



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, JANUARY 5, 2022**

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 5, 2022 at 9:00 a.m. for a Regular Meeting. The Town continues to adhere to COVID state and local guidelines.

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

Board members Absent: Comr. Renée Cahoon

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Eric Claussen; Amy Miller; David Ryan; Phil Webster; Danny Harris; JC Mitchell; Randy Wells; Shane Hite; Roberta Thuman; Karen Snyder; John Ratzenberger; Annette Ratzenberger; Bob Muller; Dorie Fuller; Aaron McCall; and Town Clerk Carolyn F. Morris

CALL TO ORDER

Mayor Cahoon called the meeting to order at 9 a.m. He recognized former Mayor Bob Muller and former Commissioner John Ratzenberger in the audience. A moment of silent meditation was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

Mayor Cahoon stated that the presentation from Terry Gray re: Dare County Motor Sports Charity as well as the recognition for years of service for Fire LT Evan Zadd were moved to the February Board meeting.

MOTION: Comr. Brinkley made a motion to approve the January 5th agenda as modified (with Dare County Motor Sports Charity and Fire LT Zadd's years of service presentations moved to the February meeting). The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was not present.).

RECOGNITION

ADVANCED CERTIFICATES

Police Chief Phil Webster presented Advanced Certificates to Police Officer Daniel "Danny" Harris and Police Officer Joseph "JC" Mitchell. Police Officers Harris and Mitchell were congratulated by the Board.

APPRECIATION OF ANNETTE RATZENBERGER

Annette Ratzenberger recently resigned from her position as Treasurer of the Firemen's Relief Fund Board of Trustees. Former Mayor of Nags Head and Firemen's Relief Fund Board Chair Bob Muller expressed his appreciation for all Ms. Ratzenberger has done for the Relief Fund Board of Trustees/Town firefighters. He also expressed appreciation for her service to the Town as a member of the Board of Adjustment, Artwork Selection, Beach Nourishment, and Sanitation/Recycling Committees.

Mr. Muller explained how Ms. Ratzenberger lead the effort for firemen's benefits to include \$110,000 in retirement benefits; \$85,000 in scholarships, and last year cancer insurance was able to be purchased for all firefighters.

Mayor Cahoon thanked Ms. Ratzenberger for her dedication to the firefighters and their families noting how difficult it will be to fill her shoes. Board members concurred with Mayor Cahoon and, on behalf of the Board, Mayor Cahoon presented her an engraved cutting board in appreciation for her many years of service to the Town in many capacities.

PRESENTATION

Nags Head Woods Annual Report - Steward Aaron McCall presented the Nags Head Woods Annual Report to the Board. The "The Land Speaks" Audio Tour as well as electric vehicle charging stations are just two of the new services being offered to the public. Mr. McCall's powerpoint presentation provided valuable updates on the past year and was well received by the Board.

Mayor Cahoon asked about the old "yellow house" structure located in the Woods – Mr. McCall stated that he is interested in getting the house, which he feels is a safety concern, removed. Mr. McCall pointed out that there are more safety issues in the area due to more vehicle traffic. Board members thanked Mr. McCall for his presentation.

PUBLIC COMMENT

Attorney Leidy opened and then closed Public Comment at 9:50 a.m. as there was no one present who wished to speak.

CONSENT AGENDA

The Consent Agenda consisted of the following agenda items:

Consideration of Tax Adjustment Reports
Approval of minutes
Establishment of the Public Works Capital Project Fund and associated Budget Amendment

Ratification of the following Traffic Control Map modifications:

- From Dec 1st Board meeting - Right Turn Only at Gray Eagle and US 158
- From Dec 1st Board meeting - Reduce speed limit to 20 MPH on all public streets west of US 158 in the Village at Nags Head

Request for Public Hearing to consider Residential Stormwater Ordinance

Consideration of Lease Extension for Community Care Clinic lease of building at 425 Health Center Drive

MOTION: Comr. Brinkley made a motion to approve the Consent Agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was not present.).

The Tax Adjustment Reports, as approved, are attached to and made a part of these minutes as shown in Addendum "A".

Establishment of Public Works Capital Project Fund and associated Budget Amendment - The agenda summary sheet read in part as follows:

"The attached Capital Project Ordinance is provided for Board consideration at the January 5th Board of Commissioners meeting. The ordinance establishes the Public Works Capital Project Fund and provides the budgeted amount for the Construction, Design and Oversight of the Public Works Complex project."

The Public Works Capital Project Fund ordinance and the associated budget amendment, as approved, are attached to and made a part of these minutes as shown in Addendum "B".

Ratification of Traffic Control Map modifications - The agenda summary sheet read in part as follows:

"At the December 1st Board of Commissioners meeting, the following actions took place:

'Gray Eagle onto US 158 - A review of Gray Eagle onto US 158 did meet the required volume/number of vehicles but the low number of crashes did not meet the criteria for a traffic signal. The Town is to request a banana island to prohibit left turn movement south from Gray Eagle onto US 158. The Board passed a motion to amend the Traffic Control Map that designates the movement from East Gray Eagle to US 158 as Right Turn only with the appropriate signage.

'Speed limit change in the Village - The Board unanimously passed a motion to amend the Traffic Control Map reducing the speed limit from 25 MPH to 20 MPH on all public streets in the Village at Nags Head west of US 158."

The ordinance amending the Traffic Control Map ratifying the two Board actions from December 1st, as adopted, is attached to and made a part of these minutes as shown in Addendum "C".

