



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, FEBRUARY 2, 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, February 2, 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. Renée Cahoon; Comr. Kevin Brinkley; and Comr. Bob Sanders

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Eric Claussen; Amy Miller; David Ryan; Phil Webster; Tyson Wild; Randy Wells; Shane Hite; Roberta Thuman; Karen Snyder; Brent Heath; Mike Robinson; Mark Kasten; and Town Clerk Carolyn F. Morris

CALL TO ORDER

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

ADOPTION OF AGENDA

Mayor Cahoon stated that he would like to add a Closed Session to today's agenda for consideration of an award.

MOTION: Comr. Renée Cahoon made a motion to adopt the February 2nd agenda, as amended. The motion was seconded by Comr. Brinkley which passed unanimously.

RECOGNITION

INTRODUCTION OF NEW EMPLOYEE

Police Chief Webster introduced Police Officer Tyson Wild who was welcomed by the Board to Town employment.

PROCLAMATION - Proclaiming February 6 - 12, 2022 Safety Week

Deputy Fire Chief Shane Hite introduced Safety Week as February 6 - 12, 2022 and invited everyone to attend the scheduled events.

Mayor Cahoon read the Safety Week Proclamation which read in part as follows:

"WHEREAS, the Town of Nags Head Board of Commissioners, employees and citizens are committed to the maintenance of a safe and healthful workplace; AND

'WHEREAS, the Town has assumed an active role in the promotion of a safe and healthful work environment by a program of regular occupational worksite evaluations and employee safety education; AND

'WHEREAS, the Town strives to stimulate and maintain the interest in loss control and accident prevention and recognizes past and future services to the employees and citizens of Nags Head; AND

'WHEREAS, the Town seeks to guide and encourage the adoption and institution of safe work practices by all employers and employees in Nags Head.

'NOW, THEREFORE, the Town of Nags Head Board of Commissioners does hereby proclaim

February 6 - 12, 2022 as
SAFETY WEEK

in the Town of Nags Head, and commends this observance to our citizens.

'FURTHERMORE, in recognition of this proclamation, I invite all Nags Head employees to attend the annual Nags Head Safety Luncheon on Friday, February 11, 2022 from 12:00 Noon to 2:00 p.m. at the Douglas A. Remaley Fire Station #16."

MOTION: Comr. Brinkley made a motion to approve the Safety Week Proclamation as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

PRESENTATION - Dare County Motorsports Charity Group

Dare County Motorsports Charity Group Director Terry Gray reported on the December 2021 Sixth Annual Toy Run. There were 160 motorcycles and 195 jeeps that participated in the parade. This is a way to provide Christmas for kids that would not be able to have one otherwise. In addition, the Charity Group has been able to give donations to each high school in the amount of \$1,500 to a deserving graduating senior. Today he wanted to take the opportunity to thank the Nags Head Board of Commissioners for their support and for the participation of the Nags Head Police Department. He spoke very highly of the Nags Head Police Department who has made each Toy Run Parade event very successful with their support.

Mayor Cahoon thanked Mr. Gray and all who participated.

PRESENTATION - Dare County Attorney/Manager Bobby Outten re: Expansion of EMS Services

Dare County Attorney/Manager Bobby Outten wanted to start a conversation with the Board concerning a renovated/new EMS Station in the Town. He said that the County has nine EMS stations that are all 30 plus years old and need renovating/replacing.

Mr. Outten stated that since the Doug Remaley Fire Station 16 is to be replaced at some point, he feels there is little sense to renovate it; he is aware that the Town has acquired the property next door to the existing Fire Station. Mr. Outten said that he would like to move in the direction of an updated EMS Station in that area depending on what the Town wants to do.

It was Board consensus that Town Manager Garman and Manager/Attorney Outten meet and discuss a partnership to include a plan along with associated timeframes for a new EMS Station. Mr. Outten confirmed with the Board that they are comfortable with the Oakley Collier Architect Firm in those discussions.

Mr. Outten indicated that he would return after discussions with Town Manager Garman for consideration by the Board, when a decision is needed.

PRESENTATION - Award presentations for former Fire Captain John Kenny
Fire Chief Randy Wells introduced former Fire Captain John Kenny.

Brent Heath, Eastern Regional Director for the State Dept of Insurance read and presented to Mr. Kenny the Commissioners Award honoring him for 30 years of public service - a lifetime of service to others. He received a standing ovation from the audience. This Award was certified by Dept of Insurance Commissioner Mike Causey who was unable to attend due to another obligation. Mr. Kenny was also presented by Mr. Heath a coin from the Office of the State Fire Marshal.

Mr. Kenny spoke about his service to the Town and how he has enjoyed his years teaching classes about fire safety and would like to see the swimming cases started up again. He also emphasized his appreciation for the award and how much it means to him.

Mayor Cahoon and the Board presented the Long Leaf Pine Award to former Fire Captain John Kenny, who then received a standing ovation.

A break was declared by Mayor Cahoon for a photo opportunity.

PUBLIC COMMENT

No one present wished to speak during Public Comment and Attorney Leidy concluded it at 9:32 a.m.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

- Consideration of Budget Amendment #8 to the FY 21/22 Budget
- Consideration of Tax Adjustment Report
- Request to advertise delinquent taxes
- Approval of minutes
- Consideration of Resolution for Reimbursement for Public Services Complex project
- Consideration of FY 21/22 Audit Contract
- Consideration of resolution designating Applicant's Agent
- Consideration of acceptance of easement located at 3626 Old Nags Head Woods Road
- Request for Public Hearing to consider text amendment to the Flood Damage Prevention Ordinance

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

Budget Amendment #8, 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".

