- AGENDA -
Town of Nags Head Planning Board
Tuesday, August 18th, 2020; 9:00 a.m.

This meeting will be open to the public; however, one or more members of the Board may participate remotely using the ZOOM meeting platform. Members of the public will also be able to view the meeting remotely using the ZOOM platform or app on a computer or smartphone, or by calling in using a phone.

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A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

D. Approval Of Minutes
July 21, 2020 Planning Board Meeting

Documents:

JULY 2020 DRAFT MINUTES.PDF

E. Action Items

1. Consideration Of Text Amendments To The UDO
as it pertains to non-conforming hotels, and accessory uses in association with preexisting fishing piers.

Documents:

MEMO TO PB RE NONCONFORMING HOTELS AND ACCESSORY USES FOR PIERS_8-14-2020.PDF

2. Consideration Of Text Amendments To The UDO

as it pertains to fill regulations for properties west of NC 12 and/or 1243 subject to a Base Flood Elevation.

Documents:

FILL IN AE TEXT AMEND PB PACKET.PDF

F. Town Updates - As Requested

1. Report On Board Of Commissioners Actions
   August 5, 2020 BOC Meeting

   Documents:

   BOC ACTIONS AUGUST 5 2020.PDF

G. Discussion Items

1. July 24, 2020 Director's Report

   Documents:

   MEMO PND DIRECTOR REPORT_7-24-2020.PDF

H. Planning Board Members' Agenda

I. Planning Board Chairman's Agenda

J. Adjournment

Town of Nags Head
Planning Board
July 21, 2020

The Planning Board of the Town of Nags Head met in regular session on Tuesday July 21, 2020 in the Board Room at the Nags Head Municipal Complex. Due to Covid-19 restrictions, this meeting was also held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public were invited to attend the meeting using the ZOOM platform or app, or by calling in using a phone and the meeting were conducted with the members participating by simultaneous communication.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Kristi Wright, Molly Harrison, Meade Gwinn, Megan Lambert, Gary Ferguson, David Elder, Gary Ferguson (via Zoom)

Members Absent

None

Others Present

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding (via Zoom)

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the June 16, 2020 meeting. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Consideration of Numerous Text Amendments to the Unified Development Ordinance for clarification and to correct errors.

Deputy Planning Director Kelly Wyatt explained that since the Planning Board's February 18, 2020 meeting where the Board reviewed and made a recommendation on the first iteration of post-UDO adoption typographical errors, Staff has identified several additional areas for correction or improvement of the UDO.
Ms. Wyatt proceeded to the review the corrections for the Board:

Correction to the Post-Firm Definition
The Flood Damage Prevention Ordinance, adopted by the Board of Commissioners on June 3, 2020 contained an error within the definition of "Post-FIRM". The Post-FIRM date is cited as being December 31, 1974. The Pre-FIRM date is cited as being November 10, 1972. Both dates should be November 10, 1972. The December 31, 1974 date had previously been provided to the town as the correct Post-FIRM date from FEMA, however we have since been directed to utilize the November 10, 1972 date. We have received direction that the November 10, 1972 is relevant for floodplain purposes; the December 31, 1974 date is relevant for insurance purposes.

Correction to Section 3.5.3.3, Action by Planning Board, to correct a typographical error "matter".
The sentence should read, "Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member."

Correction to Section 4.12.2.1, Specific Site Plan Requirements Based on the Proposed Activity, Stormwater Management.
This section of the UDO had not yet been revised with the updated information from the December 5, 2018 approval of various Stormwater management amendments.

Correction to Section 6.2.4.1, Zoning Districts, Commercial Districts, to correct a typographical error, "as".
The second to last sentence should read, "It is also the intent of this C-1 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well as site layout".

Correction of strike-through typos in Section 6.6, Table of Uses and Activities as well as to clarify no supplemental standards listed for Government Administrative Office use.
Two (2) uses within Section 6.6 Table of Uses and Activities contain strikethrough of unnecessary text, this was unintentional and simply a carryover from a "markup" version. Additionally, the use of "Government Administrative Office" contains a notation that supplemental standards are required and located within Section 7.42 of the UDO. This is in error, this use does not have supplemental standards associated with it and as such we are recommending the Table of Uses and Activities be amended to reflect that.

Correction to Section 8.3.1.5, Special Development Standards, C-3 Commercial Services District, to correct a typographical error, "pollution as".
The first sentence should read, "No outside storage of processed materials, which may be a possible source of pollution as determined by the NC Department of Environmental Quality, shall be allowed".

Correction to Section 10.24.2, Signs Permitted in Commercial Districts and the Commercial/Residential District, to include flag (non-advertising, non-informational) regulations that were inadvertently deleted during the adoption of the UDO.
Prior to the adoption of the Unified Development Ordinance, Chapter 48, *Zoning*, of the Code of Ordinances, contained various use regulations within the definition of the use. Listing use regulations within the definition of the use is not considered to be an ideal regulatory practice, and as such, during the drafting of the UDO, Staff attempted to move those regulations into the Supplemental Standards for the appropriate use. In the process, the spacing requirement for "Flag (non-advertising, non-informational)" which had previously been part of the definition, did not make it into the

appropriate section of the UDO. This was inadvertently lost during the drafting process; this amendment would simply add the spacing requirement back into the use requirements.

Ms. Wyatt noted that Staff would recommend that the amendments be adopted as proposed and she would be happy to answer any questions for the Board.

David Elder moved to recommend approval of the text amendments as presented. Meade Gwinn seconded the motion and the motion passed unanimously.

Consideration of a text amendment to allow "Real Estate Rental Management Facility" as a Conditional Use within the C-2, General Commercial Zoning District.

Ms. Wyatt stated that Cahoon and Kasten Architects, PC had resubmitted the proposed text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc.

Ms. Wyatt explained that following discussion and the recommendation issued at the June 16, 2020 Planning Board meeting, the applicant elected to withdraw the proposed text amendment, and subsequently submit a slightly revised version. If adopted, this text amendment would amend the Unified Development Ordinance ("UDO") to permit the use "Real Estate Rental Management Facility" as a conditional use within the C-2, General Commercial Zoning District.

Ms. Wyatt stated that while it is important to remember that text amendments are not site specific, this text amendment has been proposed with the intent to seek a conditional use permit for this use to be conducted in an existing structure located at 205 East Baltic Street (formerly His Dream Center) and situated within the C-2, Commercial Services Zoning District.

Ms. Wyatt noted that the "Real Estate Rental Management Facility" use was first established as a use permitted by-right within the C-3, Commercial Services Zoning District, in December 2006. At that time, a definition was established along with parking standard and buffering requirements.

Additionally, when originally adopted into the code, the use of Real Estate Rental Management Facility was determined to be a "High Impact Use". High impact uses are particular uses of land, which considered as a whole because of their peculiar or operational and physical characteristics are expected to have an adverse effect on adjoining or adjacent properties.

The intent of the C-3, Commercial Services Zoning District, is to provide standards for higher intensity land uses that are not compatible in other areas of the Town. The commercial services district accommodates utilities, light industrial uses, warehousing, bulk storage, municipal facilities, studios (dance, martial arts, etc.), and commercial service buildings (20,000 square feet or less). It is also the intent of the C-3 District to regulate and buffer such uses so that their location will not be detrimental to adjacent uses, the environment, and sources of potable water. For this reason, in 2006, this use was approved as a permitted use within the C-3 Commercial Services District.

Staff was not certain that this use was fitting for the intent of the C-2, General Commercial Zoning District, which is to foster a thriving commercial business community with a variety of uses, activities and scales. This District represents areas that are anticipated to have future concentrations of uses that serve as destinations or hubs of activity for the Town and are appropriate for shopping centers or larger footprint retail stores.

The applicant, recognizing the different intents of the two districts, as well as their locations within the Town, has suggested that this amendment be taken under consideration as a conditional use

versus a permitted use, so as to provide the Planning Board and Board of Commissioners an opportunity to consider the placement of appropriate standards upon the use.

The applicant has also provided a detailed outline of the requested text amendment with their application, including what is considered to be similar land uses currently permitted within the C-2, Zoning District, as well as possible site and design standards to ensure compatibility with the C-2 District and adjoining land uses.

These site and design standards include that the Real Estate Rental Management Facility use:
- Shall not be located upon a lot having frontage on NC 12/Virginia Dare Trail or US Highway 158.
- Shall be located upon a lot having a minimum area of one (1) acre.
- Whether as a new use or a change of use, Real Estate Rental Management Facility must adhere to the buffering requirements of 10.93, Landscaping, Buffering, and Vegetation Preservation and specifically Section 10.93.3.2, Commercial Transitional Protective Yards and 10.93.3.3, High Impact Uses.
- Shall adhere to hours of operation consistent with Article III of the Town Code, Noise Ordinance such that no activity shall occur between the hours of 11:00pm and 7:00am.
- Shall be prohibited from the outdoor storage of materials or equipment.
- Shall have freestanding signage limited to 16 square feet and there shall be no allowance for wall signage.
- There shall be no linen storage or cleaner check-in associated with this use in the C-2, General Commercial Zoning District.
- The use shall adhere to low-level of activity lighting.

Ms. Wyatt noted that in review of this text amendment application Staff would submit that while this use is compatible with the intent outlined for the C-3 Commercial Services, it is likely not compatible with the intent of the C-2, Commercial Services District. Additionally, Staff is of the opinion that the allowance of this use within the C-2 zoning district would be inconsistent with several policies contained in the Comprehensive Plan. Therefore, Staff recommends denial of the text amendment. Ms. Wyatt stated that if the Planning Board is inclined to recommend adoption of the text amendment, Staff would recommend consideration be given to incorporating the standards and criteria set forth by the applicant for the use within the C-2 zoning district.

Mr. Gwinn inquired what had changed other than the changing of the square footage. Ms. Wyatt confirmed that while the applicant could address this further, the other major change was the adding of the condition that there be no linen storage or cleaner check-in associated with the use.

Mr. Elder noted that historically there have been many uses associated with that particular site. Ms. Wyatt agreed but stated that the majority of these uses have been some type of community gathering space/indoor assembly which are allowed in the C-2 District. Planning Director Michael Zehner reminded the Board that this request was not site-specific but rather town-wide.

Mr. Ferguson inquired how many one acre lots are in the C-2 District. Ms. Wyatt noted that while she did not have an actual number there were probably only a handful of lots that meet this criteria. The concern would be the potential of multiple lots combining to create one.

Ms. Wyatt confirmed for Ms. Wright that Staff's concern was that the use was not consistent with the intent of the C-2 District, it is not what the Town envisioned for that district.

Ms. Harrison inquired what kinds of uses are generally allowed in the C-2 District.

The Board had to take a brief break due to technical difficulties with the Zoom Platform.

Ms. Wyatt confirmed that some of the permitted uses include convenience stores, food stores, furniture stores and other retail such as clothing and toy stores, pet shops, pharmacies, banking institutions, etc.

Mr. Gwinn noted that all those uses mentioned are uses that involve the public, people go into shops, banks, etc. The proposed use is not a draw for tourists or citizens; it's just for warehousing and storage.

Applicant Ben Cahoon addressed the Board. Mr. Cahoon noted that when they were working on the UDO and the Comprehensive Plan, one of the concerns that came up was the conversion of commercial property to residential. Mr. Cahoon noted that while the applicants understand that the proposed amendment is not site-specific the site they are looking at is an unusual building which has had a number of different uses. They are trying to find a use that is suitable for the current property that can allow the building to continue until a better use comes along. The applicants acknowledge that perhaps Real Estate Rental Management Facility may not be the best use but they would argue that it is not disruptive to the neighborhood and would help preserve the building for the future.

Mr. Cahoon stated that there are currently uses allowed today that are of equal or higher intensity than the use they are proposing; these uses include multi-family dwellings, hotels, dormitories, convenience stores, auto repair shops and car washes.

What the applicants tried to do with the resubmission was to reduce the level of intensity; to "tone down" some of aspects that relegate the use to the C-3 District. They took into consideration that this amendment would apply district-wide, and because they would not want a facility like this on NC 12 or US 158, they imposed this as a condition; they also increased the lot size requirement significantly, imposed the buffering standards, hours of operation, eliminated outside storage of materials, limited the signage, eliminated the linen storage and cleaner check-in/check-out so that they wouldn't have that traffic on the weekends and proposed low-level lighting standards. Mr. Cahoon noted that while it may not be providing retail services or other similar types of activities, with these added conditions the use would not be disruptive to the neighborhood.

Ms. Harrison noted that while it sounded like what the applicants are proposing would be less impact than some of the other uses that could go in that building, since the amendment would be town wide, Ms. Harrison questioned if someone else could build a Real Estate Management Facility on a one acre lot from the ground up, that was a big warehouse type structure. Ms. Wyatt confirmed that there would be opportunities for that if the amendment were to be approved.

Mr. Gwinn agreed with Ms. Harrison noting that approving this use opens the door for other uses to be expanded into the C-2 that really belong in the C-3. As someone living near there, he does not think it is the type of operation he would want in his neighborhood. Mr. Gwinn noted that even with the added conditions, someone could combine some smaller parcels and redevelop it like Ms. Harrison indicated and put up a warehouse. Even if it less intensity, it is still a warehouse.

Ms. Harrison noted that while she does not have a problem with that particular site, it is the potential for town-wide use that is the issue.

Mr. Elder stated that it's almost like they are looking for a "unicorn solution" in order to preserve the longevity of a building but noted they can't mandate that the building remain there, they can't guarantee that a bulldozer won't be visiting the property eventually.

Chair Vaughan noted that what the applicants are proposing makes it sound more like a warehouse than an actual Real Estate Rental Management Facility and she wasn't sure if that description even fits what they want to do.

Mr. Ferguson inquired about building contractor's offices and if they were actually allowed in the C-2 District as that use seemed similar to what was being proposed. Mr. Cahoon noted that contractor's offices in the C-2 District are not allowed outside storage.

Ms. Harrison inquired if another type of business could build a warehouse type building in the C-2? Ms. Wyatt noted that as part of the development of the UDO they went through the entire building design process to try to address that concern. The warehouse use is not permitted in the C-2 so something that looks like a warehouse would likely not make it through that building design process.

After some further discussion Meade Gwinn moved to recommend denial of the proposed text amendment. Chair Vaughan seconded the motion and the motion passed by unanimous vote.

Consideration of A Text Amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of commercial mixed-use uses.

Ms. Wyatt explained that Cahoon and Kasten Architects, PC had submitted a text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc. to amend Section 7.32 of the UDO, and specifically Section 7.32.2., to add the Furniture Store use as an allowable use for all Commercial Mixed-Use designations.

This would include the following use types: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Centers. Currently, and without this amendment, a Furniture Store Use would not be allowed to be incorporated as part of one of the aforementioned mixed-use uses.

Ms. Wyatt noted that generally, the various mixed-use uses contemplate and allow for multiple independent entities and/or uses to occupy a single building or property. It is also important to note that furniture stores are an allowed use only within the C-2 zoning district. Therefore, it would be within that district only that a furniture store could be incorporated as part of a mixed-use use. With the exception of the Commercial with Accessory Residential use, all other mixed-use use designations require a conditional use permit within the C-2 district.

Ms. Wyatt proceeded to review for the Board the uses that can currently go into a mixed-use development.

Ms. Wyatt noted that while staff had not identified policies within the Town's Comprehensive Plan specific to "Furniture Stores" in association with mixed-use uses, in their Staff memo they did note some policies which are generally relevant and should be taken into consideration.

In review of this text amendment application, Staff generally has no concern with listing the use of "Furniture Store" as an allowable use for all Commercial Mixed-Use designations and believes it is consistent with applicable policies. As noted, this would only be applicable within the C-2 zoning district, and, with the exception of the Commercial with Accessory Residential use, would require a conditional use permit. Therefore, Staff recommends adoption of the proposed text amendment.

Ms. Wyatt explained for Mr. Gwinn that while there is a definition for furniture showroom, it is not identified as an allowed use within any district in the UDO.

Applicant Ben Cahoon addressed the Board stating that they were not aware of any logic as to why a furniture store wouldn't be permitted in combination in any of those uses when a furniture store is already permitted in the district.

While acknowledging that this amendment would apply throughout the district, allowing this would open up a little bit of flexibility for what this owner can do, and it's a route to using the building in a way that is compliant with the district.

Mr. Cahoon further noted that currently a furniture store would not be allowed in a Shopping Center such as the Shoppes at 10.5 and others, which just doesn't make any sense so it is a reasonable thing to fix just on its own merit without consideration of any property.

Chair Vaughan stated that it made perfect sense and sounded logical. Mr. Gwinn and Ms. Harrison both agreed.

Molly Harrison then moved to recommend approval of the text amendment as presented. Mr. Gwinn seconded the motion and it passed unanimously.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's July 1st Meeting. Of note, Mr. Zehner introduce new employee Environmental Planner Kylie Shepard; the approved consent agenda included the request for a Public Hearing for the Coastal Villas revised preliminary plat for a major subdivision; the public hearing to consider text amendments to the UDO to allow outdoor stands to include reservations and ticket sales, passed with a 4 to 1 vote; Mr. Zehner gave his Planning Director Report which included updates on Regulation of Large Occupancy Homes, Residential Stormwater Regulations and Dowdy Park Farmers Market.

Town Updates

Chair Vaughan asked about inviting the interim Town Manager to stop by during their next meeting so that the Board can meet him.

Discussion Items

Continued Discussion of Legacy Establishments/Structures

Mr. Zehner noted that it's been good that they've had a lot of conversations about this because it has helped to narrow down their focus.

Mr. Zehner explained that during continued discussion of this item at their last meeting, the Board was generally supportive of the option presented by Staff that would make amendments to Article 5, *Nonconformities*, of the UDO, by providing nonconforming restaurants, hotels, or retail uses that commenced on or before December 31, 1980 with the option of seeking a conditional use permit to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Sections 5.5. and/or 5.6. of the Article. At that meeting, the Board requested that Staff review and determine the specific instances where such a provision would be applicable.

Following the meeting, Staff conducted the requested review and determined that the following hotels were all nonconforming uses, all located with the CR, Commercial Residential Zoning District, and which may benefit from the provision being considered:

1. Comfort Inn South, 8031 S. Old Oregon Inlet Road, constructed in 1974
2. Dolphin Motel, 8017 S. Old Oregon Inlet Road, constructed in 1960
3. Owens Motel, 7115 S. Virginia Dare Trail, constructed in 1966
4. Seafoam Hotel, 7111 S. Virginia Dare Trail, constructed in 1961
5. Islander Motel, 7011 S. Virginia Dare Trail, constructed in 1973
6. Blue Heron Motel, 6811 S. Virginia Dare Trail, constructed in 1975
7. Surf Side Hotel, 6711 & 6701 S. Virginia Dare Trail, constructed in 1984 & 1989
8. Holiday Inn Express (former Nags Head Inn), 4701 S. Virginia Dare Trail, constructed in 1987
9. Colonial Inn, 3329 S. Virginia Dare Trail, constructed in 1947

Mr. Zehner noted that based on their review Staff determined that the year constructed was not necessarily that important.

Additionally, Staff determined that there were no restaurants or retail establishments that were considered to be a nonconforming use. However, related, Staff did determine that the presence of residential units in conjunction with the Nags Head Fishing Pier constituted a nonconforming use of the site, which may be something that the Board wished to address.

Based upon the above, Staff felt that hotels are what they should focus on and as such they may be more appropriate to address within Section 7.12, *Hotels*, of Article 7, *Supplemental Regulations*, similar to the treatment of nonconforming cottage courts.

Under this option, the following treatment may be sufficient:

7.12.3. Nonconforming Hotels.
Where an existing hotel is considered to be a legally nonconforming use of land and/or legally nonconforming use of a structure, pursuant to Sections 5.5 and/or 5.6 of the UDO, a conditional use permit may be sought in accordance with Section 3.8, Conditional Use Permits, to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5 or 5.6, or subsections thereof.

Generally, Staff is of the opinion that it would be appropriate to address within Section 7.12 or within Sections 5.5 and 5.6. Addressing within Section 7.12, again, would be consistent with the similar provision addressing nonconforming cottage courts; however, addressing within Sections 5.5 and 5.6 would seem most germane. Ultimately, the best option may be the one that would be most apparent to those that would need to make use of the provision.

Mr. Zehner stated that if this works for the Board, staff could bring a text amendment to the next meeting.

Mr. Elder noted that it would make sense to roll Nags Head Pier into it as well, just to clean things up. Chair Vaughan agreed.

Mr. Ferguson raised a question about the Surfside Hotel noting that the second piece of the hotel was actually permitted as a condominium when that parcel was developed. Mr. Ferguson noted that in the late 80's the Town developed some severe restriction on hotels on the oceanfront and in order to

circumvent those restrictions, the developer decided to go ahead and classify it as a condominium instead of a hotel. Mr. Ferguson inquired if the Town was now looking at it as a hotel?

Mr. Zehner stated that Staff can get further clarification on this particular property but noted that the provision that Staff drafted would only apply to the hotel use.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

Chair Vaughan checked in with the members to see if everyone was comfortable with the new way of meeting (in person but socially distanced, in conjunction with the Zoom platform) and asked if anyone had comments or concerns about the way the Board met today. The Board was in general agreement that the meeting had gone well.

Adjournment

A motion to adjourn was made by David Elder. The time was 10:29 PM.

Respectfully submitted,

Lily Campos Nieberding

DRAFT

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: August 14, 2020

Subject: Consideration of text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers

OVERVIEW AND BACKGROUND

As noted in my Director's Report to the Board of Commissioners and Planning Board, dated January 30, 2019, given previously expressed interest in the future of the Blue Heron Motel at 6811 S. Virginia Dare Trail and the limitations imposed by Town Code requirements on the evolution of the current nonconforming hotel use of the property, Staff began considering text amendments to the UDO to advance Comprehensive Plan policies valuing the preservation of legacy business, establishments, and structures.

This item was initially discussed at the Planning Board's meeting on February 18, 2020, with the Planning Board wishing to consider and discuss options further. The Planning Board discussed this item further at their meeting on May 19, where the Board requested that Staff explore options that did not require the creation of an overlay zoning district, and to present those options to the Board for consideration. Staff presented additional information to the Planning Board on June 16; at that time, the Board was supportive of the option presented by Staff that would make amendments to Article 5, *Nonconformities*, of the UDO, by providing nonconforming restaurants, hotels, or retail uses that commenced on or before December 31, 1980 with the option of seeking a conditional use permit to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Sections 5.5. and/or 5.6. of the Article. At the meeting, the Board requested that Staff review and determine the specific instances where such a provision would be applicable.

Following the meeting, Staff conducted the review requested by the Board and determined that the following hotels were all nonconforming uses, all located with the CR, Commercial Residential Zoning District, and which may benefit from the provision under consideration:

1. Comfort Inn South, 8031 S. Old Oregon Inlet Road, constructed in 1974
2. Dolphin Motel, 8017 S. Old Oregon Inlet Road, constructed in 1960
3. Owens Motel, 7115 S. Virginia Dare Trail, constructed in 1966
4. Seafoam Hotel, 7111 S. Virginia Dare Trail, constructed in 1961
5. Islander Motel, 7011 S. Virginia Dare Trail, constructed in 1973
6. Blue Heron Motel, 6811 S. Virginia Dare Trail, constructed in 1975
7. Surf Side Hotel, 6701 S. Virginia Dare Trail, constructed in 1984

8. Holiday Inn Express (former Nags Head Inn), 4701 S. Virginia Dare Trail, constructed in 1987
9. Colonial Inn, 3329 S. Virginia Dare Trail, constructed in 1947

Additionally, Staff determined that there were no restaurants or retail establishments that were considered to be a nonconforming use. However, related, Staff did determine that the presence of residential units in conjunction with the Nags Head Fishing Pier constituted a nonconforming use of the site, which may be something that the Board wished to address.

Staff presented the above information to the Board at their meeting on July 21. The Board agreed, given that the necessary scope of any treatment would only apply to nonconforming hotels, that it may be more appropriate to focus any amendments within Section 7.12, *Hotels*, of Article 7, *Supplemental Regulations*, similar to the treatment of nonconforming cottage courts. Additionally, the Board requested that Staff also address the residential dwelling units accessory to the Nags Head Fishing Pier.

As noted above, Staff's was initially broadly focused on legacy establishments and structures which may have been rendered nonconforming over time, either with respect to the use no longer being allowed in the zoning district in which the property is located or because of standards or requirements changing, or due to both circumstances. Upon further consideration, it became clear that nonconforming hotels were potentially impacted most, if not solely.

It is helpful to consider that the general principle with respect to nonconformities is that, over time, the nonconforming uses or conditions cease, evolving to conforming uses or conditions. This effect, at least with respect to the identified nonconforming hotels and the Nags Head Fishing Pier, would therefore seem to be inconsistent with the intent of the goals, objectives, policies, and actions contained in the Comprehensive Plan which support the retention of legacy establishments and structures and warrants consideration. Specifically, Sections 5.5, *Nonconforming Use of Land*, and 5.6, *Nonconforming Use of a Structure*, are limiting and jeopardize the preservation of these nonconforming uses in that these sections preclude:

- Nonconforming uses from being enlarged or altered in a way which increases the degree of nonconformity, or the extension of the use to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the UDO;
- Nonconforming uses from being moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of the UDO;
- The erection of new structures on land occupied by a nonconforming use, until such use is eliminated;
- Otherwise conforming structures occupied by a nonconforming use from being expanded, enlarged, extended, constructed, reconstructed, moved or structurally altered;
- Repairs to otherwise conforming structures that may increase the cubic content or intensity of a nonconforming use; and

- Nonconforming structures occupied by nonconforming uses from performing repairs within any 12 month period that exceeded 50% of the assessed or appraised value.

The impacts referenced above**, specifically those contained in Sections 5.5 and 5.6,** were the basis for the adoption of provisions in 2015 contained in Section 7.2.14 pertaining to nonconforming cottage courts. Similarly, the proposed text amendments, attached, would add a Section 7.12.3. pertaining to existing nonconforming hotels, allowing a conditional use permit to be sought to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5, *Nonconforming Use of Land*, or 5.6, *Nonconforming Use of a Structure*. Additionally, and related, Section 7.50.1. pertaining to fishing piers is proposed to be amended to reference that dwelling units existing as of July 1, 2020 are an allowable use in conjunction with fishing piers, which would serve to remove the nonconforming use designation for the Nags Head Fishing Pier for this condition.

POLICY CONSIDERATIONS

While not specific to the nonconforming hotels noted above, or the Nags Head Fishing Pier, Staff is of the opinion that the following policies and considerations included within the Town's Comprehensive Plan are applicable to the consideration of the proposed text amendments:

- One of the Town's principal goals, as established in the Comprehensive Plan, is to "Plan for orderly and sustainable growth and redevelopment," and an identified objective to attain this goal is the "Preservation and maintenance of legacy commercial businesses."

- As used in the Comprehensive Plan, at least within the context of *Character Areas*, legacy establishments, structures, or locations are those which "contribute to the overall sense of place or tell the story of Nags Head's past. These establishments, structures, or locations often remind you of the past and are nostalgic."

- Legacy establishments are particularly noted as adding to the character of the Whalebone Junction Character Area, and specifically the Whalebone Junction Core, where it is noted that "flexibility should be given to legacy type establishments for renovations as a way to retain the character of area while allowing the establishment to remain viable in the market."

- Legacy businesses are also referenced with respect to the Corridors Character Area, and specifically for the NC 12 and SR 1243 corridors, where it is noted that one of the future desires is to "provide flexibility for existing legacy businesses to renovate to help keep the character of Beach Road."

- The Land Use Element of the Comprehensive Plan, and the discussion of Incentives/Design Flexibility with respect to Site Development Characteristics, provides an overview of the issue and general solution, as follows:

  The town has taken recent steps to preserve older legacy businesses and encourage the retention of these structures. There has been a regulatory shift with regards to nonconforming properties (properties which met zoning regulations at the time they were developed but are not consistent with regularity changes that have occurred). Essentially, non-conformity regulations have been modified to allow continued improvements to these older properties. The regulations are primarily designed to restrict additional development of unwanted land uses. The town's position is to allow continued use and improvement to nonconforming properties.

- The section on Legacy Businesses under Local Business Development, as contained within the Economic Development and Tourism Element of the Comprehensive Plan, is attached. Specific policies and actions are as follows:

  EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.

    EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.

    EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.

    EC-7c: Develop incentives to encourage the preservation of commercial floor space.

    EC-7d: Explore ways to aid in the development of cottage courts.

STAFF RECOMMENDATION

Staff recommends that the amendments be adopted as proposed.

With regard to the Planning Board's review and action, Staff recommends consideration of the following UDO provisions:

3.5.3. Action by the Planning Board.

3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning

Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

It may also be helpful to the Planning Board to review the following provisions regarding action by the Board of Commissioners:

3.5.4. Action by the Board of Commissioners.
Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.

Attachments:

1. Draft Ordinance Amending the Code of Ordinances of the Town of Nags Head, North Carolina Pertaining to Nonconforming Hotels and Accessory Uses to Preexisting Fishing Piers, August 14, 2020 Draft

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO NONCONFORMING HOTELS AND ACCESSORY USES TO PREEXISTING FISHING PIERS

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, the Board of Commissioners find that the Town of Nags Head 2017 Comprehensive Plan includes an objective supporting the preservation and maintenance of legacy commercial businesses, and advocates for flexibility with respect to legacy type establishments for renovations as a way to retain the character of the Town, specifically of the Beach Road and the Whalebone Junction Character Area; and

WHEREAS, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Unified Development Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (<u>underline</u>) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipsis ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Section 7.12, Hotels, of Article 7., Supplemental Regulations, of the UDO**, be amended by the addition of Section 7.12.3., as follows:

7.12.3. Nonconforming Hotels.
Where an existing hotel is considered to be a legally nonconforming use of land and/or legally nonconforming use of a structure, pursuant to Sections 5.5 and/or 5.6 of the UDO, a conditional use permit may be sought in accordance with Section 3.8, Conditional Use Permits, to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5 or 5.6, or subsections thereof. Such hotels shall be subject to the provisions of Section 7.12.1., Dimensional Requirements, and Table 7-2, Dimensional Requirements for Hotels, applicable to hotels located in the C-2 zoning district.

PART II. That **Section 70.5.1. of Section 7.50, Fishing Piers, of Article 7., Supplemental Regulations, of the UDO**, be amended as follows:

Site plan means a plan provided that reflects existing and proposed conditions on a site that is intended for construction. This may include but is not limited to topography, structures or additions, grading, drainage, erosion control measures, trees to be saved or planted to comply with the applicable standards of this UDO as well as other requirements of the Town Code of Ordinances.

7.50.1. Fishing piers, which may include accessory restaurant or retail uses, or dwelling units existing as of July 1, 2020, are permitted in the R-2 and CR districts in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

PART XI. That the **Table of Contents to Article 7 updated to reflect Part I of this Ordinance**.

ARTICLE IV. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST: _____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____ AYES ____ NAYS

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Deputy Planning Director

Michael Zehner, Director of Planning & Development

Holly White, Principal Planner

Date: August 14, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance as it pertains to fill regulations for properties west of NC 12 and/or SR 1243 subject to a Base Flood Elevation.

OVERVIEW

Following the adoption of the Flood Damage Prevention Ordinance by the Board of Commissioners on June 3, 2020, Staff identified two necessary amendments to the text related to fill regulations applicable to properties west of NC 12 and SR 1243 and subject to a Base Flood Elevation. The first, a simple re-numbering to correct a typographical area. The second, a more substantive change to the regulations to address an unintended consequence associated with significant reduction of the Base Flood Elevation, whereby fill is currently limited to not exceed the Base Flood Elevation but it may be necessary for the Dare County Health Department to require fill in excess of the Base Flood Elevation. Base Flood Elevation

BACKGROUND

Section 11.5.3 of the Unified Development Ordinance addresses limitations on the utilization of fill based upon a property's location being either east or west of NC 12 and SR 1243. For properties west of NC 12 and SR 1243 for which the Flood Insurance Rate Map (FIRM) provides a Base Flood Elevation, fill shall not be permitted to exceed the Base Flood Elevation. It has been brought to our attention for one property currently under development, and will likely affect other westside properties, that the Dare County Health Department requirements for fill placement for the wastewater facilities requires fill to exceed the newly established Base Flood Elevation. The situation that Staff is aware of is as follows:

- The parcel was in an AE-11 (Base Flood Elevation of 11') flood zone and is now in an AE-4 flood zone.
- The average ground elevation on this lot is approximately 2.5'.
- The ordinance allows fill to be placed to the Base Flood Elevation, therefore, pursuant to current regulations, fill could not exceed 4'.
- The Dare County Health Department evaluation for wastewater improvement requires the septic field to be elevated 30 inches, bringing the lot elevation up to 5 feet, 1 foot greater than what the UDO would permit.

As written, this section of the Unified Development Ordinance does not adequately address the scenario where fill required for the wastewater permit would exceed the established Base Flood Elevation. Generally, this is the result of the significant change in the Base Flood Elevation and did not present issues previously. The proposed amendment would remedy this situation by specifically allowing lots to fill to the Base Flood Elevation or the minimum amount of fill required by the Dare County Health Department, whichever is greater. Additionally, this will be consistent with fill requirements in areas where the FIRM provides no Base Flood Elevation.

STAFF RECOMMENDATION

Staff recommends that the amendments be adopted as proposed.

With regard to the Planning Board's review, Staff recommends consideration of the following UDO provisions:

> *3.5.3. Action by the Planning Board.*
>
> > *3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*
> >
> > *3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*
> >
> > *3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

It may also be helpful to the Planning Board to review the following provisions regarding action by the Board of Commissioners:

> *3.5.4. Action by the Board of Commissioners.*
> *Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.

Attachments:

1. Draft Ordinance pertaining to fill located west of NC 12 and SR 1243 where subject to a Base Flood Elevation.

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA TO AMEND THE UDO AS IT PERTAINS TO FILL REGULATIONS WEST OF NC 12 AND/OR SR 1243 SUBJECT TO A BASE FLOOD ELEVATION.

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, following adoption of the Flood Damage Prevention Ordinance, Planning Staff has identified an area in need to clarification with regard to fill limits west of NC 12 and/or 1243 subject to a Base Flood Elevation; and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes goals and policies aimed at maintaining a well-run and efficient government that provides high quality and cost-effective services through good governance in order to advance the Town's vision; and

WHEREAS, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Towns Unified Development Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Section 11.5.3.2, Standard for Depth or Elevation of Fill, Properties West of NC 12 and SR 1243, of the Unified Development Ordinance**, be amended as follows:

11.5.3.2.1. In areas where the most recent Flood Insurance Rate Map (FIRM) provides a base flood elevation for a subject property, fill shall not ~~be permitted to~~ exceed the amount required for wastewater permits required by the Dare County

Health Department, or the base flood elevation, whichever is greater. However, when fill is proposed to be ~~except in cases where it is~~ placed directly beneath a slab that is designed to meet the base flood elevation depicted on the FIRM~~. In these instances~~, fill may exceed the base flood elevation by up to twelve inches (12") to support a turn-down or thickened edge slab or beneath a slab that is supported by a ring-wall style foundation; when designed in this manner, fill~~. Fill~~ placed above the base flood elevation shall not extend beyond the outside edge of the slab.

11.5.3.2.~~1~~2. In areas where the most recent Flood Insurance Rate Map (FIRM) provides no base flood elevation, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet (2') above pre-development surface elevation, whichever is greater.

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

BOC ACTIONS
WEDNESDAY, AUGUST 5, 2020

1. Call to order - Mayor Cahoon called the meeting to order at 9 am. He stated that the Town was fortunate to have minimal disruption from Hurricane Isaias and wanted to remember those in other areas who suffered loss of life and property damage to include the explosion and loss of lives in Beirut.

2. Agenda - The Board approved the August 5th agenda as presented.

3. Recognition

2020 Season Lifeguards - Fire Chief Randy Wells commended Ocean Rescue Director Chad Motz and then presented a powerpoint presentation where each lifeguard was introduced. Board members thanked staff for the presentation and thanked the lifeguards.

Fleet Maintenance Supervisor Charlie Bliven introduced Fleet Mechanic Jason Brickhouse who was recognized by the Board for five years of service.

Facilities Maintenance Supervisor Mike Norris introduced Facilities Maintenance Technician Russell Canter who was recognized by the Board for five years of service and Sanitation Equipment Operator Anthony Beasley who was recognized by the Board for ten years of service.

Police Chief Phil Webster introduced Police Officer Michael Alvarez who was recognized by the Board for five years of service.

4. Public Comment - no one spoke during Public Comment.

5. Consent Agenda - the Consent Agenda was approved as presented and consisted of the following:

Budget Adjustment #2 to FY 20/21 Budget
Consideration of Tax Documents (Year-end Adjustment, Year-end Settlement, Charge to Tax Collector)
Approval of minutes
Approval of Revision 2020 of NC Statewide Emergency Management Mutual Aid Assistance Agreement
Approval of revised contract with Dare County under the Federal CARES Act
Amendment to Traffic Control Map for 45 MPH speed on Causeway re: NCDOT changes to Little Bridge
Extend existing MOA with Town of Cary for emergency relocation of govt during State of Emergency
Consideration of drainage easement agreement with Gandt Development, LLC at 101 E. Dove St.
Consideration of agreement with Outer Banks Professional Services
Request for Public Hearing to consider minor text amendments to the UDO for clarification
Request for Public Hearing to consider text amendment to the UDO for furniture stores as allowable use

Mayor Cahoon asked Interim Town Manager Greg Sparks to follow up with NCDOT concerning erection of the 45 MPH signs on the Nags Head/Manteo Causeway.

6. Public Hearing - to consider a revised preliminary plat for a major subdivision known as Coastal Villas, for an approximately 11.17 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158; the revised Preliminary Plat proposes to create 17 building lots, along with an associated street and other required improvements, and requires a public hearing due to requested waivers.

The Board approved the waivers for the proposed Coastal Villas Subdivision – as relates to Town Code/UDO Sections 10.46 (access to public street or highway), 10.47 (limiting access to US 158, US 64/24, NC 12, and SR 1243), 10.68.1 (frontage to a street), and 10.68.3 (minimum amount of frontage). The Board also passed a motion to approve the Coastal Villas Subdivision Plat as presented.

7. Update from Planning Director - Director Zehner presented an update to include the following:

- Public Hearing scheduled for Sep 2nd Board meeting - the Board scheduled a Public Hearing on a text amendment that would allow for lots west of NC12 and SR1243 which have a Base Flood Elevation (located in an AE zone) to have fill added up to a height required by the Dare County Health Department for the Sep 2nd Board of Commissioners meeting.

- National Endowment for the Arts - Our Town Grant - It was Board consensus to pursue the grant for the Town's skate park located at the YMCA.

- Joint workshop between the Board of Commissioners and the Planning Board - for a review of the Town's residential stormwater regulations - It was Board consensus to take no action at this time.

- Decentralized Wastewater Management Plan - It was Board consensus to not be involved in the process of evaluation and selection for a project consultant for the Plan.

- US Census - Director Zehner and Mayor Cahoon recently spoke with a US Census representative - the Town currently has a 84.5% response rate; Information was provided to the Census enumerators by Director Zehner to make sure they begin in residential neighborhoods which would be more efficient.

- Land Use Plan Update - Comr. Renée Cahoon questioned the delay in approval of the Land Use Plan Update document. Director Zehner is to verify the timeline of the approval process.

8. From July 1st Board meeting - The Board extended the Dowdy Park part-time manager position through the last scheduled Farmers Market (August 27, 2020) plus two weeks for closeout.

9. From July 1st Board meeting - It was Board consensus to add to the charge to the Reuse and Recycle Task Force the fiscal component - to include a full and clear understanding of what the Town has invested. The Board unanimously appointed the following to the Task Force: Meredith Fish, Robert Netsch, David Bragg, Ann Daisey, and Kari Bakus – subject to each being a Nags Head resident.

10. Human Resources Manager position - The Board approved the Human Resources Manager job description as presented.

11. Interim Town Manager - Update on the W side multi-use path was presented:

Project 8A – Soundside Road to W Danube - The project was completed April 2020.
Project 8C – W Danube to W Seachase - The project is 99% complete with some incidental work left.
Project 8B – W Baymeadow to Gull Street - The project is now 65% - 70% complete.

12. Interim Town Manager - Board members spoke favorably of the preliminary recommendations for organizational changes as presented by Interim Town Manager Sparks; It was Board consensus to agree with Interim Manager Spark's process, with some input, and to continue.

Comr. Fuller made the following comments:
- Modify title of Finance Director to Director of Administrative Services/Finance Director
- Move Fire Lieutenant position to directly below the Fire Captain position
- Public properties - he suggested that one person, such as a dept deputy, be responsible for each public property in its entirety even though separate positions handle separate functions.

13. Interim Town Manager - For the Sep 2nd Board meeting, Fire Chief Wells will present the Fire Dept Strategic Plan; In addition, Police Chief Webster will be presenting a Police activities update. Update to the Personnel Policy to reflect the process to modify job descriptions will be presented also.

14. Interim Town Manager - Interim Manager Sparks updated the Board on parking issues with the Jockey's Ridge Soundside access where neighbors have complained about the growing problem of vehicles parking on the roadway as well as vehicles waiting for the access to open. He reported that staff has met with Soundside Road neighbors/Jockey's Ridge officials. Potential solutions are being discussed.

15. Interim Town Manager - Interim Manager Sparks reported that staff recently met with the county, other municipalities, and consultants for the first quarterly meeting to see if beach nourishment projects can be collaborated for a potential cost savings. He noted that while the Town's maintenance project does not line up with other towns as we are awaiting our FEMA obligation funds for 2021, staff will continue to work with the others in this regard.

16. Interim Town Manager - Interim Town Manager Sparks thanked all Town departments for their work in preparing for Hurricane Isaias - he feels fortunate that the Town ended up with minor issues.

17. Comr. Fuller - Comr. Fuller asked Police Chief Webster to explain the procedural process in place to monitor the public beach access parking and multi-use path issues. Police Chief Phil Webster responded that during undedicated time officers patrol and during this time they address this issue – a lot of tickets have not been issued as officers try to educate/work with the public. At the beginning and at the end of each shift, officers review their specific areas. Comr. Fuller said that the Board's value has always been to put the multi-use path in a higher priority category. In addition, he said that this year he has seen more electric vehicles on the path as opposed to last year when he observed more construction vehicles on the path. Mayor Cahoon questioned Board members if the Town should still have a zero tolerance re: electric skateboards, etc. on the path or if this should be revisited.

Comr. Brinkley re-emphasized the importance of officers keeping an eye on the beach accesses and the motorized vehicles/golf carts on the multi-use path.

Chief Webster encouraged Board members to call him directly if a violation is seen and he will respond.

18. Comr. Renée Cahoon - She thanked Public Works, sanitation staff, for securing trash carts prior to Hurricane Isaias as well as picking up afterwards. She suggested more communication between the Town and rental companies to help with this.

19. Mayor Cahoon - Future Town Envision - This item is to be left on the meeting agenda with an opportunity for discussion at the Sep 2020 Board Retreat.

20. Mayor Cahoon - Sep 2020 Board Retreat - He confirmed the dates of Sep 23 – 24, 2020 with Board members for a Retreat with Sep 25th to be used for staff discussions. It was Board consensus to proceed with the Retreat Facilitator as recommended by Interim Town Manager Sparks.

21. Mayor Cahoon - Town Manager search firm selection - Discussion of a Town Manager search firm will take place at the August 19th mid-month meeting at 2 p.m. Mayor Cahoon said that the search has been narrowed to three firms. As was done with the Interim Town Manager position, representatives of the three companies will be interviewed via the Zoom platform.

22. Closed Session - The Board entered Closed Session to confer with the Town Attorney re: matters within attorney client privilege, to preserve that privilege, to include discussion of the Blackburn v Dare County, Town of Nags Head, et al in accordance with GS 143-318.11(a)(3) - and to discuss a confidential personnel matter in accordance with GS 143-318.11(a)(6). The time was 11:45 a.m.

23. Open Session - The Board re-entered Open Session at 1:00 p.m.

24. Adjournment - The Board adjourned at 1:00 p.m.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Board of Commissioners
Planning Board
From: Michael Zehner, Director of Planning & Development
Date: July 24, 2020
Subject: Planning and Development Director's Report

This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on August 5, 2020; however, there are several items for which feedback from the Commissioners would be requested, as follows: Skate Park - Potential Grant Application, Residential Stormwater Regulations, and RFQ for Update of Decentralized Wastewater Management Plan.

Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for June 2020*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, June 9 - Board of Commissioners Budget Workshop
- Wednesday, June 10 - Arts & Culture Committee Meeting
- Tuesday, June 16 - Planning Board Meeting

Impact of Coronavirus on Permitting

As previously reported, a total of 67 building permits (non-trade) were applied for in both March 2020 and March 2019. In April, 48 building permits were applied for in both 2020 and 2019. In May, 57 building permits were applied for in 2020, while 48 were applied for in 2019. Finally, in June, 48 permits were applied for in 2020, while 39 were applied for in 2019. Since March 16 through July 23, 215 permits were applied for in 2020 compared to 194 in 2019.

With regard to trade permits, a total of 469 were issued in March through June of 2019, and a total of 300 were issued during the same period in 2020.

We will continue to monitor and report any impacts to permitting.

Report on Permitting - 3rd & 4th Quarters FY19-20

Please find attached an updated report to include the 3rd and 4th Quarters of FY19-20 (January 2020 - March 2020 and April 2020 - June 2020, respectively).

Skate Park - Potential Grant Application

As previously noted, Staff is considering applying for the National Endowment for the Arts Our Town Grant. This application would be seeking funds to design and develop plans for a future renovation of the Skate Park located at the YMCA. Staff estimates that this work would total $30,000, and the grant requires a 50% local match, so the Town's contribution would be at least $15,000. As the Board is aware, no funds are currently budgeted for this project; therefore, Staff would like the Board's feedback as to whether Staff should pursue this grant, recognizing that, if successful, the Board would need to decide at a later date whether these funds could be made available or that the grant award should be declined. The grant requires a partnership with a non-profit cultural arts or design organization, and Staff has been coordinating with the Dare County Arts Council

Residential Stormwater Regulations

At the July 1 meeting of the Board of Commissioners, Staff presented recommendations from the Planning Board pertaining to the Town's residential stormwater regulations, a review initiated at the request of the Board of Commissioners. It was the consensus of the Commissioners that the recommendations and regulations be discussed at a future workshop. At the Planning Board meeting on July 21, the Planning Board indicated their interest in participating in such a workshop with the Commissioners. It is also important to note that the Commissioners had suggested that a review of the regulations by a third-party consultant may be beneficial. Staff would suggest feedback from the Board on the timeline of a potential workshop, whether they would like to include the Planning Board, and whether this workshop should coincide with any review by a consultant, if include a consultant in the workshop.

RFQ for Update of Decentralized Wastewater Management Plan

Staff is working to prepare an RFQ based upon the scope that was presented at the July 1, 2020 Board of Commissioners meeting, expected to be released by mid-August. In terms of evaluating responses, and selecting the eventual consultant, Staff would request the Commissioners feedback as to whether they, along with certain Staff, would like to evaluate the responses, interview consultants if determined ideal, and select the consultant.

Planning Board - Pending Applications and Discussions

The July 21, 2020 meeting of the Planning Board was held in person, with one member participating remotely via the Zoom platform. Applicants also choose to participate via Zoom. This was the first meeting held in person since the Board's meeting held on February 18, 2020. The agenda included a further housekeeping text amendment to the UDO, reconsideration of a withdrawn text amendment to allow the Real Estate Rental Management Facility use in the C-2 zoning district, a text amendment to allow Furniture Stores as an allowable use as part of Commercial Mixed Use uses, and continued consideration of legacy establishments/structures.

The Planning Board's next meeting is scheduled for August 18, 2020. At this time, the agenda is expected to include consideration of a text amendment to address

nonconforming hotels and preexisting uses in conjunction with fishing piers, and conditional use permit applications for the Dream Center property contingent upon the text amendments for Real Estate Rental Management Facilities and Furniture Stores.

Additional Updates

- **2020 Census** - As previously indicated, the number/percentage of vacant vacation/rental homes in Town would skew the response rate recognized by the Census, as the rate is not adjusted at this time to account for those homes. Dare County has begun releasing the information on the rate depicting more accurate response rates based upon the number of occupied homes in the various communities. Based upon this methodology, the Town's response rate as of July 20, 2020 has been determined to be 85.46%, up from 83.91% on June 23.

  On July 24, 2020, the Mayor and Director participated in a call with Derek Dorazio, Partner Specialist for North Carolina with the U.S. Census Bureau. Mr. Dorazio discussed the response rate for the Town and recommended actions that could be taken to increase the response rate. Staff provided Mr. Dorazio with information that may assist in making upcoming door-to-door efforts more efficient.

- **Town Workforce Housing Study & Plan** - Phase 1 Report presented to the Board of Commissioners at the February 5, 2020 meeting. Further action on this project is on hold pending direction from the Board of Commissioners; however, it is important to note that funds associated with this project were liquidated due to budgetary constraints associated with the Covid-19 Pandemic.

- **Hazard Mitigation Plan Update** - With the Board of Commissioners adoption of the updated Plan on July 1, 2020, this project is considered complete.

- **Skate Park Renovation - Phase 1** - Staff is working to finalize a survey to determine community preferences for any future renovation of the Skate Park. Staff has also discussed the project with the Arts & Culture Committee, who are supportive of incorporating public art within the Park; this focus is the basis for the National Endowment for the Arts Our Town Grant previously referenced.

- **CAMA Land Use Plan Update** - Staff has prepared and submitted responses and proposed draft revisions responding to comments issued by DCM staff. On July 15, 2020, Staff received further comments pertaining to the completeness of the Plan based upon CAMA requirements. As of the date of this memo, Staff is preparing revisions responding to these comments. A determination of Plan completeness is required before further review is initiated.

- **UDO Reference Manual & Permitting Workflow** - Staff continues to develop Reference Manual materials, including identifying and refining workflows, to be brought to the Board of Commissioners for approval at a later date.

- **Art Masts** - As previously noted, the Art Mast project, coordinated with the Arts & Culture Committee, has resulted in four completed art panels. The Arts & Culture

Committee continues to discuss the locations for the new Art Masts, and is considering installations beginning at Bonnet Street and ending in the Gallery Row District. Staff is working with a sign company to determine the best way to install the masts.

- **Decentralized Wastewater Master Plan** - As noted above, Staff is working to prepare an RFQ, to be released by mid-March.

- **Islington Street Beach Access** - Subject to DCM/CAMA and CIP funds to improve the access, Staff will be working to prepare plans for permitting. Staff anticipates the site plan to be reviewed initially at the September Planning Board meeting.

- **Jacob Street Beach Access** - With the exception of the installation of a bike rack and completed of an as-built plan, construction of this project has been completed and Staff if working with DCM staff to close out the grant.

- **Legacy Establishments/Structures** - Working with the Planning Board, the focus of this effort has been narrowed to pertain to nonconforming hotels, as well as one fishing pier property that includes residential units, also a nonconforming condition. Staff anticipates bringing a text amendment forward at the August Planning Board meeting.

- **Dowdy Park Farmer's Market** - The Market is scheduled to run every Thursday in the months of July and August with a wide range of vendors including fresh produce, local honey, seafood, wood carving, ceramics, pottery and other handmade crafts. Thus far, 3 of the 4 scheduled markets have been held, with the Market schedule for July 9 being cancelled based upon the weather forecast. Staff has been enforcing masking and other protocols to ensure the public's health and safety.

- **Permitting/Online Permitting** - Staff had previously contacted representatives of the Outer Banks Home Builders Association to coordinate a schedule for a workshop/forum for the building community. However, given current circumstances, this effort has been placed on hold. Staff is considering developing a series of videos in the interim.

  Staff has begun an email distribution to contractors registered with the Town to provide updates on changes to permitting and inspection procedures associated with the Coronavirus Pandemic and response. Similar updates in the future are expected to be made on a more regular schedule and Staff will likely transition to using the News Flash feature on the Town's website.

  As previously reported, as of May 8, 2020, online permitting has been activated for all residential and commercial building and trade permit types, with the exception of permits for moving of residential or commercial structures; moving permits are expected to be added now that updated fees have been approved. Staff will continue to work to make improvements to the platform, publicize the

availability of the resource, and refine documents providing guidance to the Town's customers.

- **Grants and Assistance**

    - Staff had submitted a request under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan. Staff learned that funding under that event was no longer being considered, but that the request was being considered under funding decisions related to Hurricane Dorian,

    - Staff submitted a Letter of Interest ("LOI") under the Hazard Mitigation Grant Program related to Hurricane Dorian for the acquisition of property, and assisted Fire Chief Wells in the submission of an LOI for replacement of a generator; we have been notified that the generator request has been selected for further consideration, and have also learned that the request for funds for property acquisition also continues to be considered.

    - An LOI has been submitted for a National Fish and Wildlife Foundation - National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan; the final application will be submitted shortly. Additionally, a preapplication was submitted for the 2020 North Carolina Attorney General Environmental Enhancement Grant for the same project, for which the Town was approved to submit a full application, which was submitted on May 28, 2020.

    - As noted, Staff is preparing an application for the National Endowment for the Arts Our Town Grant seeking funds to prepare designs for the renovation of the Town's Skate Park.

    - Staff had previously reported on the CASSI Autonomous Shuttle Pilot program. Due to NCDOT budget constraints, Staff was notified that the program would require the Town to cover a lease payment of $46,000 per month for the shuttle. Based upon this information, Staff decided not to submit for the program at this time. Staff did request to be notified if future opportunities become available.

Upcoming Meetings and Other Dates

- Thursday, July 30 - Farmers' Market
- Monday, August 3 - P&D Staff Meeting
- Wednesday, August 5 - Board of Commissioners Meeting
- Thursday, August 6 - Farmers' Market
- Thursday, August 6 - Annual Emergency Operations Exercise
- Tuesday, August 18 - Planning Board Meeting

Report on Planning and Development Department Permitting Processes

FY19-20 - 3rd Quarter (Jan '20 - March '20)
FY19-20 - 4th Quarter (April '20 – June '20)

August 5, 2020
Board of Commissioners Meeting

Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters

- Completed/Instituted – Since January 2019
  - Bi-weekly Permit Tracking benchmarks reduced
  - Focus on internal and external communication improvements
  - Monthly Permitting, Inspections, and Enforcement Team Meeting
  - Fees increased consistent with adjacent communities and to offset cost of services
  - Coordination of zoning, E&S, and stormwater pre- and post-construction inspections
  - Require final zoning and stormwater inspections prior to final building inspections
  - Code Enforcement Officer received probationary building inspection certificate
  - Additional Munis Training for Staff - Nov. 7 & 8, 2019; addressed general use, inspection scheduling, report and form generation, and updating property owner information
  - Customer kiosk with computer installed in lobby
  - Publicly-accessible permits & inspections search portal added to Citizen Self Service: https://selfservice.nagsheadnc.gov/MSS/citizens/PermitsInspections/Default.aspx
  - Permitting staff met with Bill Newns, Chief Building Code Official for Currituck County, to review use of Munis, and specially online permitting modules.

Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters

- Completed/Instituted – New items since January 2020

  - Rollout Citizen Self Service for online trade permits
  - Rollout Citizen Self Service for all building permits
  - Developed and implemented remote permitting protocols in response to the Pandemic
  - Developed and implemented remote inspections protocols.
  - Streamlined fees for demolitions and moving permits

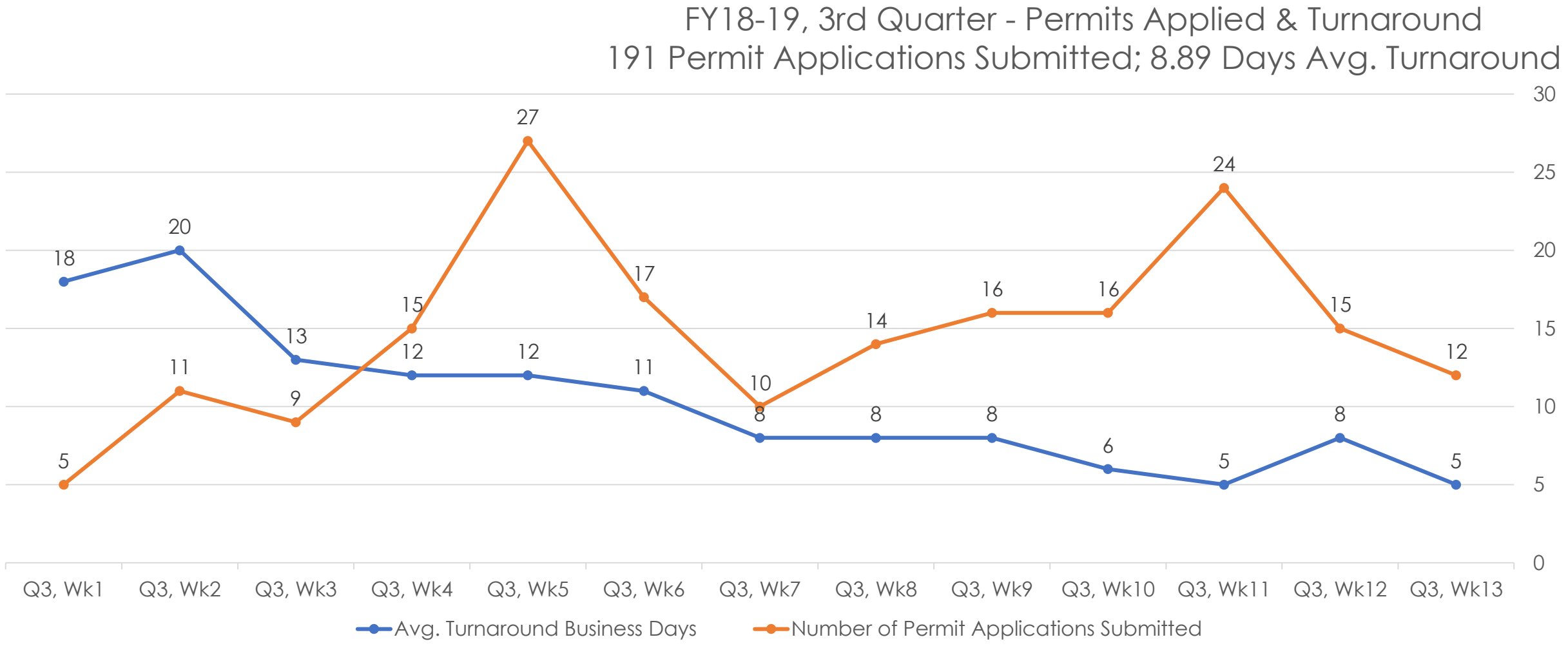
Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters

- Next Steps/Moving Forward
  - Document and improve permitting workflows
  - Create separate review processes for less complicated permits/work
  - Prepare Development Manual as part of UDO adoption
  - Plan workshops or develop videos for Home Builders, Real Estate Association, residents, etc.
  - Continue to refine and improve online permitting; resolve Munis platform issues
  - Facilitate and encourage use of customer kiosk
  - Transition Blue Prince records to Munis
  - Develop preferences and goals for records management and digitization
  - Update Munis platform and permits for new F.I.R.M. and CRS

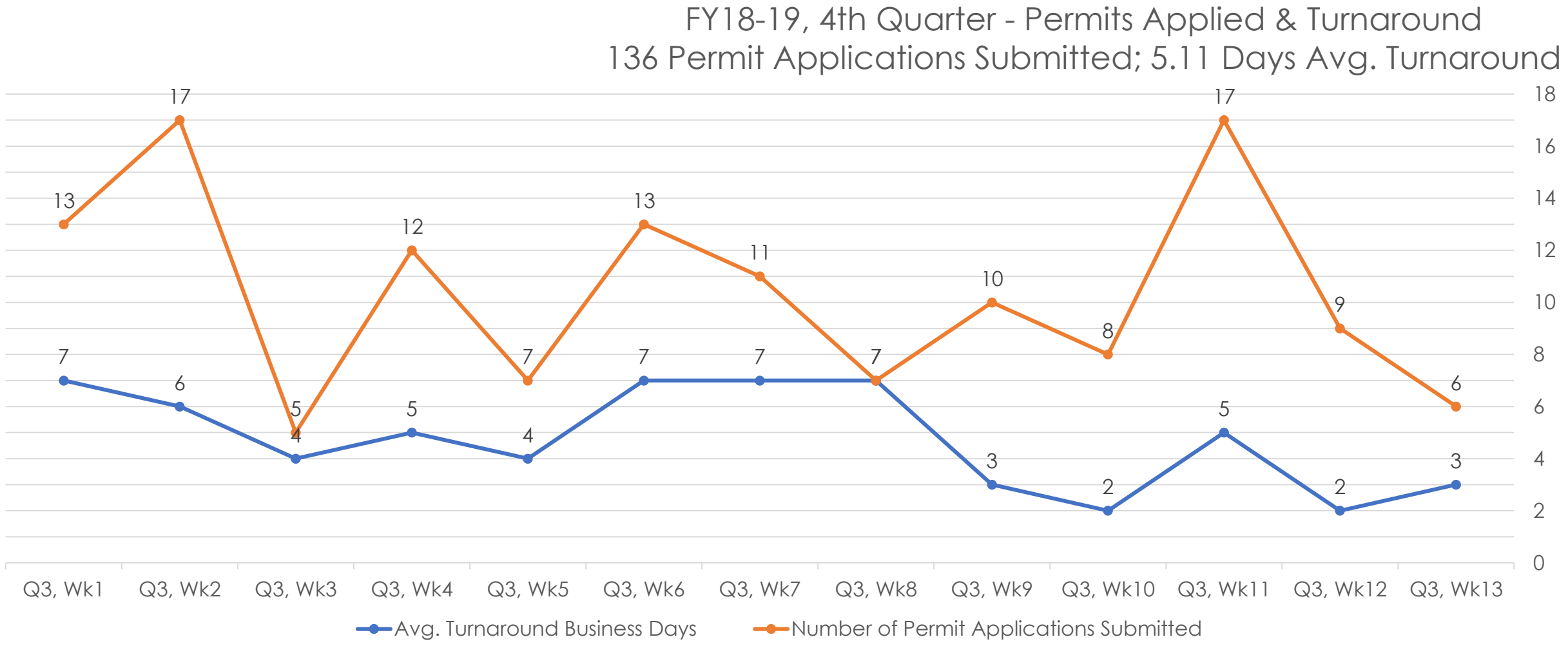
Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters



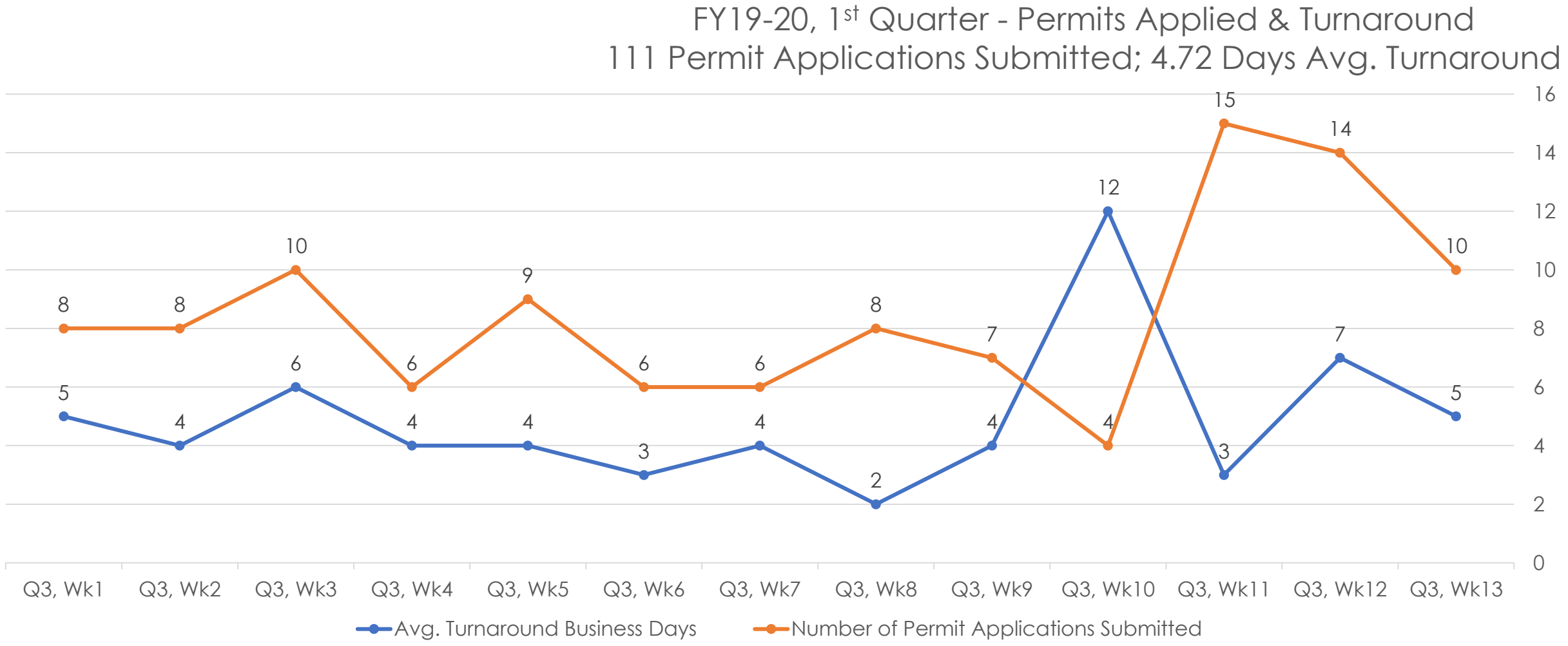
Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters



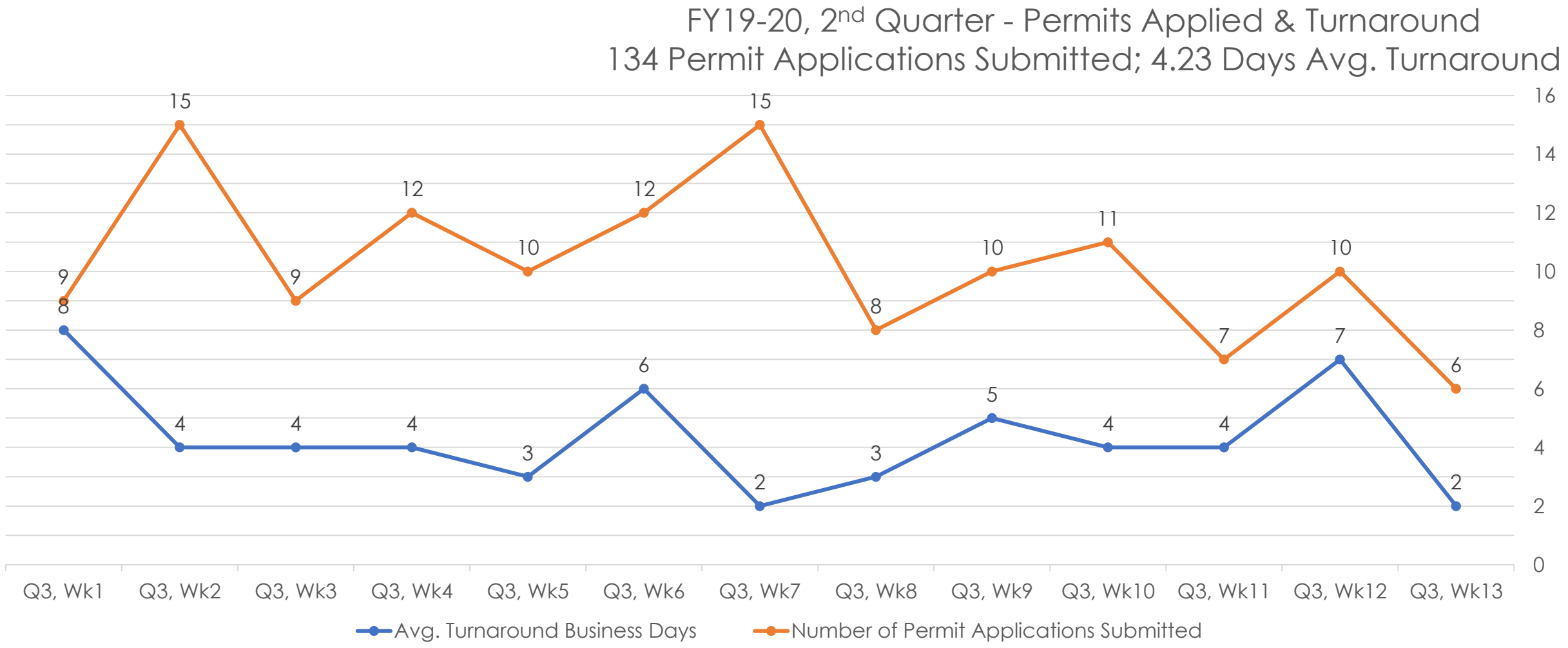
Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters



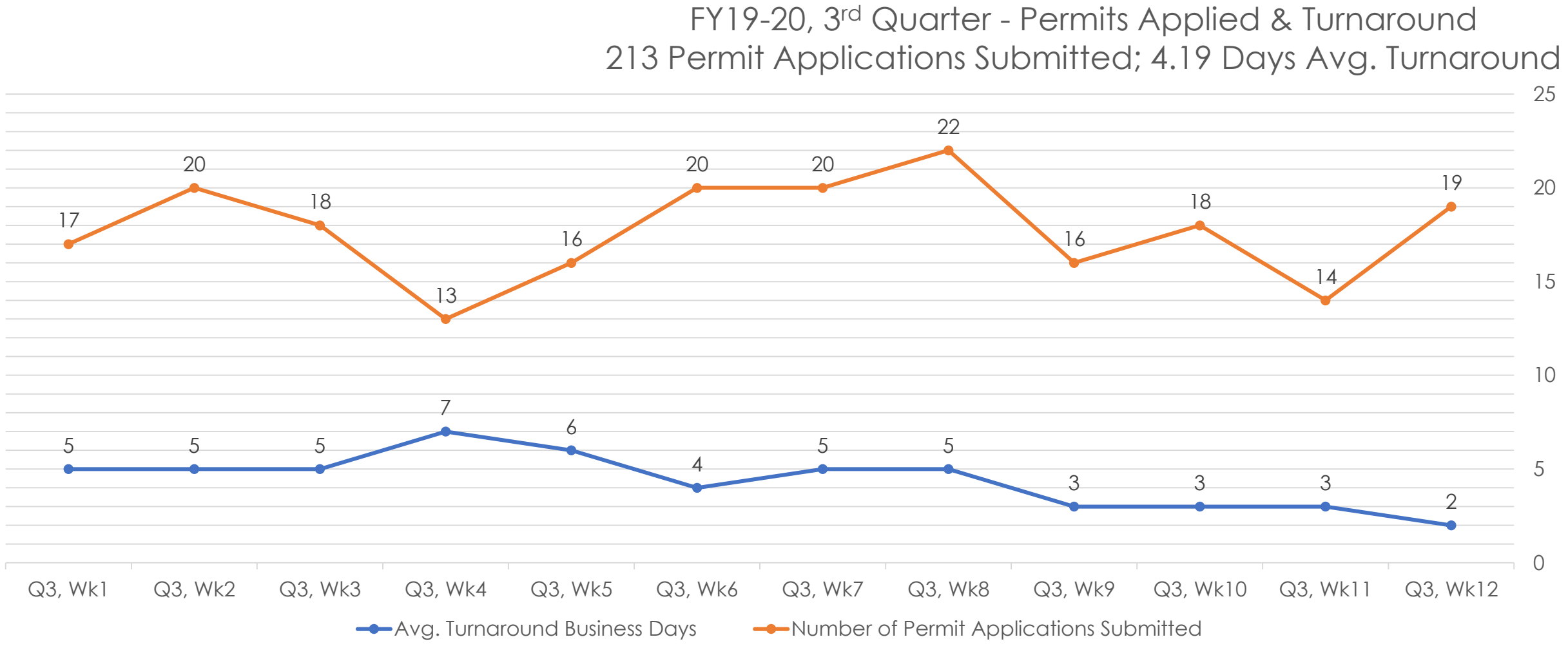
Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters



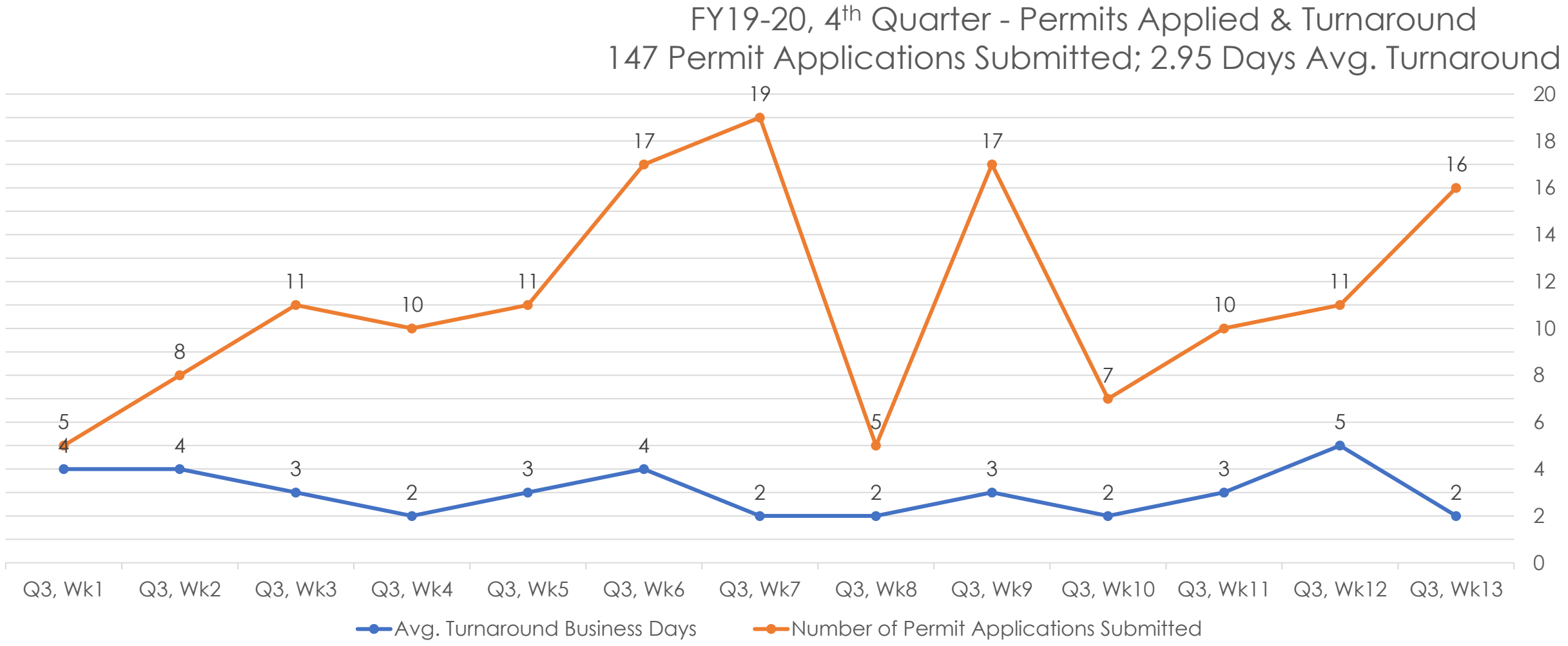
Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters



Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters



Report on Planning and Development Department Permitting Processes

FY19-20, 3rd & 4th Quarters

	FY18-19 3rd Quarter/FY19-20 4th Quarter	FY18-19 4th Quarter/FY19-20 4th Quarter	FY19-20 1st Quarter	FY19-20 2nd Quarter
Total Number of Permits	191/213	136/147	111	134
Avg. Turnaround	8.89/4.19 days	5.11/2.95 days	4.72 days	4.23 days
Residential Projects				
Total Number of Permits	164/182	102/135	91	116
Avg. Turnaround	8.68/4.00 days	4.97/2.80 days	4.21 days	4.16 days
Commercial Projects				
Total Number of Permits	27/31	34/12	20	18
Avg. Turnaround	10.25/5.19 days	5.38/4.58 days	6.90 days	3.83 days