The Request for Public Hearing agenda summary sheet, as approved, read in part as follows:

"In an effort to simplify the current stormwater management regulations required for single-family development within the Town, Planning Staff has drafted potential amendments to Article 11. Environmental Regulations, PART I. – Stormwater, Fill and Runoff Management of the Unified Development Ordinance for consideration. These proposed revisions are a result of receiving input and comments from homebuilders within the Town as well as members of the Outer Banks Homebuilders Association. Staff has proposed two primary means to approach stormwater management for residential properties: a volume-based approach and a non-volume-based approach. Staff would note that in the process of developing these proposed revisions to the stormwater management language it became obvious that revisions will also be necessary to the existing fill requirements.

'Planning Board Recommendation

At their October 19, 2021, meeting the Planning Board discussed both of the proposed amendments at length. It was the consensus of the Planning Board to move the non-volume-based approach forward with a favorable recommendation. Planning Staff requested the Planning Board defer taking a formal vote until their November 16th meeting when revised cut-sheets would be provided for the identified stormwater improvements. At the Planning Board's November and December meeting, staff requested deferral of consideration of the amendments as they continue to formalize the amendments with continued discussion and collaboration with the Outer Banks Homebuilders Association. At this time, it is the intention of Planning Staff to meet once more with the Homebuilders in early January 2022 and present these amendments to the Planning Board at their January 18, 2022 meeting.

'Staff is requesting that the Board of Commissioners schedule the public hearing for this item for their February 2, 2022 meeting. Staff will provide the Planning Board's formal recommendation at this meeting.'

Community Care Clinic extension of lease - The agenda summary sheet re: memo of lease extension for the Community Care Clinic lease of the building at 425 Health Center Drive, as approved, read in part as follows:

"At the January 5th Board of Commissioners meeting, request Board consideration of attached extension of lease for Community Care Clinic lease of the Town-owned former medical center building located at 425 Health Center Drive.

'Currently the Town's lease with the CCC expires December 31, 2021.'

The lease extension, as approved, is on file in the Town Clerk's Office.

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

Update from Planning Director

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 5, 2022.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for November 2021*. 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:

- Friday, December 3rd - OBX CRS Users Group
- Tuesday, December 7th - Technical Review Committee Meeting
- Tuesday, December 7th - Meet with Outer Banks Homebuilders Association
- Thursday, December 9th - Board of Adjustment
- Tuesday, December 14th - Planning Board Meeting

- Tuesday, December 14th – Coastal Resilience Community Quarterly Meeting.
- Wednesday, December 15th - Kick Off Estuarine Shoreline Management Committee Mtg
- Thursday, December 16th – DWMP Advisory Committee Meeting

Review of Residential Stormwater Regulations

Planning staff met with the Outer Banks Homebuilders on December 7, 2021 to continue discussion and receive feedback regarding the forthcoming residential stormwater regulation text amendments. Staff hopes to meet with the Homebuilders one more time prior to providing the formalized text amendments to the Planning Board at their January 18, 2022 meeting. A request for public hearing has been placed on the Board of Commissioners Consent Agenda to conduct the public hearing for this item at the Board of Commissioners February 2, 2022 meeting.

Recent Board of Adjustment Variance Update, Coastal High Hazard VE Zones

At their December 9, 2021 meeting, the Board of Adjustment heard and granted a variance for the Jones residence located at 100 E. Sandcastle Court, Nags Head. The Board of Adjustment found that the property, as well as the current property owner who is living with a disability, does suffer unnecessary hardships based upon application of the current Flood Damage Prevention Ordinance, specifically the requirements of *Section 11.44.2. Residential Construction* and *Section 11.44.3, Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243*. These sections of the Flood Damage Prevention Ordinance require that new construction or substantial improvement of any residential structure have the reference level elevated no lower than the regulatory flood protection elevation. In establishing the local elevation standard (LES), also referred to as the regulatory flood protection elevation (RFPE), we delineated the Coastal High Hazard Areas/VE Zones as being those properties east of NC 12 (S. Virginia Dare Trail) and SR 1243 (S. Old Oregon Inlet Road). The RFPE for properties located east of NC 12 and SR 1243 is 12' msl. While the Board of Adjustment identified numerous hardships as part of their findings of fact, one notable finding pertained specifically to the location of this, and similarly situated properties, where NC 12 does not parallel the beach. As part of the road relocation many years ago, NC 12 is now substantially further west than the alignment of the remainder of the roadway in the vicinity of Sand Castle Court, Sea Spray Court, Sand Fiddler Court, SeaHolly Court, and Sun Dancer Court. If the roadway was in its original location, many of these properties would be located west of NC 12, having an RFPE of 9' msl. Below are two images, this area of Town as regulated by the 2006 flood maps and the same area as regulated by the current flood maps. Under the previous flood maps, this area was located within an AE 9 flood zone. Under the current flood maps, this area is not located within a flood zone however with the application of the Town's LES/RFPE, this property is regulated to VE 12' standards.

2006 Flood Maps

Current Flood Maps

Staff would like to receive guidance from the Board of Commissioners as to whether or not there is a desire to move forward with a text amendment to the Flood Damage Prevention Ordinance to rectify this situation. Below is an image of this area denoting the regulatory line had NC 12 (S. Virginia Dare Trail) not been relocated.

Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on December 14, 2021 and included a request for approval to remove trees within the SED-80 District, Sketch Plan Review for Blue Moon Restaurant to be developed at 4329 S. Croatan Highway, an update on the Resilient Coastal Communities Program with designation of the Planning Board as the Community Action Team (CAT), and the discussion and initiation of a text amendment regarding the use of shipping containers as principal uses/dwellings within the Town.