Request to advertise delinquent taxes - the request to advertise delinquent taxes, as approved, read in part as follows:

"Request for Approval for Advertisement - In accordance with NCGS 105-369 advertisement of tax liens on real property for failure to pay taxes "...The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period of March 1 thru June 3... The posted notice and newspaper advertisement shall set forth the following information: ...The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes; in alphabetical order;...a brief description of each parcel of land to which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel; a statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items; ...a statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes; costs – each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement...."

'With your approval, staff intends to advertise the liens in the newspaper on March 16, 2022 in accordance with NCGS 105-369 for all amounts outstanding as of end of business on March 11, 2022.

'Request for Authorization to Begin Foreclosures on 2021 Taxes - In accordance with NCGS 105-374, "Foreclosure of tax lien by action in nature of action to foreclose a mortgage..." and/or NCGS 105-375, "In Rem method of foreclosure..." "docketing certificate of taxes as judgment - in lieu of following the procedure set forth in NCGS 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised..."

'With your direction, staff will begin the foreclosure process where necessary on the 2021 delinquent taxes thirty days after advertising."

Resolution for Reimbursement - The Resolution of Reimbursement for the Public Services Complex Project, as adopted, read in part as follows:

REIMBURSEMENT RESOLUTION OF THE TOWN OF NAGS HEAD DECLARING THE INTENTION TO REIMBURSE THE COST OF CERTAIN EXPENDITURES

'WHEREAS, The Town Manager and the Finance Director have described to the Board of Commissioners the desirability of adopting a resolution to facilitate the Town's use of financing proceeds to restore Town funds when the Town makes capital expenditures prior to closing on financing.

'BE IT HEREBY RESOLVED by the Board of Commissioners of the Town of Nags Head, North Carolina as follows:

'Section 1. The project is the financing of the planning and design of the Public Services Complex project as identified in the Capital Project Fund.

'Section 2. The project is to be financed. The currently expected type of financing (which is subject to change) is Limited Obligation Bond public offering installment financing. The currently expected maximum amount to be contracted for the project is \$2,000,000.

'Section 3. The Town presently intends, and reasonably expects, to reimburse itself for the original expenditures incurred and paid by the Town within 60 days of adoption of this Resolution from a portion of the financing proceeds.

'Section 4. This Resolution shall become effective immediately upon the date of its adoption.'

FY 21/22 Audit Contract - The FY 21/22 Audit Contract with Potter & Company was approved as presented. The agenda summary sheet read in part as follows:

"At the February 2nd Board of Commissioners meeting request Board authorization to enter a contract with Potter & Company out of Mooresville, NC to perform the Town's fiscal year end 2022 annual audit. Staff believes that Potter & Company has the experience necessary for a thorough audit. Attached please find a staff memo with additional details."

Resolution designating Applicant's Agent

The agenda summary sheet read in part as follows:

"Attached is a resolution naming Town Manager Andy Garman and Fire Chief Randy Wells as the primary and secondary agents, who, upon the adoption of the resolution, will be authorized to execute and file applications for federal and/or state assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, on behalf of the Town of Nags Head.

'This resolution is required to be considered/adopted by Nags Head's Board of Commissioners prior to receiving any federal and/or state public disaster assistance grants as part of Disaster Number 4465, Hurricane Dorian.'

The resolution designating applicant's agent, as adopted, is attached to and made a part of these minutes as shown in Addendum "C".

Consideration of acceptance of an easement over 3626 S. Old Nags Head Woods Road - The easement over 3626 S Old Nags Head Woods Road was approved as presented; the agenda summary sheet read in part as follows:

"During the process of permitting new construction of a single-family dwelling on 3626 S. Old Nags Head Woods Road, for property owners, Aaron and Kristi Wright, it was noticed by staff that the location of the Old Nags Head Woods Road easement/right of way across this property was not depicted accurately based upon its actual alignment onsite. Staff discussed the need to have the proper alignment recorded with the property owners, at which time Attorney Robert Hobbs was engaged and drafted the attached Easement language. This easement conveys to the Town a permanent and perpetual easement over and across the property located at 3626 S. Old Nags Head Woods Road.

'Staff would note that the property located at 3620 S. Old Nags Head Woods Road, currently under development by property owners, Tom and Donna Haddon, will also be seeking to have the actual alignment of Old Nags Head Woods Road easement considered for acceptance by the Town.'

Request for Public Hearing - The request for public hearing, as approved, read in part as follows:

'At the Board of Commissioners January 5, 2022 meeting, Planning Staff provided an update on a recent Board of Adjustment variance hearing and the determination to grant a variance from the Flood Damage Prevention Ordinance. The Board of Adjustment found that the application 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* does result in unnecessary hardship given that NC 12 (S. Virginia Dare Trail) was relocated westward in the general vicinity of Sandcastle Court, Sea Spray Court, Sand Fiddler Court, Sea Holly Court and Sun Dancer Court and the road no longer parallels the beach as the entirety of NC 12 otherwise does. This results in properties in this area being held to a Regulatory Flood Protection Elevation (RFPE)/Local Elevation Standard (LES) of VE 12' whereas if the road were in its original alignment, these properties would be regulated to an AE 9' RFPE.

