



HISTORICAL PRESERVATION COMMITTEE AGENDA

REGULAR MEETING

Monday, October 7, 2019 @ 6:30 pm

CALL TO ORDER

ADOPTION OF AGENDA

APPROVAL OF MEETING MINUTES:

- August 9th, 2019 Special Meeting

PUBLIC COMMENTS

OLD BUSINESS

1. Presentation by intern(s)
2. Remote Participation in Meetings

NEW BUSINESS

MEMBER ITEMS

ADJOURNMENT

ELDRIDGE LAW FIRM, P.C.

ATTORNEY AND COUNSELOR AT LAW

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MEMORANDUM

TO: PLANNING AND ZONING COMMISSION
HISTORIC PRESERVATION COMMISSION

FROM: JAMES E. ELDRIDGE

RE: REMOTE PARTICIPATION IN MEETINGS

DATE: AUGUST 30, 2019

QUESTIONS PRESENTED

1. Can a board/commission member remotely participating in a meeting be considered present for the purpose of establishing a quorum?
2. Does a municipality have statutory authority to permit remote participation through the adoption of a local policy providing for the same?

DISCUSSION

Neither the North Carolina General Assembly nor the North Carolina courts have expressly addressed these issues and local governments may be at risk, under the State's Open Meetings Law, for legal challenges to actions taken when the remotely participating member is necessary for establishing a quorum or casts a deciding vote in a matter. These risks can be mitigated under a policy allowing remote participation only when: the remote board member's presence is not necessary for establishing a quorum; the remote member's vote is not the deciding vote; and where the matter under consideration is advisory or only involves discussion.

It should be noted that adopting a remote participation policy is a matter for a governing board to act on and not an automatic right of the remote member to exercise. Under N.C. Gen. Stat. § 160A-71(c), a municipality's governing board has broad authority to adopt local rules "not inconsistent with [its] charter, general law, or generally accepted principles of parliamentary procedure." Thus, it may be argued that Town Council has the authority to adopt a remote participation policy setting forth the conditions and procedures governing such participation.

Notwithstanding this broad authority, it bears repeating that these matters have not been addressed under the North Carolina statutes or by North Carolina courts and that it may therefore be argued that a member must be physically present to establish a quorum or to vote on a matter. The risk of such arguments is amplified for boards which function as quasi-judicial decision-makers as is the case with the HPC. Notwithstanding such arguments, these risks can be mitigated under a policy carefully delineating the circumstances and procedures under which remote participation will be allowed and specifically addressing the quorum and voting issues.

RECOMMENDATIONS

1. Instruct HPC/PZC Attorney to draft a local policy permitting remote participation in the commissions' meetings, said policy including, but not being limited to, the following provisions:

- A. Allow remote participation only when enough members are physically present to constitute a quorum.
- B. Do not allow remote participation in closed sessions due to the difficulty of ensuring no one else is present at the remote location.
- C. Permit voting only when a remote member is participating by telephone or video.
- D. Permit voting on all matters coming before either commission excepting quasi-judicial matters coming before the HPC.

2. HPC/PZC to review the proposed local rule and report to Council with recommendations regarding the same.

REMOTE PARTICIPATION POLICY FOR PZC AND HPC
(Proposed amendment to Chapter 2 Administration)

ARTICLE VIII. REMOTE PARTICIPATION POLICY FOR THE PLANNING AND ZONING AND HISTORIC PRESERVATION COMMISSIONS

Sec. 2-191. Preamble.

An “official meeting” under the State’s Open Meetings Law includes the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting public business provided the public has access to such official meetings. In addition, municipalities have broad authority to manage the conduct of their meetings and thereby “grow in reasonable stride with technological advancements.” Accordingly, and to promote greater participation in the Town’s governmental activities, this article sets forth the procedures and restrictions for members participating remotely in the meetings of the Planning and Zoning and Historic Preservation Commissions. It is strongly recommended that the members of those commissions physically attend meetings whenever possible and that remote participation is not used in ways defeating the purposes of the State’s Open Meetings Law.

Sec. 2-192. Minimum Requirements for Remote Participation.

(a) A member shall be permitted to participate remotely in the commission’s meeting only if physical attendance at the meeting would be unreasonably difficult.

(b) Members participating remotely and all persons present at the meeting location shall be clearly audible to each other.

(c) A quorum of the commission, including the person chairing the meeting, shall be physically present at the meeting location. Members participating remotely in the meeting shall not be counted for the purpose of establishing a quorum.

(d) Members shall not be permitted to participate remotely in closed sessions due to the difficulty of verifying that no other person is present at the remote location.

(e) Members participating remotely may vote on all matters coming before the commission excepting quasi-judicial matters coming before the Historic Preservation Commission.

(f) All votes taken during any meeting in which a commission member participates remotely shall be by roll call vote.

Sec. 2-193. Technology.

(a) The following media shall constitute the acceptable methods for remote participation:

(1) Telephone, internet, or satellite-enabled audio or video conferencing.

REMOTE PARTICIPATION POLICY FOR PZC AND HPC

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(2) Any other technology enabling the remote participant and all persons present at the meeting location to be clearly audible to one another.

(3) When video technology is being used, the remote participant shall be clearly visible to all persons present at the meeting location.

(4) The commission shall determine which of the acceptable methods may be used for remote participation.

(5) The person chairing the meeting may decide how to address technical difficulties which may arise as a result of the remote participation provided that, whenever possible, discussion of an item is suspended pending reasonable efforts to resolve any such technical issues. In the event a remote participant is disconnected from the meeting, that fact and the time at which it occurred, shall be noted in the meeting minutes.

Sec. 2-194. Procedures for Remote Participation.

(a) A commission member wanting to participate remotely shall, as soon as reasonably possible prior to the subject meeting, notify the commission's chair of his/her request to participate remotely and the facts supporting the request.

(b) At the start of the meeting, the person chairing the meeting shall announce the name of the member participating remotely and the technological means of that participation and this information shall be recorded in the meeting minutes.

(c) When feasible, the commission's clerk shall distribute to remote participants, in advance of the meeting, copies of any documents the clerk reasonably anticipates will be used during the meeting.

Sec. 2-195. Adoption and Revocation of Policy.

Remote participation in commission meetings shall not be permitted until town council adopts this policy. Council may revoke any such adoption in like manner.



HISTORICAL PRESERVATION COMMITTEE MINUTES

REGULAR MEETING

Wednesday, August 7, 2019 @ 6:30 pm

The Kure Beach Historical Preservation Committee held its regular meeting on Wednesday, August 7, 2019. A quorum of members was present and Attorney Jim Eldridge attended.

P&Z MEMBERS PRESENT

Chairman Craig Galbraith
Member Bill Moore
Member Robert Young
Member David Garceau
Member Kenneth Richardson

P&Z MEMBERS ABSENT

STAFF PRESENT

Nancy Avery, Town Clerk
John Batson, Building Inspector
Mandy Sanders, Deputy Town Clerk

1. CALL TO ORDER

Chairman Galbraith called the meeting to order at 6:30 pm.

2. APPROVAL OF AGENDA

MOTION – Member Richardson made a motion to approve the agenda as presented

SECOND – Vice Chairman Moore

VOTE - Unanimous

3. APPROVAL OF MEETING MINUTES:

- July 9, 2019 Regular Meeting

MOTION – Member Young made a motion to approve the minutes from the July 9, 2019 special meeting

SECOND – Member Garceau

VOTE – Unanimous

OLD BUSINESS

Chairman Galbraith stated one of the issues that has come up several times for the Commission is call in for meetings. Even if it is not recommended can the Commission still make a motion to allow a member of the Commission to call in? Does the Town Council currently allow call in for meetings and does the Town Council vote?

Attorney Eldridge commented there is currently no rule of law. The UNC School of Government frowns upon voting and he would recommend the Commission consider this. If the School of Government doesn't recommend then there is a risk the Commission may be taking. He does not believe being present is accomplished by electronic means but will do more research on this subject.



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Town Clerk Avery stated the Town Council does currently allow call in and voting via telephone.

MOTION-Vice Chairman Moore made a motion to table the Commission having the authority to call in to meetings for the Historical Preservation Commission to the September meeting

SECOND- Member Young

VOTE- Unanimous

NEW BUSINESS

1. Introductions to UNCW interns

Chairman Craig Galbraith stated:

- Kure Beach has two interns from the Master of Public Administration program at UNCW
- The program has a requirement to do an internship with a local public agency or a nonprofit
- The internship is full academic credit with 20 hours per week for 15 weeks
- 300 hours over the whole fall semester
- The Interns won't have to be present at Town hall at all times to receive the credit
- The interns will attend the Commission meetings and public hearings
- Interns will write the analysis and write the report provided by the State Government
- The intern for the HPC is Joe Donohoe who has already received the model study

UNCW Intern Joe Donohoe stated:

- Currently studying at UNCW as a graduate student
- Majored in Political science for his bachelor degree
- He has worked at fort fisher for over a year and is very familiar with the area
- He is looking forward to the task and feels it will be very rewarding

UNCW Intern Gloria stated:

- Majored in Political Science for her undergrad at UNCW
- This is her second year in the MBA program with a concentration in Urban Policy and Planning

Chairman Galbraith stated Gloria will be the P&Z intern and will be working on two main projects. One project will be a green study by researching other communities in the State of NC to see what programs communities offer or polices the communities have in place. The other project will be the allowable businesses categories. The P&Z Commission needs to identify each item that is not allowed in the community.

The members of the Historical Preservation Commission introduced themselves to the interns.



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Mayor Bloszinsky stated he is delighted to have the interns assist the Town in this effort. The Town Council looks forward to receiving value from you and hope to do the same in return. Please keep in mind at times the Town Council may have to scale back the ideas you bring forward to protect the citizens. The programs you come up with are always meant to serve the community. The citizens should never have to struggle with the processes the Town Council puts into place.

Chairman Galbraith would like to have a recommendation for the Town Council by the end of the fall semester.

MOTION- Vice Chairman Moore made a motion to adjourn the meeting at 6:58 p.m.

SECOND- Member Garceau

VOTE- Unanimous

ATTEST:

Mandy Sanders, Deputy Town Clerk

Craig Galbraith, Chairman

NOTE: These are action minutes reflecting items considered and actions taken by Historical Preservation Commission. These minutes are not a transcript of the meeting. A recording of the meeting is available on the town's website under [government>planning and zoning](#).