The Planning Board's next meeting is scheduled for January 18, 2022. At this time, the agenda is expected to include consideration of the Town's Residential Stormwater Regulations, Site Plan Review for

development of Blue Moon Restaurant at 4329 S. Croatan Highway, and a text amendment concerning the use of shipping containers as principal uses/dwellings within the Town.

At their December 14, 2021 meeting, Planning Board members discussed numerous items with staff, two items of note are included below for the Board of Commissioners information and consideration.

- It was the consensus of the Planning Board that planning staff discuss with the Board of Commissioners a desire to revisit the conversation surrounding the allowance of Accessory Dwelling Units (ADU's) within the Town. Planning Board members felt as though given the increased concerns with affordable housing, adequate staffing of local businesses, and increased visitation that there may be an interest to explore the allowance of ADU's within certain zoning districts and in conjunction with required deed restrictions. The Board of Commissioners last discussed Accessory Dwelling Units at their September 16, 2019 meeting where a motion to adopt text amendments related to the allowance of ADU's failed.

In light of the Planning Board's discussion, staff would ask that the Board of Commissioners provide feedback on how they wish planning staff to proceed.

- The Planning Board expressed an interest in receiving updates on items being heard by the Nags Head Board of Adjustment. Planning Board members noted that they would benefit from knowing more about the types of variances and appeals being requested, heard and subsequent outcomes. Planning staff agrees completely and will begin providing Board of Adjustment updates within the Directors Report which is also provided to the Planning Board for review. In this report, a brief update on the December Board of Adjustment meeting has been provided above along with a request for feedback and possible initiation of a text amendment if the Board so desires.

Additional Updates

- Decentralized Wastewater Management Plan – The Advisory Committee met on Thursday, December 16, 2021 to discuss recommendations to the Todd D. Krafft Septic Health Initiative Program and the draft Decentralized Wastewater Management Plan. The meeting agenda and presentation can be viewed [HERE](#). A draft of the Management Plan was provided to the Advisory Committee on December 23, 2021. The Advisory Committee will meet again on January 13 and January 20, 2022.
- Estuarine Shoreline Management Plan – The Advisory Committee for the Estuarine Shoreline Management Plan (ESMP) held their first meeting on Wednesday, December 15, 2021. This meeting included an overview of the project as well as the project schedule. Dr. Reide Corbett, Executive Director of CSI, gave a presentation on estuarine shoreline science and committee members then participated in a goal setting exercise. Meeting materials and a recording of the presentation are available on the project page website. A summary of notes and key take aways from the consultant's initial visit on October 27-29, 2021 is now also available on the project page website, located [HERE](#). We anticipate that the community engagement and outreach plan, along with a general project fact sheet, will be finalized in January and accessible on the project page.
- NC Resilient Coastal Communities Program – Candice Andre, Senior Project Manager with VHB, attended the December Planning Board meeting virtually to provide an overview of the program, current status, and to discuss next steps. As part of the planning process, the Town is required to identify a Community Action Team (CAT) of key stakeholders to provide targeted input and champion the effort. It is suggested that the Planning Board act as the CAT for this project since there are several other ongoing planning projects that are utilizing citizen advisory committees. The Planning Board concurred and was willing to act as the CAT. A copy of the presentation is attached. In the coming month, staff will develop a public facing project website where information can be shared.

- Electric Vehicle Action Plan – Duke students are actively working on developing content for the EV Action Plan. The students will engage the Planning Board at their January 18, 2021 meeting to gain feedback and discuss project goals.
- Dowdy Park Events/Farmers Market/Holiday Markets – There are no events or markets scheduled at this time. The Committee for Art and Culture will plan to provide an update on the 2021 Season to the Board of Commissioners at their March 2022 meeting.

Upcoming Meetings and Other Dates

- Tuesday, January 4th – Technical Review Committee Meeting
- Thursday, January 6th - OBX CRS Users Group
- Tuesday, January 11th – Staff presenting ESMP at Nature Based Solutions for Coastal Hazards for NC Training.
- Thursday, January 13th – DWMP Advisory Committee Meeting
- Tuesday, January 18th – Planning Board Meeting

In response to Director Wyatt, Mayor Cahoon confirmed with Board members that by acclamation the Board would like to see a text amendment processed (as a result of a recent BOA case) that takes into account structures located (due to roadway relocation many years ago) where NC 12 does not parallel the beach - requiring certain properties to meet 12' standards on the current flood maps which would have been 9' standards on the previous flood maps.

Consideration of approval for the removal of trees with a caliper of 16 inches or greater within the SED-80 Zoning District

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

GENERAL INFORMATION

Applicant: J. Webb and Dorothy Fuller.

Application Request: Approval of tree removal within the SED-80 District.

Purpose: Request approval for the removal of twelve (12) trees with a caliper of 16-inches or greater within the SED-80, Special Environmental District.

Property Location: 452 W. Villa Dunes Drive, Nags Head.

Existing Land Use: Single Family Dwelling.

Zoning Classification of Property: Property is split zoned between the SED-80, Special Environmental District & SPD-20, Special Planned Development District.

Zoning Classification and Use of Surrounding Properties: Property to the north and south of this parcel are also split zoned between SED-80 and SPD-20, similar to the subject property, and used as single-family dwelling use. Properties to the east, directly

across W. Villa Dunes Drive, are zoned SPD-20 and are developed residentially. The Roanoke Sound borders the property to the west.

Flood Hazard Zone of Property: X Flood Zone and AE-5 immediately adjacent to the Sound; per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9' msl.

Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map designates this property as Conservation, described as follows:

The Conservation designation offers protection to significant, limited, or irreplaceable sensitive areas. This designation encompasses wetlands, estuarine and coastal shorelines, public trust and estuarine waters, Significant Natural Heritage Areas (as designated by the State Natural Heritage Program), and othersimilar lands that are environmentally significant because of their natural role in the integrity of the coastal region as significant natural areas in Section 2.9 Significant Natural Areas. Conservation areas should be preserved and not developed.

The provision of infrastructure and services in this area should not stimulate or intensify development in these fragile areas. Proper management of these areas is needed to conserve the natural, cultural, recreational, scenic, or biologically productive value of these areas.

'Additionally, the property is located within the Significant Natural Areas Character Area, and specifically Nags Head Woods. Single Family Residential is identified as an appropriate land use within the Nags Head Woods Significant Natural Areas Character Area. The Comprehensive Plan includes the following discussion regarding the SED-80 zoning district:

The special environmental district, SED-80, contains Nags Head Woods and Fresh Pond. This zoning district was created to permit development that is compatible with the environmentally sensitive nature of Nags Head Woods. Additionally, the SED-80 district preserves land in a natural state where such land is considered to be a vital link in the groundwater replenishment cycle of the outer banks and where the destruction of natural vegetation would have a harmful effect on the stability of the soil and its resistance to erosion. The purpose of the SED-80 district is to:

- 1. Provide for the paramount public concern for these natural resources in the interest of health, safety, and general welfare of the residents of and visitors to the town.*
- 2. Preserve the natural features and functions of the area necessary for safe and compatible development on the entire outer banks. Such features include, but are not limited to, the following:*
 - a. The components of the groundwater storage and recharge system which are necessary for the growth and maintenance of the maritime forest vegetation. Such components include ponds, lowlands, marshes, bay forests and wetlands.*

- b. Vegetation acting as soil stabilizers or which provide significant protection from storm or salt intrusion, including the dune ridge plant communities and scrub forest*
- 3. Protect the fragile ecosystems of Nags Head Woods from the effects of fire, storms, flooding and other natural and manmade disasters.*
- 4. Prevent pollution of the estuary and the sound which might otherwise adversely affect the biological productivity of the sound.*
- 5. Permit low-density residential development of those portions of the SED-80 district suitable for residential use and to encourage open space and limited passive recreational use of portions not suitable for residential use.*
- 6. Prohibit commercial and industrial use of the land except as provided in this section.*
- 7. Preserve the cultural heritage, features and integrity of Nags Head Woods as a maritime forest.*

'The lot in question is approximately 2.8 acres in area, with approximately 140' of frontage along the Roanoke Sound. The applicant is seeking to construct an accessory structure (pool and pool surrounds) in the southwest corner of the property. Currently, the applicant is requesting approval of the removal of trees within the footprint of, and within a five-foot perimeter of, the proposed accessory structure as well as other trees on the property which are within the vicinity of the existing principal structure and vehicular access areas that pose a safety hazard. A total of 23 trees have been identified for removal and meet the code requirements for removal. Of the 23 trees, 12 of them are greater than 16-inches in caliper and require Board of Commissioners review and approval.

'Due to the location of the lot adjacent to the Sound and its unique natural features, which include rolling topography and a diverse variety of large trees, the property is subject to numerous regulatory requirements, including CAMA requirements, Army Corps of Engineers wetland regulations, local zoning regulations, erosion and sedimentation control regulations and Dare County Health Department requirements pertaining to the location and operation of the septic system.

'The SED-80 zoning district provides for development requirements in addition to the standard development requirements (Section 8.4.3.3., Additional Requirements), which the proposed site plan meets. Additionally, the District provides for additional standards in Section 8.4.3.4., Special Development Standards, including design standards contained in Section 8.4.3.4.2., Site Design Standards; the proposed site plan meets all site design standards, with the exception of the following:

***8.4.3.4.2.3.** The removal of any tree with a caliper sixteen (16) inches or greater is prohibited, whether or not they fall within any building site, septic area, driveway, road or utility easement, except as provided in subsection 8.4.3.4.3.1.3 of this section.*

Pursuant to Section 8.4.3.4.2., Site Design Standards, the provided design criteria, including the aforementioned criteria contained in Section 8.4.3.4.2.3., "shall be satisfied, except where the Board of Commissioners finds an alternative design scheme which provides equal or better performance standards regarding the intent of this UDO and to protect the natural features of the SED-80 district protected under this section."

Section 8.4.3.4.3., Standards of Review and Approval Procedure; Intent and Purpose, and subsections, and specifically Section 8.4.3.4.3.1.4., provide the standards for review of the subject request. The Section and subsection are provided below, with relevant sections highlighted:

8.4.3.4.3. Standards of Review and Approval Procedure; Intent and Purpose. When selecting the building site, the applicant shall adhere to the following standards and to the intent and purpose of this section:

8.4.3.4.3.1. Building Site Selection. The Board of Commissioners or planning and development staff, whichever the case may be as described in subsection 8.4.3.4.3.2 of this section, shall review and may approve the proposed improvements site plan indicating the proposed building sites before a building permit can be issued. The most suitable building sites are those areas that require the absolute minimum alterations of the natural vegetation, topography and groundwater systems. Evaluation of site suitability shall use the following additional criteria:

8.4.3.4.3.1.1. Existing unforested land areas shall be considered as the most suitable building sites, unless such a selection would threaten the health of the vegetation by stimulating dune migration or cause extensive salt mist intrusion into the Woods or would involve alterations or development prohibited elsewhere in this section.