'It was the consensus of the Board of Commissioners that staff move forward with drafting a text amendment to the UDO that would rectify this situation. Staff has drafted a text amendment that would add language stating that within the Village at Nags Head, only parcels with direct frontage on the Atlantic Ocean/ocean beach shall be considered a Coastal High Hazard Area with an RFPE of 12. Noting that this language applies only within the Village at Nags Head SPD-C District, this amendment would address the hardship as expressed by the Board of Adjustment and the concerns noted by the staff and the Board of Commissioners.

'Planning Board Recommendation

At their January 18, 2022, meeting, the Planning Board voted unanimously to recommend adoption of the text amendment as proposed.'

PUBLIC HEARINGS

Public Hearing to consider Residential Stormwater Ordinance

- Consideration of Nags Head Low Impact Development Manual

Attorney Leidy introduced the Public Hearing to consider the Residential Stormwater Ordinance. The time was 9:33 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, January 19, 2022 and on Wednesday, January 26, 2022 as required by law.

The agenda summary sheet read in part as follows:

'Staff drafted new non-volume based ordinance language established through meetings with the Outer Banks Homebuilders Association members, as well as practical experience applying stormwater regulations throughout residential areas in the town. Some modifications to the ordinance were necessary outside of Section 11.5, General Standards for Residential Development on Individual Lots for consistency and clarity, therefore, Article 11, Part 1 was reviewed as a whole. For consistency, it was also necessary to update Article 11, Part III, Flood Damage Prevention, to reflect the changes to the fill requirements and consolidate to one location. In addition to this, changes have been drafted to UDO Appendix A. definitions which change the way onsite material may be used to achieve fill height, offer consistency with respect to fill terminology, as well as add a relevant stormwater definition that was previously discussed. Lastly, the Town of Nags Head

Low Impact Development Manual draft document has been updated for consistency with the overall residential stormwater ordinance changes.

'Staff Recommendation/Planning Board Recommendation
Staff recommends approval of the text amendments as presented.

'At their January 18, 2022, meeting the Planning Board voted unanimously to recommend approval of the text amendments as presented."

The staff memo presented by Senior Environmental Planner Kate Jones read in part as follows:

"Earlier this year planning staff drafted and presented updates to the Town of Nags Head Low Impact Development and Stormwater Reference Manual for consideration by the Planning Board and Board of Commissioners. At their May 5, 2021, meeting, the Board of Commissioners unanimously passed a motion to continue consideration of these updates to the first meeting in July 2021 in order to review potential changes in conjunction with the overall residential stormwater ordinance with several Nags Head homebuilders. Since then, the following meetings have taken place:

- June 16, 2021: Initial meeting with Nags Head homebuilders, Planning board member Meghan Vaughn and Town staff.
- September 15, 2021: Initial meeting with representatives from the Outer Banks Homebuilders Association and Town staff.
- September 21, 2021: Planning Board meeting: An update on the stormwater review process and associated meetings was provided.
- September 22, 2021: Town of Nags Head staff held a conference call with Wes Haskett, Planning Director for the Town of Southern Shores.
- October 6, 2021: Board of Commissioner's meeting; The Board desired the residential stormwater ordinance to be simple and easy to understand and implement.
- October 7, 2021: Town staff met with representatives of the Outer Banks Homebuilders Association and reviewed two ordinance options.
- December 7, 2021; Town staff met with representatives of the Outer Banks Homebuilders Association and further reviewed the preferred option.
- January 10, 2022: Town staff met with representatives of the Outer Banks Homebuilders Association and further reviewed the preferred option.
- January 18, 2022: Planning Board meeting; The board recommended approval of the text amendments as presented.

'Staff has drafted new non-volume based ordinance language established through discussion at these meetings as well as practical experience applying stormwater regulations throughout residential areas in the town. Modifications to the ordinance were necessary outside of Section 11.5, General Standards for Residential Development on Individual Lots for consistency and clarity, therefore, Article 11, Part 1 was reviewed as a whole. For consistency, it was also necessary to update Article 11, Part III, Flood Damage Prevention, to reflect the changes to the fill requirements and consolidate to one location. In addition to this, changes have been drafted to UDO Appendix A. definitions which change the way onsite material may be used to achieve fill height, offer consistency with respect to fill terminology, as well as adds a relevant stormwater definition that was previously discussed. Lastly, the Town of Nags Head Low Impact Development Manual draft document has been updated for consistency with the overall residential stormwater ordinance changes."

Ms. Jones provided a PowerPoint presentation summarizing the issues involving residential stormwater, comparing the existing and the proposed ordinance as well as the ordinance main points. Her presentation is attached to and made a part of these minutes as shown in Addendum "D".

Mayor Cahoon asked for comments from the two commissioners who participated in the process – Mayor Pro Tem Siers and Comr. Brinkley.

Mayor Pro Tem Siers thanked the builders who participated with their input and comments. He said that it was an interesting committee to work on and that he feels the resulting ordinance was well thought out. Comr. Brinkley agreed and stated that everyone spent a lot of time with a lot of contractors working together and he very much appreciated that.

Comr. Renée Cahoon thanked staff and the contractors who participated.

