorporation.

At 6:29 p.m., the regular meeting reconvened.

### **Committee Reports**

Government Education Access Channels Committee (GEACC) Commissioner Gray shared that the Town had received a Local Programming Development Initiative grant for \$5,000, which will be used to develop a video segment on the Town's historically-designated landmark properties.

Coastal Resources Advisory Council (CRAC) – Mayor Windley shared that he had attended the CRAC and Coastal Resources Commission meetings, and noted among several topics was the celebration of the 50<sup>th</sup> anniversary of the Coastal Area Management Act (CAMA).

### **Commissioners' Agenda**

#### **Mayor's Agenda**

#### **1. Resolution Honoring the Life and Service of Thomas M. Lee, Sr. (Attached MA-1)**

Mayor Windley stated that it was with greatest sadness that the Board must note the death of Assistant Fire Chief Thomas "Tommy" M. Lee, Sr. Having a true servant's heart, Chief Lee made a positive difference in our community for over 50 years.

Mayor Windley moved to adopt the *Resolution Honoring the Life and Service of Thomas M. Lee, Sr.* Commissioner Heikens seconded the motion, which was approved by a unanimous, 5-0, vote.

Mecklenburg-Vorpommern, Germany Delegation Mayor Windley said he had recently hosted a delegation from the Mecklenburg-Vorpommern region of Germany. The area was home to

aviation glider pioneer Otto Lilienthal, whose successful glider experiments the Wright Brothers modeled to develop the world's first powered flight.

Police Department Mayor Windley shared that he had witnessed members of the Police Department safely block off the intersection at US 158 and Landing Drive and push a disabled vehicle out of the lane during poor weather. He commended the officers for their great work.

## **Town Manager's Agenda**

### **1. Coastal Storm Damage Mitigation Fund Application Process**

Town Manager Debora P. Díaz stated that the State of North Carolina established a Coastal Storm Mitigation Fund (CSMF) to assist in addressing the unique issues faced by coastal communities. Along with the other Dare County localities, Kill Devil Hills has taken advantage of this program to pursue grant opportunities to offset the costs of Beach Erosion Control and Flood and Hurricane Protection Works projects (beach nourishment programs). The towns and Dare County have successfully partnered and coordinated the financing and logistics aspects of the multiple beach nourishment programs, which have resulted in substantial savings because of cost sharing, coordinated project timelines, and overall economies of scale for these efforts. A partnership with Dare County and the other towns works well, directly benefiting and resulting in savings for Kill Devil Hills residents and property owners.

Following recent discussions between the town and county managers, an additional step to more efficiently coordinate CSMF funding would be for Dare County to manage the grant applications on behalf of the entire group for this biennial budget cycle, with up to \$10 million in grant funding available in each this year and the next. Ken Willson, Senior Project / Program Manager of Coastal Protection Engineering, has noted that it is unlikely that this partnership would receive the entire \$10 million; however, any grant award would further sustain our local beach nourishment funding model.

Staff recommended and requested Board approval to authorize Dare County to pursue Coastal Storm Mitigation Fund grant funding for this biennial budget cycle. Through consensus, the Board granted its authorization for Dare County to pursue Coastal Storm Mitigation Fund grant funding for the biennial budget cycle.

## **Town Attorney's Agenda**

### **Consent Agenda**

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

A. February 5, 2024

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

A. January 2024

**3. Government Education Access Channels Committee – 2024-2025 Proposed Budget (Attached CA-3)**

The Government Education Access Channels Committee (GEACC) oversees operations of the local government and education access channels, known as Current TV. Created through an interlocal agreement, the group is a collaboration of the Towns of Duck, Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo, along with Dare County, and educational entities Dare County Schools, UNC Coastal Studies Institute, and College of The Albemarle. The Committee is composed of a representative from each participating entity; government representatives to the committee must be members of their respective governing board. Commissioner Gray is Kill Devil Hills' representative.

The GEACC annually submits its annual operating budget, which must be approved by all member entities. Approval of the Consent Agenda will record the BOC's approval of the 2024-2025 GEACC Budget.

**4. Resolution Supporting the Coastal Resource Commission's Temporary Rules (Attached CA-4)**

Following actions by the North Carolina Rules Review Commission (RRC), longstanding rules protecting Areas of Environmental Concern were removed from the Administrative Code. The Coastal Resources Commission (CRC) has introduced 16 temporary emergency rules for the critical day-to-day administration of the North Carolina Coastal Management Program to protect those AEC areas, including Jockey's Ridge State Park. Through consensus, the Board approved a *Resolution Supporting the Coastal Resource Commission's Temporary Rules* for submission by the February 22, 2024, public comment deadline.

Approval of the Consent Agenda will record the Board's earlier approval of the resolution.

**5. Schedule public hearings (Attached CA-5A and CA-5B)**

The Planning Department's meeting memoranda detail the proposed amendments to the Town Code. At its February 13, 2024, meeting, the Planning Board reviewed and forwarded the following amendments, recommending approval:

- A. Town Code Amendment - 153.355(A) Site Plan Requirements & 153.357 Site Plan Review Process for Commercial, Multi-Family, and Special Use Applications: Revise Number of Copies Required for Submittal**

At the BOC's January 24, 2024, meeting, the Town Clerk presented a memorandum on approaches the Town was implementing for the Board's goal to decrease the Town's carbon footprint. One recommendation included decreasing the number of paper copies required for site plan review. As a result, the BOC directed Staff develop an amendment to decrease the required number of site plans for submittal to five, accompanied by an electronic copy.

**B. Town Code Amendment - Chapters 10, General Provisions; Chapter 150, Building Regulations; Chapter 151, Flood Damage Prevention; Chapter 152, Subdivisions; and Chapter 153, Zoning: Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Procedures**

The proposed amendment, prepared in consultation with the Town Attorney, would modify the Town's notice of violation, civil penalties, and appeals procedures for clarification. The amendments to Chapters 10 General Provisions, 150 Building Regulations, 151 Flood Damage Prevention, 152 Subdivisions, and 153 Zoning will clarify the appeals process, resulting in a more efficient and user-friendly appeals system.

Staff recommended scheduling these two public hearings for Wednesday, March 27, 2024, at 6:00 p.m. Approval of the Consent Agenda will schedule these items for public hearings.

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 Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

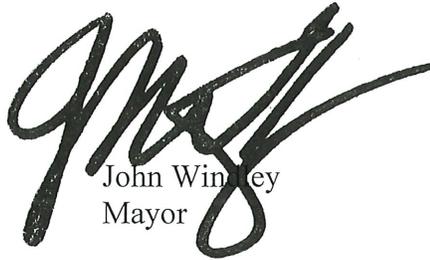
The time was 6:39 p.m.



Submitted by:

  
James Michael O'Dell  
Town Clerk

These minutes were approved by the Board of Commissioners on March 27, 2024.



John Winkley  
Mayor