8.4.3.4.3.1.2. Where vegetation must be removed for the building sites, the most suitable sites will be the sites which disturb the minimum number of healthy trees and vegetation. In approving the building sites, the board shall consider the density, height and variety of the vegetation to be removed, so as to preserve those forest stands which provide the most protection from storm and salt spray and maintain the unique natural diversity of the plant species in the Woods.

8.4.3.4.3.1.3. The planning and development department may approve the removal of any tree which:

8.4.3.4.3.1.3.1. Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruption of public service;

8.4.3.4.3.1.3.2. Poses a safety hazard to a building; or

8.4.3.4.3.1.3.3. Is diseased or weakened by age, so as to pose a safety hazard.

8.4.3.4.3.1.4. The Board of Commissioners shall review and may approve the removal of any tree greater than four (4) inches in caliper where:

8.4.3.4.3.1.4.1. The Board of Commissioners find in their opinion no reasonable alternative building site and/or supporting facilities can be located on a lot; or

8.4.3.4.3.1.4.2. The removal is necessary to construct proposed improvements as a result of: need for access around the proposed structure for construction equipment; need for access to the building site for construction equipment; essential grade changes; surface water drainage and utility installations. However, removal of trees greater than sixteen (16) inches in caliper is prohibited unless subsection 8.4.3.4.3.1.3 or subsection 8.4.3.4.3.1.4 of this section apply.

8.4.3.4.3.1.5. The topography of the site shall be evaluated for overall development suitability so that all structures shall be constructed below the canopy of existing tree cover.

To summarize, the Applicant is seeking to remove twelve (12) trees greater than 16-inches in caliper. In reviewing the request, the Planning Board and Board of Commissioners shall consider, in light of the requested removals,:

- Whether the proposed building site is the most suitable in that it is in areas requiring the absolute minimum alterations of the natural vegetation, topography and groundwater systems.
- Whether existing unforested land exists that would be considered the most suitable building site, unless development of such area would threaten the health of vegetation by stimulating dune migration or cause extensive salt mist intrusion into the Woods or would involve alterations or development prohibited elsewhere in this section.
- Whether the building site, given the removal of trees, is the most suitable in that it disturbs the minimum number of healthy trees and vegetation, with consideration to the density, height and variety of the vegetation to be removed, with the goal to preserve those forest stands which provide the most protection from storm and salt spray and maintain the unique natural diversity of the plant species in the Woods.

- That there is no reasonable alternative building site and/or supporting facilities can be located on a lot OR the removal is necessary to construct proposed improvements as a result of: need for access around the proposed structure for construction equipment; need for access to the building site for construction equipment; essential grade changes; surface water drainage and utility installations.
- Whether, based upon an evaluation of the topography of the site, all structures will be constructed below the canopy of existing tree cover.

Staff would submit that the proposed building site for the accessory structure is a suitable location given existing site conditions of the property. Based upon a review of the application, staff inspection and analysis of the property, and the above, Staff recommends approval of the request as presented, allowing for the removal of the twelve (12) subject trees.

Staff notes that there is one tree that has been identified as being 16-inches or greater in caliper, located on the northern property boundary between the applicants and their adjoining neighbor. Staff is in receipt of written authorization from the adjoining propertyowner for the removal of this specific tree.

At their December 14, 2021, meeting the Planning Board voted unanimously to recommend approval of the removal of twelve (12) trees with a caliper of 16-inches or greater as requested.”

MOTION: Mayor Pro Tem Siers made a motion to approve the removal of trees with a caliper of 16 inches or greater in the SED-80 Zoning District as requested. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was not present.).

Presentation - Annual Audit Report

Lisa Murphy of Johnson, Mizelle, Straub, and Murphy reported that the audit her office performed for the Town for the year ending June 30, 2021 resulted in an “unmodified opinion”, the highest rating, which means that the financial statements met regulation standards and were prepared in accordance with accounting principles, criteria and standards. It is the highest rating the Town can receive. Ms. Murphy said that the Town goes above and beyond in its reporting. She also noted that the Town’s PAFR (Popular Annual Financial Report), prepared by Finance Director Amy Miller and her staff, provides additional information to include statistical and historical information. The Town has received the Certificate of Achievement from the GFAO (Government Financial Accounting Office) for the past four years.

Mayor Pro Tem Siers thanked Finance Director Amy Miller for her work on the PAFR. Ms. Murphy emphasized that the PAFR is a difficult document to complete and is something to be very proud of.

Presentation of the PAFR - Finance Director Amy Miller explained that the PAFR is in lieu of the annual report. Nags Head is one of 500 entities that received certification for the PAFR. She thanked staff as did the Board for the PAFR Report.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From Dec 1st Board meeting - Consideration of amendments to Town Code Chapter 42 Traffic and Motor Vehicles re: updated definitions to include electric assist vehicles

Public Services Director Eric Claussen summarized his report which read in part as follows:

"At the December 1, 2021, Board of Commissioners Meeting, the Board requested that staff revise and simplify the proposed modifications to Town Code Section 42-92, regarding the operation or riding of certain vehicles or devices within public right-of-way.

'New definitions have been proposed to be added to Chapter 42, which include non-motorized vehicle or device, electric-assist vehicle or device, and low-speed motorized vehicle or device. These definitions are intended to comprehensively cover the applicable vehicle-type that would be assumed to be operated or ridden upon Town or State right-of-way within the Town limits.

'The "*Section 42-92 Riding coasters, roller skates, or similar devices*" is proposed to be replaced with "*Section 42-92 Operation of Non-Motorized, Muscle-Powered, Electric-Assist, & Low-Speed Vehicles and Devices*". The revised Code Section defines the appropriate vehicle or device that can be used upon the applicable public right-of-way, as well as provides additional guidance for the general operations of such vehicles or devices."