Comr. Sanders questioned if the ordinance encourages swales, etc. and more toward rock, rain gardens, utilizing existing topography - Ms. Jones stated that the ordinance does allow for choices to include taking advantage of your existing site.

Mayor Cahoon noted that there are grants available to homeowners as Ms. Jones was also aware.

Duke Geraty, Government Affairs representative for the Outer Banks Homebuilders Association spoke concerning the committee that he also served on; he thanked staff and the Town Manager for their participation; everything was talked through from the point of view of the homeowner; the group worked on simplifying everything which he felt saved homeowners a lot of money as well as speeding up the process. The committee work did take a long time but he feels it paid off. Homeowners will not need to completely clear a lot to accommodate stormwater management. He thanked the Board members and staff and said that his association is happy with the resulting proposed ordinance.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 9:52 a.m.

Mayor Cahoon thanked the building community, Board members who participated, staff who participated and made it a positive experience.

MOTION: Comr. Brinkley made a motion to adopt the Residential Stormwater Ordinance as presented. The motion was seconded by Mayor Pro Tem Siers.

Comr. Renée Cahoon thanked staff and the building community again for all the time and effort they spent working with each other on the ordinance.

CONTINUATION OF MOTION: The motion passed unanimously.

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

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 February 2, 2022.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for December 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:

'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

Thursday, January 20th – DWMP Advisory Committee Meeting

'Review of Residential Stormwater Regulations

At their meeting on Tuesday, January 18, 2022, the Planning Board voted unanimously to recommend approval of the residential stormwater regulation text amendment as presented. The Board of Commissioners will conduct the Public Hearing for consideration of this item at their February 2, 2022, meeting.

'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on January 18, 2022 and included a Site Plan Review for Blue Moon Restaurant to be developed at 4329 S. Croatan Highway, consideration of text amendments to the Town's Residential Stormwater Regulations, to the Flood Damage Prevention Ordinance to address an inconsistency in the application of the Regulatory Flood Protection Elevation (RFPE), and a request to initiate consideration of rezoning the property located at 2110 S. Pond Avenue (Nags Head Water Plant) from SED-80, Special Environmental District to C-3, Commercial Services. The Planning Board also participated in a stakeholder interview for the Electric Vehicle Action Plan and received updates on the number of Short-Term Rental registrations in 2021 and the use of shipping containers as dwellings. Public Works Director, Eric Claussen attended the Planning Board meeting and provided members with an update on several transportation related items. The Planning Board expressed their appreciation for Mr. Claussen's attendance and updates.

'The Planning Board's next meeting is scheduled for February 15, 2022. At this time, the agenda is expected to include consideration of a rezoning request for the property at 2110 S. Pond Avenue from SED-80, Special Environmental District to C-3, Commercial Services as it relates to the design process for the Public Works Master Plan, a presentation of the Draft Decentralized Wastewater Management Plan and an update on the Resilient Coastal Communities Program.

'Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in January 2022.

'Decentralized Wastewater Management Plan – The Advisory Committee met on Thursday, January 13th and January 20th, 2022, to provide final thoughts, feedback and recommendations as the consultant begins to finalize the Draft Decentralized Wastewater Management Plan. The meeting agenda and presentation can be viewed [HERE](#). At this time, the Plan is scheduled to be provided to the Planning Board at their February 15, 2022, meeting. The DWMP Advisory Committee will be meeting on Thursday, February 17, 2022.

'Estuarine Shoreline Management Plan – Staff is working with the Advisory Committee to solidify the next committee meeting date, which is anticipated for the last week in February. The Community Engagement and Outreach Plan and the General Project Factsheet have been finalized and are available on the project website located [HERE](#).

'NC Resilient Coastal Communities Program – With the Planning Board serving as the Community Action Team (CAT) of key stakeholders for this program, they will meet with Candice Andre, Senior Project Manager with VHB, at their February 15, 2022, meeting to participate in a goal setting exercise. Staff intends to schedule and conduct a meeting with other departmental team members to provide stakeholder input in the coming month. Staff will soon have a public facing project website where information can be accessed and shared.

'Electric Vehicle Action Plan – Duke students are actively working on developing content for the EV Action Plan. The students met virtually with the Planning Board at their January 18, 2022, meeting to discuss the current status of the EV Action plan and, receive feedback and discuss the project goals. Staff is compiling a list of potential stakeholders to be interviewed as part of Plan.

'ETIPP Project/Program – Staff has provided a prioritized list of critical facilities to the Department of Energy's Energy Transitions Initiative Partnership Program (ETIPP) and has met with representatives of National Renewable Energy Laboratory (NREL). Staff participates in a weekly update meeting with Energy Transitions Initiative Partnership and has facilitated further communication between this organization and Dominion Power and Nags Head Public Works Department.

'NC AIA Activate Technical Assistance – A meeting will be held on February 9, 2022, to discuss the appropriate conservation treatments and measures that should be featured in the Residential Energy and Water Conservation Guide based on the feedback provided from the stakeholder survey results.

'Whalebone Park: Phase 1 – Planning and LID Stormwater Demonstration Project – Senior Environmental Planner, Kate Jones will be providing an update on these items at the Board of Commissioners February 2, 2022, regularly scheduled meeting.

'Dowdy Park Events/Farmers Market/Holiday Markets – 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

Thursday, February 3rd – OBX CRS Users Group, Risk Rating 2.0

Thursday, February 3rd – ETIPP Meeting

Wednesday, February 9th – AIA Meeting

Wednesday, February 9th – Committee for Art and Culture Meeting

Friday, February 11th – EV Action Plan Meeting

Tuesday, February 15th – CSI Comprehensive Review as Community Partner

Tuesday, February 15th – Planning Board Meeting

Thursday, February 17th – DWMP Advisory Committee Meeting

Friday, February 25th – EV Action Plan Meeting"

Consideration of site plan submitted by Michael Robinson, P.E., P.L.S. on behalf of Blue Moon Five, LLC for the construction of an approximately 8,676 square foot, two-story restaurant. The property is zoned C-2, General Commercial and is located at 4329 S. Croatan Highway

Mayor Cahoon asked to be excused from the site plan discussion as his firm is involved in the project.

MOTION: Comr. Sanders made a motion to excuse Mayor Cahoon from the Blue Moon Five site plan discussion as his firm, Cahoon & Kasten, is involved in the project. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Mayor Cahoon left the meeting.

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

"GENERAL INFORMATION

Applicant: Michael Robinson, P.E., P.L.S. on behalf of Blue Moon Five, LLC.

'Application Type: Site Plan Review.

'Purpose/Request: Construction of an approximately 8,676 square feet, two-story, 100 seat restaurant and all associated site improvements.

'Property Location: 4329 S. Croatan Highway, Nags Head.

'Existing Land Use: Vacant.

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

'Zoning Classification of Surrounding Properties: Property to the north is zoned C-2, General Commercial (Cavalier Surf Shop, Residential). Property to the south, directly across Dove Street, is zoned C-2, General Commercial (Haven on the Banks Event Center and Cottage Court). Property to the west, directly across US Highway 158 is zoned R-2, Medium Density Residential (vacant). Property to the east is zoned C-2, General Commercial (residential and vacant).

'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. The proposed first floor elevation of the restaurant is 11.7 and is therefore compliant.

'Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as Neighborhood Commercial. This proposal is consistent with this land use classification and stated Land Use Policies.

'SPECIFIC INFORMATION

'Applicable Zoning Regulations:

- Use Regulations: Section 6.6, Table of Uses and Activities lists "Restaurant – Sit Down" as a Permitted Use within the C-2, General Commercial District, with supplemental regulations set forth in Section 7.31. This section requires that the restaurant have a food preparation area that is at least 20 percent of the gross building square footage of the principal building, that at least 75 percent of all customer seats are designated for full-service, full menu dining and that no more than fifteen percent of the total building square

footage is devoted to accessory entertainment uses. As proposed, the restaurant is compliant with these supplemental regulations.

- Lot Coverage: Total allowable lot coverage for this site is 55%. Proposed lot coverage is 53.7% and is therefore compliant.
- Height: The maximum allowable building height within the Town is 35 feet; however, pursuant to Section 8.2.1, Dimensional requirements, total height may be increased to 42 feet with the use of an 8:12 roof pitch or greater. The applicant has proposed a structure with an overall height of 33.5 feet with the use of an 8:12 roof pitch therefore height is compliant.
- Architecture Design Standards: Section 10.82 of the UDO, Applicability, states that Commercial Design Standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review. This project must adhere to the Commercial Design Standards set forth within Part VI of the UDO. Section 10.83, Design Standards, of the UDO, states that projects adding a total habitable building area of 10,000 square feet or less may elect to comply with the building design requirements by achieving 150 points based on the criteria outlined in the Town of Nags Head Residential Design Guidelines. Projects that elect to comply in this manner shall, in addition to the required 150 architectural design points, incorporate specific building standards into the design. The proposed architectural design satisfies the minimum standards required by Section 10.83 and additionally achieves 159 architectural design points with the use of a first-floor porch, dormers, 8:12 pitched roof, simulated wood shingles and other miscellaneous architectural details.
- Parking: Pursuant to Article 10, Table 10-2, Required Parking by Use, Sit Down Restaurant shall provide parking at one (1) parking space for every 55 square feet of indoor customer service area. The proposed structure contains 2,513 square feet of customer service area, requiring 46 parking spaces. A total of 49 spaces have been provided therefore parking is compliant.

In addition, Section 10.92.14.4 of the UDO, Surface Materials, requires that a minimum of twenty (20) percent of the surface area of the parking area and drive aisles shall be constructed of permeable surface materials. Upwards of 40% of the parking area has been proposed in permeable surface materials therefore the proposal is compliant.

- Buffering/Landscaping: Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:
 - Section 10.92.6.2 of the UDO, Parking and Drive Aisle Setbacks, requires that where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way. A compliant buffer has been proposed along the western property boundary, adjacent to US Highway 158, and along the southern property boundary adjacent to East Dove Street.
 - Section 10.93.3.2 of the UDO, Commercial Transitional Protective Yards, requires increased landscaping to be provided and maintained when non-residential land uses are adjacent to a residential use or residential zoning district. This protective landscape buffer is required to be ten (10) feet in width with two rows of acceptable plant material. Properties to the east are developed residentially, therefore this protective yard will be required along the eastern boundary line.

The proposed site plan included in the Board of Commissioners packet does not meet this requirement. Michael Robinson, P.E., P.L.S. with input from the Town Engineer, has revised the drive aisle along the eastern property boundary in order to provide the required 10-foot-wide commercial transitional protective yard. A mark up site plan has been provided for your consideration and to demonstrate the revisions being

proposed which include: the elimination of five (5) parallel parking spaces adjacent to the drive aisle and adjusting the drive aisle width accordingly. The parallel parking spaces to be eliminated are not required parking spaces, the site has compliant parking without the use of these five spaces. This revision provides additional space for the transitional protective buffer yard, eliminates the need for a retaining wall and reduces the overall lot coverage onsite. A formal submittal of these revisions and approval by the Town Engineer will be required prior to the issuance of a building permit.

'Property north of this site is developed both residentially and commercially, a compliant protective buffer has been proposed in this area.

➤ Section 10.93.3.7 of the UDO, Interior Parking Lot Landscaping, requires parking lot landscaping be provided at a minimum rate equal to ten percent of the total area of the parking spaces. The minimum area necessary for compliance is 1,080 square feet of vegetation. The applicant has proposed 1,386 square feet of vegetation therefore interior parking lot landscaping is compliant.

➤ Section 10.93.3.8 of the UDO, Vegetation Preservation/Planting Requirements, requires that new development projects either preserve a minimum of ten (10) percent of the lot's total area with existing natural vegetation and/or dune elevations or plant new vegetation in lieu of preservation. When existing vegetation cannot be preserved, the planting of a minimum of fifteen (15) percent of the lot's total area shall be required. Existing vegetation on this site is sparse and cannot be preserved to meet the intent of this section therefore, the applicant has proposed to plant 15% of the lots total area in new vegetation. The applicant has provided the required calculations and notation on the landscape plan demonstrating that the vegetation planting requirements will be met.

- Lighting: A lighting plan compliant with the requirements of Article 10, Part IV of the Unified Development Ordinance will be required prior to the issuance any development permits. In addition, a light audit will be required prior to issuance to occupancy permits.

- Signage: No signage is being proposed at this time.

Water and Sewage Disposal: The Dare County Health Department has reviewed and approved the proposal as presented (DCHD Approval Attached).

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

Stormwater Management: Stormwater management has been reviewed and approved by the Town Engineer as presented. An NCDEQ state stormwater management permit will be required to be submitted and approved.

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.

Public Works: The Public Works Director has reviewed and approved the proposed site plan as presented.

'ANALYSIS

Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies.

'STAFF RECOMMENDATION

Staff recommends approval of the Site Plan request as presented.

PLANNING BOARD RECOMMENDATION

At their January 18, 2022, meeting, the Planning Board voted unanimously to recommend approval of the proposed Site Plan as presented.”

Ms. Wyatt suggested approval of the site plan as presented with the recommended conditions shown on the screen which includes a change to the Commercial Transitional Protective Yard at the rear of the site.

Mayor Pro Tem Siers confirmed that Board members had no questions.

MOTION: Comr. Renée Cahoon made a motion to approve the Blue Moon Five, LLC site plan, as amended, as shown today [which includes the suggested change to the Commercial Transitional Protective Yard in the rear of the site.]. The motion was seconded by Comr. Brinkley which passed 4 - 0 (Mayor Cahoon was excused.).

Mayor Cahoon returned to the meeting.

Preliminary discussion to review conceptual designs for the Whalebone Park project

Senior Environmental Planner Kate Jones’ memo was presented and read in part as follows:

“Staff is in the early stages of developing conceptual designs for Whalebone Park to generate thoughtful discussion and feedback related to the park renovations for the purposes of submitting a grant application to the North Carolina Parks and Recreation Trust Fund (PARTF) for funding. Last year, Whalebone Park was incorporated into the Capital Improvement Plan (CIP). The CIP project description states “Renovation and improvement of amenities at Whalebone Park; Improvements may include restrooms, permanent shade structure and picnic area, landscaping, and additional recreational elements.” The proposed schedule for PARTF grant submission is below:

PARTF TIMELINE 2022		
BOC MEETING	FEBRUARY 2, 2022	INTRODUCE PARK CONCEPTS; FEEDBACK
PUBLIC MEETING	MARCH 2, 2022	INTRODUCE PARK CONCEPTS; FEEDBACK
FOCUSED PUBLIC MEETING	MARCH 9, 2022	INTRODUCE PARK CONCEPTS; FEEDBACK
PLANNING BOARD MEETING	MARCH 15, 2022	INTRODUCE PARK CONCEPTS; FEEDBACK
PARTF REVIEW DEADLINE	MARCH 15, 2022	PARTF FEEDBACK
BOC MEETING	APRIL 6, 2022	FINAL PLAN AND COST BREAKDOWN FEEDBACK
PARTF FINAL DEADLINE	May 2, 2022	FINAL SUBMISSION

To date, Staff has held on site meetings with the Committee for Arts & Culture and the Planning Board to help guide the direction of the project. For example, beyond physical improvements or changes, much of the discussion with the Committee for Arts & Culture members included the potential opportunity to improve the Park through programming and events, as well as the need to explore issues and opportunities in the vicinity of the Park, beyond the Park’s boundaries, that may affect the use of the Park and conversely may allow the Park to serve as a bigger asset to the Whalebone Junction area. Planning board voiced their support for additional recreational opportunities, a dog walking area, flexible event space, shade and a restroom. Similar

ideas were mentioned at a Board of Commissioners meeting last year where it was also suggested that staff engage local business owners and residents in the area.

'Staff requests feedback from the Board related to the conceptual plans for Whalebone Park. Staff also requests recommendations for community and civic groups, as well as local business owners to be a part of the focused public meeting. As noted above, two separate outreach meetings will be held and the concept plans shown at those meetings. Staff can also answer any questions related to the proposed PARTF timeline and grant application.'

Ms. Jones provided a PowerPoint presentation on the Whalebone Park project which is attached to and made a part of these minutes as shown in Addendum "F".

Board members spoke in favor of the project and made the following comments:

- The #1 item needed is a restroom
- The "spray n play" item would set this park apart
- A shade element is needed and should be located fairly close to the small children's activities
- The static items on the poles used by smaller children to keep them occupied are broken
- Swings are needed for all ages of children to include physically challenged children with ADA equipment
- No need for basketball courts, etc - bigger kids have other areas
- No need for a dog park - concern about conflict due to smallness of the site
- Consider multiple purpose structures - such as multi-functional steps woven into existing areas that don't take up a lot of space

Update on Dare County Soil and Water Community Conservation Assistance Program (CCAP) Town Hall Rain Garden Project

Senior Environmental Planner Kate Jones summarized her memo which read in part as follows:

"Last year, staff applied and received a cost share grant from Dare County Soil and Water Community Conservation Assistance Program for \$2500 to install a rain garden near the front entrance of Town Hall. This proposed rain garden area has a natural depression already present, and this topography can be utilized for the planted rain garden. Water will be diverted through a 70 linear foot gutter section at the front entrance of the building, with a downspout and extension pipe feeding into the rain garden. As part of the grant, the town is responsible for the gutter section, with the downspout and associated elements, plants and soil amendments provided by the grant.

'Staff has received quotes from a local gutter contractor for a 70 linear foot section of half round copper gutter, as well as a half round aluminum gutter section that can be matched in color to the aged copper. The quotes are as follows:

- 6" half round copper gutter \$10,098.00
- 6" half round aluminum gutter with color coating to match \$6,596.21

'Staff would like to initiate discussion and gain consensus on how to move forward with the gutter section type at the front entrance.

'Sample gutters were distributed to Board members. Plant choices are representative to go either with or without water.'

In response to Mayor Cahoon's question, Ms. Jones said that the action requested of the Board today is to determine what type of gutter to proceed with.

Board members spoke favorably of the proposed Town Hall Rain Garden and it was Board consensus to agree to the longer-lasting copper gutters; Funds were confirmed available by Finance Director Amy Miller.

NEW BUSINESS

Committee Reports

- Consideration of appointment to Rural Transportation Coordination Committee (RTCC)

Town Manager Garman summarized the RTCC improvement efforts for this part of the state – The Albemarle Commission has two committees – the Technical Committee consists of staff; the Mayor is an appointee on the Advisory Committee as it is made up of elected officials. Town Manager Garman suggested removing him and appointing Public Services Director Eric Claussen to the Technical Committee.

MOTION: Comr. Brinkley made a motion to appoint Public Services Director Eric Claussen to represent the Town on the Rural Transportation Coordination Committee (RTCC). The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Comr. Sanders - Estuarine Shoreline Management Plan Advisory Committee

Comr. Sanders reported that the Estuarine Shoreline Management Plan Advisory Committee is expected to meet the end of February 2022.

Comr. Renée Cahoon - Gov-Ed Channel Committee

Comr. Renée Cahoon reported on last week's Government Education Channels Committee meeting and stated that the Board will be considering the annual budget at the March meeting.

Mayor Pro Tem Siers - Jockey's Ridge/Soundside Road

Jockey's Ridge letter recently received from the State is to be circulated to the Jockey's Ridge/Soundside Road members.

Mayor Pro Tem Siers - Dare County Tourism Board

Mayor Pro Tem Siers reported that his first Dare County Tourism Board meeting took place last week and he is excited to participate.

Mayor Cahoon - Offshore Wind Task Force

The Offshore Wind Task Force was created by the Governor re: offshore wind regulations. Mayor Cahoon is a member and will be attending the first meeting tomorrow in Wilmington.

Consideration of Government Access Channel (Current TV) LPDI Grant for use of upgraded Board Room Camera System

Public Information Officer Roberta Thuman summarized her memo which read in part as follows:

"For Fiscal Year 2021-2022, the Dare County Government and Education Channel's Local Programming Development Initiative (LPDI) is offering a \$5,000 grant to each member. In the budget adopted this past June, the Board approved moving forward with requesting an audio upgrade for the Board of Commissioners Room. However, we have since established that we can improve the audio quality and make the Zoom experience flow better for about \$500.

'Because we no longer need to use the LPDI grant to upgrade the audio in the Board Room, we are requesting your consideration of our intention to use the grant to fund, primarily, the replacement of the three ceiling-mounted cameras in the room and the related camera controller.

'Nearly 10 years old, the cameras use analog versus digital technology, resulting in lower quality videos. In addition, because of their age, we must use adapters to enable the cameras to communicate with the video switcher, which further degrades the video quality. Finally, these cameras are no longer supported by the manufacturer.

'Thank you for your consideration of our request to apply to the Dare County Government and Education Channel's Local Programming Development Initiative for \$5,000 to replace the three ceiling-mounted cameras in the Board of Commissioners Room."

MOTION: Comr. Renée Cahoon made a motion to approve the request to apply for the \$5,000 LPDI grant for the replacement of the three ceiling-mounted cameras and camera controller in the Board Room. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy had nothing new to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Project Updates

Town Manager Garman introduced Public Services Director Eric Claussen who provided an update on Sanitation Services.

Sanitation Services/Schedule

Public Services Director Eric Claussen provided an update for the Board re: sanitation services/schedule to include Accomplishments, Issues, and the Upcoming Sanitation Season.

The sanitation memo from Director Eric Claussen was provided at the end of last year's season and read in part as follows:

"As Nags Head remains the premier resort community of the Outer Banks, the old adage holds true "You never get a second chance to make a first impression". The Public Works Department is committed to providing for the most basic needs of the community, while also understanding the importance of looking

beyond the immediate task at hand to address safety and aesthetics that go hand-in-hand with an effective & efficient collection schedule.

'Over the course of the past five years, the Sanitation Division has experimented with a number of operational changes, such as collection days, processes, and notifications during the peak tourist season. While there is justification for each of these modifications, changes often leave residents, property managers, and visitors confused as to when to set refuse at the curb.

'Contributing to that confusion, the Town has gone from a town-wide recycling program to our new subscription-based, third-party vendor. Additionally, as we have navigated these changes, the Town has replaced, charged, and potentially taken away blue carts over this same timeframe. Ultimately, this season was left with homes, especially along the Beach Road, with insufficient carts per the Town Code.

'2019 & 2020 PEAK SEASON – MONDAY & FRIDAY PRIMARY COLLECTION

The tables below show the documented trash tonnage for the Blue Route including the two primary collection days and the sweep day. Unfortunately, the data prior to 2019 was not able to be deciphered due to the total sweeps being combined with the regular collection day data of the Green Route.

'In 2019, the primary trash collection days occurred on Mondays and Fridays. Prior to 2017, the collection days were on Tuesdays and Saturdays with no consistency of the sweeps. While the 2017 & 2018 are not included in this report due to the fact that the sweep days were not able to be analyzed from the data. There is realized consistency between the primary collection day tonnage from 2017 to 2019.

'In 2020, the collection year was not a typical tourism season due to the pandemic. Public Works collected on Mondays and Fridays as the primary pickup days and performed sweeps on Wednesdays like 2019. From a year-to-year perspective, the data tells us that the tonnage was up each month with a steady increase on the Wednesday sweep days as vacationers flooded the Outer Banks. It appears that as the sweeps became more of an expectation, additional tonnage began to appear on Wednesdays."

Director Claussen provided the following highlights of the past year:

Accomplishments

Program is part of the Strategic Plan

Reviewed previous collection times

Collect inventory of all trash carts and make sure larger houses had correct number of carts

Worked on communications between staff and rental companies

Implemented new trash schedule; Clings were updated and old ones removed

A seasonal debrief took place with staff, the manager, and major rental companies to discuss what was learned over the season, the needs of each, etc.

Violations of the Town Code were written up

Issues

Dept is down several staff members, now starting to get positions filled

Additional trash has been seen over the past couple of years

New schedule caused some confusion

Unable to do collection late Saturday or on Sunday

A few storms caused overturned trash and staff went out and picked up trash

Met with those in the field to make sure everyone knew what was taking place

Ongoing communication with property owners

Placed dumpsters in some areas

Verify proper inventory of carts needed at houses, etc.

Cart rollout and rollback program for the Beach Road to begin again this year

Upcoming season

Better communication with property management companies

Maintain Monday - Thursday collection – staff doesn't want to make any schedule change at this time

Cart rollout and rollback in organized manner so that Town has some control

Request that the Board approve an enhanced rollout/rollback service to address the aesthetics of the Beach Road and pursue that as part of tax bills for those who receive the additional service

Mayor Cahoon clarified the enhanced service would handle east as well as the west side of the Beach Road.

Comr. Sanders asked about the cost for the rollout/rollback; Director Claussen said that a quote is expected by the end of the week but should be less than \$20 per month – May through October. He estimated approximately 2,000 households would be affected.

The individual streets on SR1243 would not be affected; only looking at what fronts on Old Oregon Inlet Road - for residential only.

Mayor Pro Tem Siers suggested that the fee will be initiated unless a response is received from a homeowner. Some can't afford the additional cost as they are on fixed incomes

Director Claussen's presentation detailing Sanitation Services Accomplishments/Issues/Upcoming Season was well received by the Board. The rollout/rollback of trash carts on the Beach Road/SOOIR was conceptually approved by the Board; final costs are being worked on with the vendor and is expected to be less than \$20/month per residential homeowner. Public Services will be working with the Town's Public Information Office and the Property Management Companies to relay this information to homeowners.

Stormwater Update

Town Engineer David Ryan provided an update on the Stormwater Projects as well as the active construction projects in progress:

- New waterpipe installation on Bladen Street
- Old Nags Head Place Subdivision – in planning stages
- Submitted application for Land and Water Grant for Wrightsville Ave – groundwater lowering system
- Maintenance on S Virginia Dare Trail near Mall Drive and E Baymeadow
- Reactive maintenance in other areas such as in the Village, Soundside Road sinkhole
- Older compromised pipe underground on Soundside Road – NCDOT is to monitor

Other active construction work in progress:

- Bainbridge St dune walkover
- