



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
WEDNESDAY, JANUARY 4, 2023**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, January 4, 2023 at 9:00 a.m. for a Regular Meeting.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Kevin Brinkley; and Comr. Bob Sanders

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Kate Jones; Amy Miller; David Ryan; Perry Hale; Randy Wells; Shane Hite; Chad Motz; Paige Griffin; Caleb Macon; Steve Szymanski; Andrew Carter; Tim Oakley; Shelly Blackstone; Basil Belsches; Richard Hanson; Brendan and Debbie McConnell; Chris and Frank Campanale; Markee Stalls; Peter Pinto; Steve Smiley; Clara McKenzie Smiley; Duke Geraghty; Matt Hooper; Mike Mishoe; Matt Costa; Barbara Costa; Greg Sherman; Bobby Harrell; Jessica Norris; Emily Mills; Dawn York; Mark Kasten; Michelle Gray; Roberta Thuman; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 am. A moment of silent meditation was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

MOTION: Comr. Brinkley made a motion to approve the January 4<sup>th</sup> agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

**RECOGNITION**

Police Chief Perry Hale introduced Police Officer Caleb Macon who was welcomed by the Board to Town employment.

Planning Director Kelly Wyatt introduced Building Inspector III Steve Szymanski who was congratulated by the Board for ten years of service.

*FOR THE JOY OF IT* CHRISTMAS DECORATING CONTEST WINNERS - Arts & Culture Committee

Event Coordinator Paige Griffin reported that the winners of the Arts & Culture Committee Christmas Decorating Contest were *Waveriders Restaurant* and the *Nags Head Church*. Board members congratulated the winners.

## **PUBLIC COMMENT**

### PUBLIC COMMENT – BARBARA COSTA

Barbara Costa, Outer Banks Running Company; their family business is an outdoor running event company on the Outer Banks that hosts weekly running events; she would like to speak with the Board re: the outdated ordinance that limits running events which needs to be revamped; there are a large number of vacationers that plan their vacations around the running events; they would like to host recurring events in the same locations; she feels they need to cater to those that feed our economy as they enjoy the beautiful Outer Banks; many businesses are positively affected by running events and their running event company.

### PUBLIC COMMENT – SHELLY BLACKSTONE

Shelly Blackstone, Nags Head property owner; she spoke concerning the proposed re-zoning of the Hollowell St property; she is in favor of the current moratorium; she would like to see more cooperation between the towns especially concerning the work force housing issue; she questioned why Target was invited to the area instead of putting workforce housing in that location; all the towns need to be more cooperative with each other in order to preserve this beautiful area.

There being no one else present who wished to speak, Attorney Leidy concluded Public Comment at 9:12 a.m.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

- Consideration of Budget Amendment #9 to FY 22/23 Budget
- Consideration of Tax Adjustment Report
- Approval of minutes
- Consideration of modification to Consolidated Fee Schedule
- Consideration of FY 23 audit contract with Potter & Co

MOTION: Comr. Renée Cahoon made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

Budget Amendment #9, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

The Tax Adjustment Report, as approved, is attached to and made a part of these minutes as shown in Addendum "B".

The agenda summary sheet concerning the modification to the Consolidated Fee Schedule re: tow fees, as approved, read in part as follows:

"Consideration of modification to the *Towing of Automobiles, vans, pick-ups trucks, motorcycles,* and

*Storage charges until owner/operator takes possession* portions of the Consolidated Fee Schedule.

'Attached is a memo from Police Chief Hale, price comparison sheet from the NC Highway Patrol, and the applicable page from the Consolidated Fee Schedule.

'The police department is requesting to change the consolidated fee schedule, entitled "Towing of Automobiles, vans, pick-ups trucks, motorcycles, etc.". Since this fee has not been adjusted in recent years and with the increase in fuels, it is realized an increase in the fee is necessary. It is also recommended to adjust the "storage charges until owner/operator takes possession".'

The agenda summary sheet concerning the FY23 audit contract with Potter & Co, as approved, read in part as follows:

"At the February 2, 2022 Board of Commissioners meeting, a contract with Potter & Company for audit services for the next five (5) years was approved with the understanding that the contract is to be submitted for Board approval each year. An approximate annual 4% inflation increase was also approved."

The FY23 audit contract with Potter & Company, as approved, is on file in the Town Clerk's Office.

## **PUBLIC HEARINGS**

Public Hearing to consider proposed financing for the Public Services Complex

- Accept Public Services Complex Construction Project / Advanced Metering Infrastructure (AMI) bids
- Authorize Notice of Awards
- Consideration of resolution authorizing amendment to Installment Financing Contract w/PNC
- Consideration of Initial resolution concerning the approval of the execution and delivery of the Contract and the Town's financing of the 2023 Projects

Andrew Carter (DEC & Associates) and Tim Oakley (Oakley/Collier) were both present via the Zoom platform.

Town Manager Andy Garman introduced this item – the agenda summary sheet read in part as follows:

"At the January 4, 2023, Board of Commissioners meeting a Public Hearing will be held to consider an installment financing contract with a principal amount not to exceed \$19,900,000 for the financing of the Public Services Facilities and conversion of the existing water meters to the Advanced Metering Infrastructure (AMI) system (smart meters), also referred to as the FY 2023 Projects.

'As part of the public hearing, staff will provide a summary of the presentations from the December 21, 2022, Board meeting. The presentations are included in your packet. Both consultants from Oakley Collier Architects and DEC Associates Inc. will be available at the meeting to answer any questions.

'Attached please find the required legal documents for the execution and delivery of the contract for Board consideration.

- 'A. Conduct Public Hearing
  1. Consideration of Initial Resolution approving the negotiation of an installment financing contract and other related matters related to the Town's financing of the FY 2023 Projects.
- 'B. Consideration of Resolution authorizing an amendment to the Installment Financing Contract and Substitute Deed of Trust with PNC Bank.

- 'C. Consideration of the Notice of Award to A.R. Chesson Construction Co. for the Public Services Complex construction bid in the amount of \$14,494,000, as recommended by Oakley Collier Architects, and authorize the Town Manager to execute the construction contract amount contingent upon Attorney Review and Local Government Commission (LGC) approval (see attached letter and bid tabulation).
- 'D. Consideration of the Notice of Award to Consolidated Pipe & Supply for Advanced Metering Infrastructure (AMI) in the amount of \$1,650,495, as recommended by staff, and authorize the Town Manager to execute the contract amount contingent upon Attorney Review and Local Government Commission (LGC) approval (see attached memo and bid tabulation)."

Attorney Leidy opened the Public Hearing to consider the proposed financing for the Public Services Complex and to accept Public Services Complex Construction Project / Advanced Metering Infrastructure (AMI) bids. The time was 9:18 a.m.

Dep Town Manager/Finance Director Amy Miller explained that the purpose of the public hearing is for consideration of entering into a contract at an amount not to exceed \$19,900,000 for financing of the new Public Services Complex and Advanced Metering Infrastructure (AMI) smart water meters. The contracts would not be executed until after Local Government Commission (LGC) approval is received – probably not until mid-February 2023.

Notice of the Public Hearing was published in the *Coastland Times* on Sun, December 25, 2022 and on Sun, January 1, 2023, as required by law.

There being no one present who wished to speak, Attorney Leidy closed the Public Hearing at 9:22 a.m.

*Public Services Complex*

**MOTION:** Comr. Brinkley made a motion to adopt the Initial Resolution approving the negotiation of an installment financing contract and other matters related to the Town's financing of the FY 2023 Projects as presented. The motion was seconded by Comr. Sanders which passed unanimously.

The Initial Resolution, as adopted, read in part as follows:

"WHEREAS, the Town of Nags Head, North Carolina (the "Town") is a validly existing municipal corporation of the State of North Carolina (the "State"), existing as such under and by virtue of the Constitution, statutes and laws of the State;

"WHEREAS, the Town has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

"WHEREAS the Board of Commissioners of the Town (the "Board") hereby determines that it is in the best interest of the Town to (1) enter into an Installment Financing Contract (the "Contract") with Nags Head Leasing Corporation (the "Corporation") in order to finance (a) the construction, equipping, and furnishing of public services facilities, (b) the conversion of the Town's residential and commercial water meters to an Advanced Metering Infrastructure (AMI) system (collectively, the "2023 Projects"), and (c) certain costs incurred in connection with financing the 2023 Projects; and (2) enter into a deed of trust, security agreement and fixture filing (the "Deed of Trust") related to the Town's fee simple interest in certain real

property on which all or a portion of the 2023 Projects will be located (the "Mortgaged Property"), that will provide security for the Town's obligations under the Contract;

'WHEREAS, the Corporation will assist the Town by the issuance of Limited Obligation Bonds in one or more series to finance the 2023 Projects;

'WHEREAS, the Town hereby determines that the 2023 Projects are essential to the Town's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2023 Projects will provide an essential use and will permit the Town to carry out public functions that it is authorized by law to perform; and that entering into the Contract and Deed of Trust is necessary and expedient for the Town by virtue of the findings presented herein;

'WHEREAS, the Town hereby determines that the Contract allows the Town to finance the 2023 Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the Town;

'WHEREAS, the Town hereby determines that the estimated cost of financing the 2023 Projects is an amount not to exceed \$19,900,000, and that such cost of the 2023 Projects exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the Town in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

'WHEREAS, although the cost of financing the 2023 Projects pursuant to the Contract is expected to exceed the cost of financing the 2023 Projects pursuant to a bond financing for the same undertaking, the Town hereby determines that the cost of financing the 2023 Projects pursuant to the Contract and the Deed of Trust and the obligations of the Town thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of the 2023 Projects; and (3) insufficient revenues are produced by the 2023 Projects so as to permit a revenue bond financing;

'WHEREAS, the Town has determined and hereby determines that the estimated cost of financing the 2023 Projects pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

'WHEREAS, the Town anticipates that any property tax increase, if necessary, to pay installment payments falling due under the Contract will not be excessive;

'WHEREAS, no deficiency judgment may be rendered against the Town in any action for its breach of the Contract, and the taxing power of the Town is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under the Contract;

'WHEREAS, the Town is not in default under any of its debt service obligations;

'WHEREAS, the Town's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the Town has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

'WHEREAS, past audit reports of the Town indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the Town has not been

censured by the North Carolina Local Government Commission (the "LGC"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies; and

'WHEREAS, a public hearing on the Contract after publication of a notice with respect to such public hearing was held on the date of the adoption of this Resolution and approval of the LGC with respect to entering the Contract must be received.

'NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, AS FOLLOWS:

Section 1. Authorization to Negotiate the Contract. That the Mayor, the Town Manager and the Finance Director, individually and collectively, with advice from Hornthal, Riley, Ellis & Maland LLP, as town attorney, and Parker Poe Adams & Bernstein LLP, as bond counsel, are hereby authorized and directed to proceed and negotiate on behalf of the Town for the financing of the 2023 Projects for a principal amount not to exceed \$19,900,000 under the Contract to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina and to provide in connection with the Contract, as security for the Town's obligations thereunder, a Deed of Trust conveying a lien and interest in the Mortgaged Property, including the improvements thereon, as may be required by the entity, or its assigns, providing the funds to the Town under the Contract.

Section 2. Application to LGC. That the Finance Director, or her designee, is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the Town and its financial condition as may be required by the LGC.

Section 3. Direction to Retain Professionals. That the Town Manager and Finance Director are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, as bond counsel; DEC Associates, Inc., as financial advisor; The Bank of New York Mellon Trust Company, N.A., as trustee, and PNC Capital Markets LLC, as underwriter. The Town Manager and Finance Director are hereby authorized to retain such other professionals as they deems necessary in their judgment to carry out the transaction contemplated in this Resolution.

Section 4. Repealer. That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 5. Effective Date. That this Resolution is effective on the date of its adoption."

**MOTION:** Comr. Renée Cahoon made a motion to adopt the resolution authorizing an amendment to the Installment Financing Contract and Substitute Deed of Trust with PNC Bank, as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

The resolution, as adopted, read in part as follows:

'WHEREAS, the Town of Nags Head, North Carolina (the "Town") previously entered into an Installment Financing Contract, dated as of May 7, 2020 (the "Original Contract") with PNC Bank, National Association (the "Bank"), pursuant to which the Bank advanced funds to the Town in the amount of \$1,401,396 for the purpose of financing the construction of a pedestrian multi-use path, fuel and pump tank conversion and replacement, and improvements to Dowdy Park (the "Project");

'WHEREAS, as security for the Town's performance of its obligations under the Original Contract, the Town has executed and delivered a Deed of Trust and Security Agreement and Fixture Filing, dated as of May 7,

2020 (the "Original Deed of Trust"), to the trustee named therein for the benefit of the Bank, granting a lien on certain real property in which a portion of the Project on which the fuel and pump tank conversion is located (the "Public Works Facility Site");

'WHEREAS, the Board of Commissioners (the "Board") of the Town has determined to construct a new public works facility and the Town will need to use the Public Works Facility Site as collateral for the financing of the new facility on the site;

'WHEREAS, the Town and the Bank have agreed to amend the terms of the Original Contract pursuant to a First Amendment to Installment Financing Contract (the "First Amendment") between the Town and the Bank to substitute the Public Works Facility Site pledged as security to the Bank for the Town's performance of its obligations under the Original Contract and to execute and deliver a Deed of Trust and Security Agreement and Fixture Filing (the "Replacement Deed of Trust") to the trustee named therein for the benefit of the Bank, to replace the Original Deed of Trust and to grant a lien on certain real property in which a portion of the Project known as Dowdy Park is located as more particularly described in the Replacement Deed of Trust;

'WHEREAS, there has been made available to the Board the forms of the First Amendment and the Replacement Deed of Trust (collectively, the "Instruments"), which the Town proposes to execute and deliver to effectuate the substitution of collateral as described above; and

'WHEREAS, it appears that each of the Instruments is in appropriate form and is an appropriate instrument for the purposes intended;

'NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, AS FOLLOWS:

Section 1. Ratification of Prior Actions. All actions of the Town, the Town Manager and the Finance Officer and their respective designees in effectuating the changes described in this Resolution are hereby approved, ratified and authorized.

Section 2. Approval, Authorization and Execution of the Instruments. The form, terms and content of the Instruments are in all respects authorized, approved and confirmed, and the Mayor, the Town Manager, the Finance Officer and the Town Clerk or their respective designees (the "Authorized Officers") are each authorized, empowered and directed to execute and deliver the First Amendment and the Replacement Deed of Trust for and on behalf of the Town, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Instruments, the Authorized Officers are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Instruments as executed.

Section 3. Further Actions. The Authorized Officers are each hereby designated as the Town's representatives to act on behalf of the Town in connection with the transactions contemplated by the Instruments, and are authorized to seek opinions on matters of law from the Town Attorney, which the Town Attorney is authorized to furnish on behalf of the Town, and opinions of law from such other attorneys for all documents contemplated hereby. The Authorized Officers are each hereby authorized to designate one or more employees of the Town to take all actions which the Authorized Officers are authorized to perform under this Resolution, and the Authorized Officers are each in all respects authorized on behalf of the Town to supply all information pertaining to the transactions contemplated by the Instruments. The Authorized Officers are each authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the

Instruments or as they may deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution. Any provision in this Resolution that authorizes more than one officer to take certain actions shall be read to permit such officers to take the authorized actions either individually or collectively.

Section 4. Repealer. All motions, orders, resolutions, ordinances and parts thereof in conflict herewith are hereby repealed.

Section 5. Severability. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration does not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. Effective Date. This Resolution is effective on the date of its adoption.”

Tim Oakley of Oakley Collier Architects summarized a powerpoint presentation which recapped the public services complex project bid process and results.

MOTION: Comr. Brinkley made a motion to give notice of award to AR Chesson Construction Company for the Public Services Complex construction bid in the amount of \$14,494,000. The motion was seconded by Comr. Sanders which passed unanimously.

MOTION: Comr. Sanders made a motion to authorize the Town Manager to execute the AR Chesson construction contract in the amount of \$14,494,000 contingent on attorney review and LGC approval. The motion was seconded by Comr. Brinkley which passed unanimously.

#### *Smart Meters*

Finance Director Miller introduced Andrew Carter, Town’s Financial Advisor from DEC & Associates. She summarized the Advanced Metering Infrastructure/smart meters bid process and results.

MOTION: Comr. Sanders made a motion to give notice of award to Consolidated Pipe & Supply for the Advanced Metering Infrastructure/smart meters in the amount of \$1,650,495. The motion was seconded by Mayor Pro Tem Siers.

Comr. Renée Cahoon mentioned the alternate option so water customers, via an app on their phone, can check their water usage. Finance Director Miller said that the app was \$8,400 and is not included in the bid itself but is included in the contingency money being requested.

It was Board consensus to concur with the alternate option for the smart meters with the understanding it will come back to the Board for final consideration.

CONTINUATION OF MOTION: The motion passed unanimously.

MOTION: Comr. Renée Cahoon made a motion to authorize the Town Manager to execute the contract with Consolidated Pipe & Supply for the Advanced Metering Infrastructure/smart meters in the amount of \$1,650,495 contingent on attorney review and LGC approval. The motion was seconded by Comr. Brinkley which passed unanimously.



Public Hearing to consider UDO text amendment pertaining to multifamily uses within the C-2 District

Attorney John Leidy opened the Public Hearing to consider a UDO text amendment pertaining to multi-family uses within the C-2 District at 9:36 a.m.

Planning Director Kelly Wyatt summarized the agenda summary sheet which read in part as follows:

"At their December 13, 2022 meeting the Planning Board voted unanimously to initiate and recommend adoption of a text amendment to the Unified Development Ordinance (UDO) to remove the use "Dwelling, Multi-Family" as a permissible use within the C-2, General Commercial Zoning District. This proposed amendment is being requested to allow the town the necessary time to begin the process of developing standards to ensure that appropriate multi-family development can occur in the appropriate areas of town."

Notice of the Public Hearing was published in the *Coastland Times* on Sun, December 25, 2022 and on Sun, January 1, 2023, as required by law.

Basic Belsches, Memorial Avenue resident; his home is adjacent to the proposed affordable housing area; the proposed amendment will help preserve both his and the historical area; quite a few of his neighbors have submitted comments in support of the proposed amendment.

Clara McKenzie Smiley, Nags Head property owner; spoke against the Woda Cooper project; for close to 70 years she has been visiting the area; their house is within the historic character area characterized by well maintained cottages and supported by local businesses; everyone looks out for each other; this area would not have been chosen years ago by her father if multi family tenant apartments had been in the area; the project would change the character of this area and she is in favor of the proposed amendment eliminating the multi-family designation; she would appreciate other areas being looked at for a possible project location.

Frank Campanelli, Nags Head property owner; he is looking to retire at his home on S Virginia Dare Trail in a few years; he is in favor of changing the zoning to eliminate high density; he is in favor of reexamining another area for the project location.

Richard Hanson, lives on Linda Lane; he is in support of the Planning Board's recommendation rezoning the C-2 area and encourages the Board to preserve the charm that Nags Head has.

Debbie McConnell, property owner on S Virginia Dare Trail; wants to emphasize issues they have now such as ponding on the sidewalk and significant flooding; one side effect of the proposed project would be pedestrian traffic, people walking in the roadway, and other safety issues; she supports the proposed amendment.

Mike Mishoe, retired from local government in Northern Virginia; he encouraged the Board to continue to follow the plan and supports the amendment in favor of the historic character area.

Bobby Harrell, business owner in Nags Head; the multi-family elimination is directed at the essential housing project and he stressed how critical this project is to many; we need housing and elimination of multi-family in the C-2 zone will affect everyone; he attended the Planning Board meeting on Dec 21<sup>st</sup> and did not see this item on their agenda; he is concerned that people do not have the proper notice to know what is taking place today – he asked the Town to postpone the vote for another 30 days so everyone can be aware of the effect this modification will have on them.

Peter Pinto, has a home in Duck and multiple properties from Carova south; he and his partners have been a loyal and cooperative group and own multiple properties in the C-2 district; he has been positively received by

neighborhood projects such as the Tar Heel Motel and Sugar Creek Condos; he was surprised by the manner and quickness of this amendment being brought up for the Board; he feels the proposal would adversely affect his businesses which he has built following the Town's laws re: property rights, and where good faith, sunshine laws, and basic fairness and equity should be respected.

Matt Hooper, owns multiple businesses in Nags Head; eliminating the multi-family scenario would eliminate the ability to create workforce housing in the Town; he feels it is unfair to totally eliminate the possibility of workforce housing.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 9:58 a.m.

MOTION: Comr. Brinkley made a motion to adopt the ordinance pertaining to multi-family uses in the C-2 District as presented. The motion was seconded by Comr. Renée Cahoon.

Mayor Pro Tem Siers confirmed with Attorney Leidy that a fully documented project having gone through the permitting process would not be affected by this amendment.

Comr. Renée Cahoon said that she appreciates this step, that this is not a long-term process, it is a means to get zoning maps and the zoning ordinance in order. Everyone recognizes the need for more diverse housing options and this is one step to try to give staff to bring in better definitions.

Comr. Brinkley said that Sunshine Law adherence and being transparent is very important to the Town as it was when he worked for the Town for 30 years. He confirmed with staff that the required Public Hearing notice for this public hearing was done. He also agreed that the ordinance allows staff more time for research.

Comr. Sanders agreed with other Board members that this gives staff time for additional research.

Mayor Cahoon stated that he is opposed to this motion as the multi-family use is a long-standing use and predates much of the uses now in existence; he feels that the amendment is taking an essential use off the table without a guarantee that it will be put back – many have made good faith investments with this use in place.

CONTINUATION OF MOTION: The motion passed 4 – 1 (Mayor Cahoon cast the NO vote.).

MOTION: Comr. Renée Cahoon made a motion to approve the Statement of Consistency as presented. The motion was seconded by Comr. Brinkley which passed 4 – 1 (Mayor Cahoon cast the NO vote.).

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "C".

Comments received via email from the following prior to the Public Hearing are attached to and made a part of these minutes as shown in Addendum "D": Chess and Karen Harris; Deborah and Brendan McConnell; Thomas and Sharon DiLaura; Jeff and Pat Pavlak.

### **Presentation of Draft Estuarine Shoreline Management Plan – Time Specific 10:00 a.m.**

Dep Planning Director Kate Jones introduced Jessica Norris from Biohabitats and Dawn York from Moffat & Nichol via the Zoom platform. Dep Director Jones summarized the agenda summary sheet which read in part as follows:

"The draft Estuarine Shoreline Management plan will be introduced to the Board of Commissioners, including a hard copy for each Board member. The consultant, Jessica Norris from Biohabitats will be providing a presentation via zoom.

'Staff Recommendation/Planning Board Recommendation

Staff would like the Board to view the presentation, receive the draft plan, and subsequently take the following 3 ½ weeks to review and provide any comments. At this point, the draft plan has been reviewed by the advisory committee and staff. The Board's comments may be received via email or in person to Deputy Planning Director, Kate Jones, by January 27, 2023."

Dep Director Jones distributed a hard copy of the Draft Estuarine Shoreline Management Plan and engineering report to Board members. She asked that Board members, after review, provide any comments to her, in any form, by January 23<sup>rd</sup>. It is hoped that the Plan would be presented to the Board for final consideration at the February 1<sup>st</sup> Board meeting.

Jessica Norris of Biohabitats presented slides which are attached to and made a part of these minutes as shown in Addendum "E".

In response to Comr. Renée Cahoon, Ms. Jones said that they have found that the dominant, day-to-day winds do the most erosion damage.

**Report from Town Auditor, Potter & Co – via Zoom Platform – Time Specific 10:30 a.m.**

Dep Town Manager Amy Miller introduced Emily Mills from Potter & Company. Ms. Mills presented the Town's annual audit report to the Board and issued an unmodified opinion which is the highest opinion to receive; she also commended the Town's financial staff for their help.

Ms. Mills noted that with the implementation last year of GASB 87 by the Local Government Commission (LGC), the Town needs to submit a response to the LGC within 60 days of today's audit report presentation. This pertains to expenditures exceeding appropriations in the General Fund pursuant to GS 159-8. Finance Director Miller confirmed that the violation the Town received was resolved with a budget amendment in November 2022 and she will follow up with a letter to the LGC, as required.

Comr. Renée Cahoon asked that information re: the long-term pension debt is provided to the Board during the upcoming budget process.

Public Hearing to consider various text amendments to the Unified Development Ordinance pertaining to the tree preservation/removal regulations within the Town

Attorney Leidy introduced the Public Hearing on proposed Unified Development Ordinance text amendments pertaining to the tree preservation/removal regulations. The time was 10:47 a.m.

Deputy Planning Director Kate Jones summarized her memo which read in part as follows:

"Members of the Board of Commissioners have expressed an interest in better understanding and considering potential changes to the Unified Development Ordinance (UDO) and town regulations to clarify and strengthen the Town's language as relates to tree protection and preservation standards as well as remedies for unauthorized tree removal. Over the past few months, the Board of Commissioners as well as the Planning Board have held discussions on tree protection and mitigation. Staff synthesized the comments and

suggestions into draft ordinance language for review by both boards. Additionally, sections of both the UDO and town code that pertain to tree preservation and removal have been consolidated into an appendix for ease of use. Both the text amendments and Appendix are attached for your review.

'As a reminder, the general suggested changes are summarized here by section.

'Chapter 26 Offenses and Miscellaneous Provisions, Section 26-9, Official Town Tree

This section defines the Live oak (*Quercus virginiana*) as the official town tree. The existing language can be located [Here](#). As the official town tree, staff recommends expanding the preservation to all zoning districts. Staff also suggests the clarification of removal as related to an active building or land disturbance permit as well as where not a part of a construction project. Staff also further defined the replacement guidelines and well as a fine for unauthorized removal.

'UDO Section 4.9 Development Permitting Requirements

Section 4.9, Development Permitting Requirements, Purpose, and Intent states that when developing one- and two- family dwellings on vacant lots, removal of trees greater than 6-inches in caliper shall require a permit. This language was adopted as a means to address the clear cutting of vacant lots that did not have yet have site plan approval. Staff defined a new location of measurement to diameter breast height, as well as clearly spelled out a permit is needed to store fill or grade material. The existing UDO language can be found [Here](#).

'UDO Section 8.4 Development Standards for Special Districts

'SED-80, Special Environmental District.

Section 8.4.3.4, Special Development Standards, regulates the removal of any tree greater than 4-inches in caliper measured at one foot above the ground. The removal of any tree with caliper of 16-inches or greater is prohibited without special approval from the Board of Commissioners. Staff updated the measurement location in order for consistency with forestry and arboriculture standards to diameter breast height or DBH. The other changes strengthen and clarify situations planning staff can authorize removal. Link to Special District existing regulations [Here](#).

'SPD-20, Special Planning Development District

Section 8.4.2.2, Site Design Standards, regulates the removal of any tree greater than 4- inches in caliper measured at one foot above the ground. Trees greater than 4-inches in caliper shall only be removed if within the proposed building footprint, including decks and a 10-foot perimeter around the principal building and its accessory buildings, within vehicular accessways, within the septic drain field, and in areas where land disturbing has created slopes in excess of 3:1 in an effort to minimize erosion. Suggested changes include allowing a wider perimeter around built elements from 10 feet to 20 feet, matching the language in the SED-80. Other changes also related to the location of measurement and clarifying situations planning staff can authorize removal. Additionally, remedies for unauthorized removal include tree replacement as noted in Table A. The existing language can be found [Here](#).

'Staff and Planning Board Recommendation

Planning Staff recommends adoption of the proposed text amendments as well as the Appendix which consolidates the various tree protection, preservation, and removal regulations into one document, as presented. At their October 18<sup>th</sup> and November 15<sup>th</sup> meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendments as well as the Appendix respectively."

Notice of the Public Hearing was published in the *Coastland Times* on Sun, December 25, 2022 and on Sun, January 1, 2023, as required by law.

Board members stated that they valued the work that has been done on this project.

Duke Geraghty, Outer Banks Home Builders; he said that the Home Builders Association is not in favor of the amendment; the Association would prefer to allow owners to landscape their properties as they see fit.

Greg Sherman, he manages the Villas Homeowners' Association and always receives a lot of opinions on how to best landscape; in response to his question, Ms. Jones stated that whenever a tree is diseased/dying, or is a safety hazard, it can be removed; otherwise some evidence has to be shown.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 11:04 a.m.

**MOTION:** Comr. Renée Cahoon made a motion to adopt the ordinance amending the UDO pertaining to tree removal/regulations as well as the consistency statement, as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "F".

Public Hearing to consider a Special Use/Site Plan Amendment submitted by Chris Greening on behalf of TW's Bait and Tackle for the reduction of three (3) required parking spaces with the use of bicycle racks pursuant to Section 10.15.2.5 of the Unified Development Ordinance. The property is zoned C-2, General Commercial and is located at 2230 S. Croatan Highway, Nags Head

Attorney John Leidy introduced the Public Hearing to consider a special use/site plan amendment on behalf of TW's Bait and Tackle for reduction of three parking spaces with the use of bicycle racks pursuant to Sec 10.15.2.5 of the Unified Development Ordinance. Attorney Leidy explained that the Board sits as a quasi-judicial body and must make its decision: 1) based on competent material and substantial evidence - and those presenting must be sworn in 2) based on information presented, and 3) Board members must be recused if there is basis for believing that they would not be able to be an impartial decision maker - to include a commissioner having a fixed opinion not susceptible to change. The time was 11:05 a.m.

Mayor Cahoon stated that his firm (Cahoon & Kasten) is the architectural firm for this project and he asked to be recused from the discussion/voting.

**MOTION:** Comr. Brinkley made a motion to recuse Mayor Cahoon from this agenda item. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Comr. Brinkley noted that he has a relative that works for the business, not his spouse; Attorney Leidy indicated no conflict.

Mayor Pro Tem Siers noted that he is an adjoining property owner, has no financial interest, and has no predetermined ideas about the property; Attorney Leidy indicated no conflict.

Sworn in by Town Clerk Carolyn F. Morris were: Planning Director Kelly Wyatt and Cahoon & Kasten architect, Mark Kasten.

Planning Director Kelly Wyatt summarized her report which read in part as follows:

"Applicant: Chris Greening on behalf of TW's Bait & Tackle.

'Application Type: Special Use Permit/Site Plan Amendment.

'Purpose/Request: Consideration of the reduction of three (3) required parking spaces with the use of three (3) bicycle racks pursuant to Section 10.15.2.5 of the UDO.

'Property Location: 2230 S. Croatan Highway, Nags Head.

'Existing Land Use: Retail.

'Zoning Classification of Property: C-2, General Commercial Zoning District.

'Zoning Classification of Surrounding Properties: Property to the north, directly across Satterfield Landing Road, is zoned C-2, General Commercial and developed commercially (Outer Banks Professional Center/OBX Bowling). Property to the south is zoned C-2, General Commercial and developed commercially (Plaza del Sol Shopping Center) Property to the west is zoned C-3, Commercial Services and is vacant. Property to the east, directly across US Highway 158 is zoned C-2, General Commercial and is developed commercially (Beach Mart Office).

'Flood Hazard Zone of Property: Property is located in an X Flood Zone, per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. There are no structures associated with this request.

'Land Use Plan Map/Policies: The 2022 CAMA Land Use Plan/Comprehensive Plan Future Land Use Map classifies this property as General Commercial. This proposal is consistent with this land use classification and stated Land Use Policies.

'SPECIFIC INFORMATION

Applicable Zoning Regulations:

'Use Regulations: Section 10.15.2.5, Reduction of Required Parking for Commercial Uses with the use of Bicycle Racks by Special Use Permit states:

*'The total parking requirement for a proposed non-residential use may be reduced by up to three parking spaces at a rate of one parking space per bike rack if one or more bicycle racks are located on the site provided that:*

**10.15.2.5.1.** *The subject property has frontage along a two-lane roadway, or a sidewalk or similar path crosses the property or is located along the frontage of the property;*

**10.15.2.5.2.** *Each bicycle rack must be highly visible and conveniently located in close proximity to the entrance of the principal structure.*

**10.15.2.5.3.** *Each bicycle rack must support at least five (5) bicycles. 10.15.2.5.4. Parking reduction shall not exceed more than one (1) parking space per ten (10) parking spaces provided.*

'The property for which this parking reduction is being requested has frontage on Satterfield Landing Road, a two-lane roadway as well as a sidewalk that crosses the property alongside US Highway 158. The bicycle racks have been proposed in highly visible locations and in close proximity to the entrance of the structure. Additionally, the proposed bicycle racks would support a minimum of five (5) bicycles. Based upon this review, staff finds that the requested parking space reduction is compliant with the use standards noted.

'Lot Coverage: The additional parking spaces are required to serve a proposed 1,568 square foot addition of retail space within the existing footprint. No additional lot coverage is being proposed at this time.

'Height, Architectural Design Standards, Buffering/Landscaping, Lighting, Signage and Stormwater Management: The proposed request for required parking reduction does not necessitate any revisions to

these elements.

'Parking: The applicant intends to increase the overall retail space at TW's Bait and Tackle by constructing a mezzanine, adding approximately 1,568 square feet of area. This increase in floor area requires five (5) additional parking spaces. The applicant can accommodate two (2) of the five required spaces within the existing parking lot. The remaining three (3) parking spaces are being requested to be reduced with the use of bicycle racks per Section 10.15.2.5 of the Unified Development Ordinance.

'Water and Sewage Disposal: Should the Special Use/Site Plan Review request for reduction of three (3) required parking spaces via the use of bicycle racks be approved, the applicant will then submit a complete development application for interior building improvements which can be reviewed and approved administratively. Approval of the existing septic system with regard to the increased retail area will be required prior to issuance of any building or zoning permits.

'Traffic Circulation: Traffic circulation has been reviewed and approved by the Town Engineer.

'Fire: The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance. While it is not part of the Special Use/Site Plan Review request, the proposed location of the two new parking spaces between the principal structure (TW's Bait and Tackle Retail) and the accessory storage structure, has been reviewed and approved by Deputy Fire Chief Shane Hite with the condition that exit doorways and access to public ways must be always maintained and unobstructed. This will be confirmed as part of the administrative review.

'Public Works: The Public Works Director has reviewed and approved the proposed Special Use/Site Plan as presented.

'ANALYSIS - Planning staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies.

'STAFF RECOMMENDATION - Based upon staff's review of the proposal staff recommends approval of the Special Use/Site Plan Review as presented.

'PLANNING BOARD RECOMMENDATION - At their November 15, 2022, meeting the Planning Board voted unanimously to recommend approval of the Special Use Permit/Site Plan Amendment as presented.

'Pursuant to Section 3.8.4.6 of the Unified Development Ordinance the Board of Commissioners shall issue a Special Use Permit if it has evaluated an application through a quasi-judicial process and determined that:

'The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.

'The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the Town as such facilities and capabilities will exist on the completion date of the conditional use for which application is made.

'The conditional use will be in harmony with the existing development and uses within the area in which it is to be located.

'Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.

'Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets."

Notice of the Public Hearing was published in the *Coastland Times* on Sun, December 25, 2022 and on Sun, January 1, 2023, as required by law.

Mark Kasten, Kasten and Cahoon Architects; spoke on behalf of the applicant, he thanked Ms. Wyatt for her presentation; he stated that the site plan amendment will allow for more retail space for the business and improves the property with bicycle racks.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 11:16 a.m.

**MOTION:** Comr. Renée Cahoon made a motion to approve the special use/site plan amendment for TW's Bait and Tackle for reduction of three parking spaces with the use of bicycle racks as presented with the following findings of fact:

- The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
- The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the Town as such facilities and capabilities will exist on the completion date of the conditional use for which application is made.
- The conditional use will be in harmony with the existing development and uses within the area in which it is to be located.
- Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
- Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

The motion was seconded by Comr. Brinkley which passed 4 – 0 (Mayor Cahoon was excused.).

Mayor Cahoon returned to the meeting.

## **REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE PLANNING AND DEVELOPMENT DIRECTOR**

Update from Planning Director Kelly Wyatt

Planning Director Kelly Wyatt summarized her report which read in part as follows:

"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 January 4, 2023.

'Monthly Activity Report

'Attached for the Board's review is the *Planning and Development Monthly Report for November 2022*. 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:



- Thursday, December 1<sup>st</sup> – Holiday Market (4pm – 7pm)
- Friday, December 2<sup>nd</sup> – CRS Users Group Meeting
- Saturday, December 3<sup>rd</sup> – Towns Holiday Party.
- Monday, December 5<sup>th</sup> – Meeting Beach Concierge Vendors
- Tuesday, December 6<sup>th</sup> – Technical Review Meeting (no applications received)
- Tuesday, December 6<sup>th</sup> – SeeClickFix Training
- Wednesday, December 7<sup>th</sup> – Board of Commissioners Meeting
- Thursday, December 8<sup>th</sup> – Board of Adjustment Meeting (no hearings)
- Saturday, December 10<sup>th</sup> – Last Holiday Market (9am – noon)
- Tuesday, December 13<sup>th</sup> – Planning Board Meeting
- Tuesday, December 13<sup>th</sup> – Art and Culture Committee Holiday Contest Judging
- Wednesday, December 14<sup>th</sup> – All Hands Staff Meeting
- Tuesday, December 20<sup>th</sup> – Rescheduled Flashlight Candy Cane Hunt
- Wednesday, December 21<sup>st</sup> – Board of Commissioners mid-month meeting

#### 'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, December 13, 2022 and included a presentation of the Sound side Event Center concept by Tim Cafferty and Lee Nettles of the Outer Banks Visitors Bureau, continued discussion of the Historic Character Area, initiation and consideration of a text amendment to the Unified Development Ordinance to eliminate the "multifamily" use from the C-2, General Commercial Zoning District and initiation of a text amendment as it pertains to the definition of dwelling unit, what constitutes a dwelling unit and to clarify language related to accessory structures and accessory uses.

'Regarding the Historic Character Area discussion, staff presented to the Planning Board a series of three (3) maps for their consideration. The first was the area of the moratorium mapped with the current zoning designations, the second map depicted the area with a C-1, Neighborhood Commercial zoning designation and the third map depicted the area with a combination of R-3, High Density Residential zoning and C-1, Neighborhood Commercial zoning designation. Staff discussed several other informative attachments including the relevant excerpts of the UDO related to the C-1 District, the uses that currently permitted within the C-1 District, Dimensional Standards for each zoning district, and a listing of commercial businesses located within the moratorium area and potential nonconformities that may result from any rezoning. After much discussion, Planning Board members provided staff with feedback on their preferred mapping options and additional information that would be helpful as they move forward with discussion at their next meeting.

'The Planning Board's next meeting is scheduled for January 17, 2023. At this time, the agenda is expected to include ongoing discussions with the Planning Board pertaining to the Historic Character Area as it relates to the adopted moratorium prohibiting all non-residential development in the area north of Danube Street to Hollowell Street between US Hwy 158 and NC 12.

#### 'Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in December 2022, however Woda Cooper Development, Inc. has submitted an appeal of the UDO Administrators formal interpretation issued on October 31, 2022 that is scheduled to be heard by the Nags Head Board of Adjustment on Thursday, January 12, 2023.

#### 'Additional Updates

- DWMP/Septic Health Advisory Committee - Planning staff put out an online call for volunteers for the newly created Septic Health Advisory Committee. Interested applicants can apply online via the Town's website. To date, one application has been received, and the online form will be kept open until mid-January, with the first meeting likely being at the end of January. Staff also completed a targeted mailer to

property owners in higher risk areas of groundwater rise, that were identified in the Decentralized Wastewater Management Plan update. Included in the mailer is general information about the septic health program as well as the newly formed committee.

- Estuarine Shoreline Management Plan – The fifth and final advisory committee meeting was held Monday, December 19<sup>th</sup>. The purpose of the meeting was to receive feedback on the draft management plan. The consultant team of Biohabitats and Moffat & Nichol attended virtually, with members of the advisory committee attending virtually and in person. Comments were received at the meeting, and productive discussions took place. Members are also able to submit comments via a google form that were unable to attend. The project is wrapping up and staff anticipates that the Board of Commissioners will be provided a draft version of the management plan at the January 2023 meeting.
- NC Resilient Coastal Communities Program – The consultants were on-site December 19<sup>th</sup>, 2022 to install the water level data loggers. The installation of this equipment will permit for a more continuous review of water levels and provide improved accuracy in calibrating the hydrologic and hydraulic model for the infiltration system design. The data loggers can be repurposed and utilized as part of the Towns water quality monitoring program as identified in the Decentralized Wastewater Management Plan update.
- Electric Vehicle Action Plan – Staff continues looking into securing funding opportunities for an EV Charger at Town Hall and town facilities such as parks. Staff will report on any potential grant opportunities.
- ETIPP Project/Program – As a reminder, this project is grant funded with the goal to evaluate municipal buildings for efficiency opportunities based on current demand and use. A meeting was held with team members including Coastal Studies Institute, NREL and Sandia Labs in late November. The following was accomplished:
  - The Reopt preliminary model results were presented by NREL. Reopt is an energy modelling and optimization tool to identify cost-optimal solar and battery storage to help Nags Head support energy resilience and cost savings.
  - The Coastal Studies Institute will schedule a meeting with Dominion to discuss potential utility rate impacts from renewable investments recommended by the project, as well as Dominion's interest in clean energy benefits associated with those recommendations. The meeting with Dominion is tentatively planned for mid-January.
- Whalebone Park: Phase 1 Planning – Staff is moving forward with the accessible restroom design and is in discussions with a local architect to complete the design drawings. The amount of the project is such that a Mini- Brooks Exemption can be written to avoid the Qualifications-Based Selection process. The anticipated schedule for construction completion of the accessible restroom is summer 2023 at the earliest. We should hear if the PARTF AFP Grant was successful by Spring 2023.
- Dune Management Cost Share Program – Currently there are 54 property owners that have submitted applications for the dune management cost share program. Of them, 52 are sand relocation projects, and 2 are planting only projects. Staff have been working diligently to align this grant program with the sand relocation permitting process. \$270,000 was the total amount funded to this program, and \$180,500 is currently allocated to the 54 applicants, leaving a balance of \$89,500 as of 12/20/22.
- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – The Dowdy Park Holiday Markets are now complete, and all were very well received within the community among vendors and visitors alike. The Art and Culture Committee held the Flashlight Candy Cane Hunt at Dowdy Park on the evening of Tuesday, December 20<sup>th</sup> and it met and exceeded expectations for this first annual event. Planning staff estimate over 75 children attended this event. The Art and Culture Committee is looking forward to providing

the Board of Commissioners with their update in March 2023 on the 2022 Season and ideas for the discussion regarding the upcoming 2023 Season.

'Upcoming Meetings and Other Dates

- Tuesday, January 3<sup>rd</sup> – Technical Review Meeting (no applications to review)
- Wednesday, January 4<sup>th</sup> – Board of Commissioners Meeting
- Thursday, January 5<sup>th</sup> – CRS Users Group (Dave Hallac, NPS Supt. guest)
- Wednesday, January 11<sup>th</sup> – Committee for Art and Culture Meeting
- Thursday, January 12<sup>th</sup> – Board of Adjustment Meeting
- Tuesday, January 17<sup>th</sup> – Planning Board Meeting"

Planning Director Wyatt also reported that Chris Trembly was recently promoted to Planner and Chase Hundley was hired (from Public Services Dept) as Code Enforcement Officer.

**NEW BUSINESS**

Committee Reports

Comr. Renée Cahoon – Government Access Channel / Government Education TV Committee – Comr. Renée Cahoon reported on an upcoming meeting of the Government Education Channel Committee the end of January 2023.

Annual appointment of Board of Adjustment Chair/Vice-Chair

The agenda summary sheet read in part as follows:

"At the January 4<sup>th</sup> Board of Commissioners meeting, request Board consideration of the annual appointment of Chair and Vice-Chair to the Board of Adjustment, in accordance with Town Code - UDO Sec. 2.5.3.1.

'Margaret Suppler and Bobby Gentry are both interested in being reappointed as Chair and Vice Chair respectively.

'Attached please find the current roster of the Board of Adjustment."

**MOTION:** Comr. Brinkley made a motion to reappoint Margaret Suppler as Chair and Bobby Gentry as Vice-Chair of the Board of Adjustment. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Discussion/Consideration of new Ocean Rescue Pay Plan

Ocean Rescue Captain Chad Motz summarized his report concerning the Ocean Rescue Pay Plan which read in part as follows:

"Recruitment of qualified ocean rescue staff has been a challenge among agencies nationwide in recent years. We continue to experience difficulties with recruiting the required number of staff and keeping them past mid-August. Additionally, we compete locally with the service industry which has raised wages significantly in

the past few years. Working with human resources and finance, we have analyzed our current pay and bonus structure and are suggesting the following changes to remain competitive not only within the local job market, but also with other public and private agencies on the east coast.

'We would request consideration of the following modifications for the coming season:

- A \$2 per hour increase in base pay from \$16/hour to \$18/hour. A portion of this would be paid for by removing the housing allowance, which is roughly \$1 per hour.
- An increase in end-of-season lifeguard bonus from \$200 to \$600 and an increase in the Supervisor bonus from \$500 to \$1000. Our bonus structure has not changed in 20+ years and is not effective in encouraging staff to stay for their seasonal commitment.
- The implementation of a "Labor Day" incentive program, which would include a \$2/hour lump sum bonus paid for all hours worked from 8/15 to Labor Day.

'In the past we have started with 15 stands on the beach Memorial Day weekend and continued at that level through the peak season. I would propose that we start with 15 stands for Memorial Day and reduce the stands to 10 until the third week in June. This level of service would be appropriate to match our weekly population levels. This would also offset some of the cost increases that are being proposed. This change, in addition to converting the housing allowance to a per hour pay increase, would allow us to proceed now without a budget amendment. For next year (FY 24 budget), the net increase with these changes is \$71,633. This is broken down below:

Bonus increase of	\$22,499
Labor Day Incentive	\$ 7,255
\$2/hour pay increase	\$41,879
Total requested increase in 2023/24	\$71,633

'Approving these changes now would allow us to start the recruiting process in January using the new pay and benefits structure. Thank you for your consideration.'

Board members spoke in favor of the proposed recruitment incentives.

Fire Chief Wells spoke in favor of and encouraged approval of the proposed incentives as presented.

MOTION: Mayor Pro Tem Siers made a motion to approve the new Ocean Rescue Pay Plan modifications as presented to include an increase per hour for Lifeguard/EMT by \$1.00. The motion was seconded by Comr. Sanders.

Board members expressed their appreciation of staff being comprehensive and looking thoroughly into this issue as well as reviewing other markets.

CONTINUATION OF MOTION: The motion passed unanimously.

#### Consideration of text amendment to Town Code Chapter 42 re: barricades

Police Chief Perry Hale summarized his memo which read in part as follows:

"It is my recommendation to add a section under the Town's Code of Ordinances Chapter 42 "Traffic" that would cover "Barricades". These would be placed on the Town's streets or highways in the event of a natural or man-made incident where the police department or town has deemed travel unsafe or to restrict the

amount of vehicular traffic in a particular section of town to preserve property. It would include the beach accesses where the town recently placed chains at the ramps to prevent beach driving when the town has deemed conditions unfavorable to drive during high tides or prolonged high winds. We currently have no recourse when barricades are placed in an area to block traffic unless an officer is stationed at the location or unless the mayor has declared a "State of Emergency" under Sec 14-6. I have drafted language below for your review for presentation to the BOC for their approval if you concur.

**'Definition:**

Barricade means an obstruction or barrier placed on or across a beach access, road, street, or highway to prevent the passage of motor vehicles. A barricade could be any form of fencing, cones, barrels, chain, or roping material intended to prevent travel past a specific location.

**'Ordinance language: Driving through or around barricades**

- (a) It shall be unlawful for the driver of any motor vehicle to drive over, through, or around any barricade erected for the purpose of preventing traffic on certain accesses, streets, roads, or highways that have been closed by the Town for construction, repair, or dangerous conditions.
- (b) The town's official governmental and emergency motor vehicles are exempt from the restriction of operating beyond a barricade in the performance of the town's official duties.
- (c) A service contractor performing duties for the repair or reopening of the area would be exempt while performing official duties."

**MOTION:** Comr. Brinkley made a motion to adopt the ordinance amending Town Code Chapter 42 re: barricades as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "G".

## **ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**

### Attorney Leidy – Request for Closed Session

Attorney Leidy requested a Closed Session related to attorney/client privilege when the Board enters Closed Session later in the meeting.

## **ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**

### Town Manager Garman - Discussion of donation of property located at 119 E Seagull Drive to the Town

Town Manager Garman summarized the agenda summary sheet which read in part as follows:

"The attached letter from Matthew and Lynn Toloczko offers for donation to the Town their parcel located at 119 E Sea Gull Drive in S Nags Head.

'Provided for Board discussion and consideration at the January 4<sup>th</sup> Board of Commissioners meeting."

**MOTION:** Comr. Brinkley made a motion to accept the donation from Matthew and Lynn Toloczko of the property located at 119 E Seagull Drive in S Nags Head. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

A letter of appreciation is to be sent to the Toloszko's.

## **BOARD OF COMMISSIONERS AGENDA**

### Mayor Pro Tem Siers – Unified Development Ordinance (UDO) review

Mayor Pro Tem Siers asked that direction be given to staff to review each definition and each use in the Unified Development Ordinance. He'd like to see some extra initiative be taken to review each use and correct any possible loopholes.

It was Board consensus for staff to look into the UDO tables of definitions and uses to clean up any errors/loopholes/inconsistencies.

Comr. Renée Cahoon asked about a definition for affordable housing. It was Board consensus that staff provide a definition for affordable housing for Board review and consideration.

## **MAYOR'S AGENDA**

### Mayor Cahoon - Consideration of NCLM Business Meeting Voting Delegate

Mayor Cahoon stated that he would be pleased to serve as the voting delegate and to do the actual voting after review with other Board members, if approved.

MOTION: Mayor Pro Tem Siers made a motion to appoint Mayor Cahoon as representative for the Town as the NC League of Municipalities voting delegate. The motion was seconded by Comr. Brinkley which passed unanimously.

### Mayor Cahoon – Building Inspectors

Mayor Cahoon noted that in the upcoming year the NC League of Municipalities will be looking into a time limit policy on mutual aid for building inspectors. Mayor Cahoon has spoken with other mayors and planning agencies and would like to see everyone on the same page concerning the issue of a lack of building inspectors and sharing inspectors between agencies.

## **CLOSED SESSIONS**

MOTION: Mayor Cahoon made a motion to enter Closed Session pursuant to GS 143-318.11(a)(6) to discuss personnel and to confer with the Town Attorney re: attorney/client privilege and to preserve that privilege pursuant to GS 143-318.11(a)(3). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:55 a.m.

## **OPEN SESSION**

The Board re-entered Open Session at 12:46 p.m. Mayor Leidy reported that during Closed Session the Board conferred with the Town Attorney re: attorney/client privilege and did discuss a personnel issue but no actions were taken.