Mayor Pro Tem Siers confirmed with staff that golf carts are not allowed on the bike path; Comr. Brinkley confirmed with Police Chief Webster that he and his officers are okay with the proposed ordinance as well.

MOTION: Mayor Pro Tem Siers made a motion to adopt the ordinance amending Town Code Chapter 42 Traffic and Motor Vehicles re: updated definitions to include electric assist vehicles as presented. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was not present.).

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

From Dec 15th Board meeting - Consideration of Change Order to Old Nags Head Cove Water Main Replacement Project - and associated Budget Amendment

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

"At their December 15, 2021, meeting, the Board of Commissioners authorized execution of a construction contract with Enviro-Tech Unlimited Construction Services, LLC, in the amount of \$1,378,208 for the Old Nags Head Cove watermain replacement project. Recognizing the scale of disturbance associated with the open cut installation method, staff has been working with the low bidder to (1) reduce impacts in heavily landscaped areas and (2) provide an expanded driveway apron replacement section for enhanced aesthetic appeal and functionality.

'Staff has been able to identify (4) separate areas within the neighborhood where the horizontal directional drill method could be employed to reduce vegetation disturbance and impacts to above ground improvements. The areas identified are large enough to span multiple properties and avoid conflicts with existing mature trees and at grade improvements. Pricing for horizontal directional drill in lieu of open cut installation in the identified areas has been provided and is included in the requested change order pricing.

'Enviro-Tech has included pricing to account for an expanded driveway width to increase the section replaced across the driveway from an average width of 2.5' to 10'. The additional driveway width will typically result in the driveway apron being replaced back to the first control joint providing increased functionality and aesthetics.

'In total, the requested Change Order #1 amount is \$459,976.70.

'The budgeted funds for the project are \$1,759,930. Additional funding has been identified in the amount of \$78,124.90 from Town funds received from the American Rescue Plan Act (ARPA) and \$50,130 from the Water Fund/ Water Capital Reserve Fund to cover project contingency costs.

'Staff is requesting Board approval for a project budget amendment to cover the balance of the change order amount and a project contingency. A second action is being requested for the Town Manager to execute the submitted Enviro-Tech Change Order #1 in the amount of \$459,976.70."

Mayor Cahoon said that he appreciated the work staff has done with the neighborhood; Engineer Ryan said it has been very effective working with resident Dave Masters as neighborhood liaison.

MOTION: Comr. Brinkley made a motion to approve Budget Amendment #7 for the Old Nags Head Cove Water Main replacement project in the amount of \$142,885. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Renée Cahoon was not present.).

Budget Amendment #7, as approved, is attached to and made a part of these minutes as shown in Addendum "E".

MOTION: Mayor Cahoon made a motion to authorize the Town Manager to execute the Change Order #1 Contract with Enviro-Tech in the amount of \$459,976.70. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was not present.).

The contract with Enviro-Tech for Change Order #1, as executed, is on file in the Town Clerk's Office.

From Dec 15th Board meeting - Post-Dorian Beach Nourishment Project

- Notice of Bid Award
- Authorization of execution of construction contract
- Capital Project Ordinance Budget Amendment

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

"On Thursday October 7, 2021, the Town of Nags Head received three (3) competitive bids from Manson Construction Company, Weeks Marine, Inc., and Great Lakes Dredge & Dock Company, LLC for the 2022 Post-Dorian Renourishment project. Bids were structured with (7) base bid items and two add alternate items consisting of an additional beach fill quantity amount and sand-fencing.

'The consulting engineering firm of Moffatt and Nichol conducted an evaluation of the submitted bids and issued a Bid Recommendation Letter on October 18, 2021 with a recommendation to accept the bid by Great Lakes Dredge and Dock Co., LLC. The recommended award amount is for \$11,598,653.10 which includes the base bid items for the beach fill placement quantity of 508,070 c.y., in addition to a portion of 'Add Alternate Bid item #1 to accept beach fill placement quantity of 103,189 c.y., and acceptance of Add Alternate Bid item #2 for sandfence installation.

Several Board actions are required with Staff requesting the following items for Board consideration:

1. Approve the issuance of the Notice of Award to Great Lakes Dredge & Dock Company, LLC in the amount of \$11,598,653.10.
2. Consideration of an amendment to the Beach Nourishment Capital Project ordinance.
3. Authorize the Town Manager to execute the construction contract with Great Lakes Dredge & Dock Company, LLC in the amount of \$11,598,653.10."

MOTION: Comr. Brinkley made a motion to approve issuance of the Notice of Award to Great Lakes Dredge & Dock Company, LLC in the amount of \$11,598,653.10. The motion was seconded by Mayor Pro Tem Siers which passed 4 - 0 (Comr. Renée Cahoon was not present.).

MOTION: Comr. Brinkley made a motion to adopt Amendment #3 to the Capital Project Ordinance as presented. The motion was seconded by Comr. Sanders which passed 4 - 0 (Comr. Renée Cahoon was not present.).

MOTION: Comr. Brinkley made a motion to authorize the Town Manager to execute the construction contract with Great Lakes Dredge & Dock Company, LLC in the amount of \$11,598,653.10. The motion was seconded by Comr. Sanders which passed 4 - 0 (Comr. Renée Cahoon was not present.).

NEW BUSINESS

Committee Reports

Comr. Sanders - Estuarine Shoreline Management Plan Committee - First meeting was December 15th - Overview of the project was provided by Executive Director Reide Corbett, of the Coastal Studies Institute (CSI); the Town will be looking at this with the VCAP Project; a grant of \$75,000 has been secured from the National Fish and Wildlife Foundation; next meeting is later this month.

Board/Committee appointments

- Annual appointment of Board of Adjustment Chair and Vice-Chair
- Appointment/Reappointment to Planning Board and Board of Adjustment
- Appointment to Firemen's Relief Fund Board

The agenda summary sheet read in part as follows:

"At the January 5th Board of Commissioners meeting, request Board consideration of the following:

'Appointment/Reappointment to Board of Adjustment

Margaret Suppler's term expires February 6, 2022 - She has indicated that she would like to be considered for reappointment.

'Annual appointment of Chair and Vice-Chair to Board of Adjustment

In accordance with Town Code - UDO Sec. 2.5.3.1 request appointment of Chair and Vice-Chair to the BOA. Margaret Suppler (if reappointed to the BOA) and Bobby Gentry are both interested in being reappointed as Chair and Vice Chair respectively.

'Appointment/Reappointment to Planning Board

Meade Gwinn's term expires January 2, 2022 - He has indicated that he would like to be considered for reappointment.

Appointment to Firemen's Relief Fund Board

At the January 5th Board of Commissioners meeting, request appointment to fill the vacancy of Annette Ratzenberger, who submitted her resignation in November 2021. Anne Farmer, with an application on file, indicated her interest in serving in December 2021.

'Attached please find updated Tracking Charts with current rosters, as well as updated Candidate Charts - for the three listed boards.'

MOTION: Mayor Pro Tem Siers made a motion to reappoint Margaret Suppler to another term on the Board of Adjustment. The motion was seconded by Comr. Brinkley which passed 4 - 0 (Comr. Renée Cahoon was not present.).

MOTION: Mayor Pro Tem Siers made a motion to reappoint Margaret Suppler and Bobby Gentry as BOA Chair and Vice-Chair respectively. The motion was seconded by Comr. Brinkley which passed 4 - 0 (Comr. Renée Cahoon was not present.).

MOTION: Comr. Brinkley made a motion to reappoint Meade Gwinn to another term on the Planning Board. The motion was seconded by Mayor Pro Tem Siers which passed 4 - 0 (Comr. Renée Cahoon was not present.).

MOTION: Comr. Brinkley made a motion to appoint Anne Farmer to the vacant position on the Firemen's Relief Fund Board of Trustees. The motion was seconded by Comr. Sanders which passed 4 - 0 (Comr. Renée Cahoon was not present.).

Mayor Cahoon encouraged staff to continue to advertise the Town's interest in having people apply to serve on various boards and committees in the Town.

Consideration of Traffic Control Map amendment

- No Parking - Tow-Away Zone on Pond Island - S North Shore Road

The agenda summary sheet read in part as follows:

"At the January 5th Board of Commissioners meeting, request Board review and adoption of attached ordinance amending the Town's Traffic Control Map.

'Investigation by Police revealed that parking in this area had the potential of adversely impacting the integrity of the Town's bulkhead as well as causing unnecessary congestion in this narrow area. Staff is requesting that a No Parking - Tow Away Zone be designated for the right-of-way to begin on S North Shore Road at the eastern most point of the bulkhead to where the road begins to run in a linear north/south direction onto S West Shore Road.

'Attached please find a memo from Police Chief Webster with additional details, a map depicting the area, and a proposed ordinance amending the Traffic Control Map.'

Police Chief Webster's memo read in part as follows:

"The Police and Public Works Department's recommend the institution of a no parking- tow away zone on South North Shore Road. The location is across from 7813 South North Shore Road.

'The property owner of 7813 S N Shore Rd brought to the attention of the Town that vehicles were parking in the curve on S N Shore Rd in the northwestern corner of Pond Island. The property owner felt this practice was unsafe and created unnecessary congestion.

'While investigating the complaint it was noted that the right of way in this area is narrow and abuts the Town owned bulkhead built on the Sound. Beyond the stated traffic safety issue, the Police and Public Works Department's observed that parking vehicles on this property could negatively impact the integrity of the bulkhead.

'It is for the aforementioned safety complaint and the potential for vehicles to adversely impact the bulkhead that we recommend the institution of a no parking- tow away zone along this right of way. The no parking- tow away zone would begin on S N Shore Rd at the eastern most point of the bulkhead to where the road begins to run in a linear north/south direction on to South West Shore Road."

Comr. Brinkley confirmed with staff that there were no complaints received, nor any issues noted by other neighbors. Manager Garman said that the real question is does this pose an issue to the Town's infrastructure (bulkhead).

Mayor Cahoon said that he is not sure the designation of a No Parking - Tow Away Zone is needed and that he feels there are reservations by other Board members also.

MOTION: Comr. Brinkley made a motion to deny the request to designate a No Parking-Tow Away Zone on S North Shore Road in the Pond Island Subdivision until such a time that evidence presents an issue. The motion was seconded by Mayor Pro Tem Siers.

Comr. Brinkley stated that if staff heard from other property owners with issues, to bring that forward. Comr. Sanders confirmed with staff that no bulkhead damage has been seen.

CONTINUATION OF MOTION: The motion passed 4 – 0 (Comr. Renée Cahoon was not present.).

Consideration of COVID policy related to leave time for vaccinations

Human Resources Coordinator Jan Mielke summarized the agenda summary sheet which read in part as follows:

"At the January 5th Board of Commissioners meeting, request Board review and approval of the following:

- Consideration of providing 4 hours of vacation leave to incentivize individuals to receive their COVID-19 booster shot. Benefits include:
 - 1) Additional safety for teammates in the workplace
 - 2) Continuity of operations given the new(attached) recommending five-day quarantine for vaccinated individuals that are exposed to positive cases and received vaccines (more than six months ago for Pfizer/Moderna or two months ago for Johnson & Johnson) but that have not received the booster shot"

Comr. Brinkley confirmed with Ms. Mielke that receiving the vacation leave hours is retroactive to those employees who have already received their booster shots.

Ms. Mielke reported that 70% of employees have received the initial series of shots - both shots.

In accordance with CDC guidance released end of December, if exposed and have received the booster can continue to report to work. She will find out how many employees have had COVID in response to an inquiry by Mayor Pro Tem Siers.

MOTION: Comr. Brinkley made a motion to approve the COVID policy related to leave time for vaccinations as presented. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Renée Cahoon was not present.).

The COVID policy related to leave time for vaccinations, as approved, is on file in the Town Policy Book.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy wished Board members and staff a Happy New Year.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman - Project updates

Three sidewalk construction projects – Bonnett Street (east side of Wrightsville), Barnes Street, and Seachase (connects to the Village Golf Club entrance). Work is expected to begin on Monday, January 10th and is expected to be completed within 60 days.

Seachase crosswalk light - The NCDOT reimbursement agreement is in place and staff is coordinating with NCDOT for the installation. Staff is hopeful that completion of the crosswalk light will align up with completion of the sidewalks.

Bainbridge Beach Access - Under construction and currently closed; looking at getting the Huron Street Beach Access out to bid within the next few weeks.

Dowdy Park pickleball courts - Resurfacing project has been completed; positive reports have been received by those who play on the courts.

The Town recently closed on the purchase of the former BB&T building on Seachase Drive; staff has met with the tenant and is working through details.

Soundside Road access to Jockey's Ridge State Park - Staff recently met with State Parks and residents of Soundside Road concerning the access to the Park - The park has two boardwalks - one is in disrepair. Staff would like guidance on how to proceed – staff would like to remove the dilapidated boardwalk structure which is dangerous.

Mayor Cahoon confirmed with Manager Garman that the Town never did receive a response to its letter to State Parks last year; Manager Garman stated that according to Jockey's Ridge State Park Superintendent Joy Greenwood, a response should be on its way from the State soon. This is to be included on the February 2022 Board agenda for discussion.

In response to Mayor Cahoon, Attorney Leidy stated that unless a structure is imminently dangerous, the Board can wait to take action on the boardwalk. It was Board consensus to wait until receipt and discussion of the response from the State before taking action on the boardwalk.

Skateboard Park (At YMCA) status – Town Manager Garman reported to the Board how structures at the skateboard park need to be replaced as they are hard to maintain in order to make them safe. There is a local company that works with landscaping architects to bring people together and prepare a skateboard park design - for the amount of \$1,500. Staff would like to move forward with a design and then return to the Board for further discussion/direction. Manager Garman pointed out that the Visitors Bureau funds for the skateboard park are only to be used for construction, not design.

It was Board consensus to agree with Manager Garman to move forward and utilize funds in the amount of \$1,500 for the design of a new skateboard park.

Mayor Cahoon requested a status of the following:

- Condition of the beach/beach driving after the recent storm: Manager Garman stated that the beach was closed during the storm and anticipate it opening up tomorrow (Thursday, January 6th).
- Whalebone Park progress in evaluating the site: Manager Garman said that staff is still in discussion with the Planning Board on this project.

Comr. Brinkley asked Manager Garman to make sure the contractor is aware how busy the roadway/area is at Bonnett Street before and after school when constructing the new sidewalk.

Town Manager Garman - Request for Closed Session

Mayor Cahoon noted that the Closed Session to discuss a personnel matter requested by Town Manager Garman would be addressed at the end of the meeting.

BOARD OF COMMISSIONERS AGENDA

Mayor Cahoon – Conference in Wilmington re: Offshore Wind Economic Strategies

Mayor Cahoon reported that last year the Governor signed Executive Order 218 to commit to offshore wind power to transition to a clean energy economy. Part of the Executive Order established a NC Task Force for Offshore Wind Economic Resource Strategies (NC TOWERS). He learned recently that he has been appointed to this task force. The first meeting is scheduled for February 2-3, 2022 in Wilmington. Mayor Cahoon indicated that he is honored to be a part of the task force and is looking forward to serving.

Mayor Cahoon – Meeting at Netherlands Embassy in Washington, DC on flood management strategies

Mayor Cahoon was invited and will be attending a meeting in Washington, DC at the Netherlands Embassy on January 18, 2022, along with other coastal mayors, to discuss and hear the latest on flood management strategies. He stated that he is pleased to attend and represent the Town.

Comr. Brinkley – Happy New Year

Comr. Brinkley wished all staff a Happy New Year.

CLOSED SESSION

MOTION: Mayor Cahoon made a motion to enter Closed Session to discuss a personnel issue in accordance with GS 143-318.11(a)(6). The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was not present.). The time was 11:37 a.m.

OPEN SESSION

The Board re-entered Open Session at 12:21 p.m. Attorney Leidy reported that the Board did discuss a confidential personnel matter during Closed Session and no action was taken.

ADJOURNMENT

MOTION: Comr. Brinkley made a motion to recess to a BOC Workshop on Tuesday, January 25th at 9 am in the Board Room. The motion was seconded by Mayor Pro Tem Siers which passed 4 - 0 (Comr. Renée Cahoon was not present.). The time was 12:22 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: **February 2, 2022**

Mayor: _____
Benjamin Cahoon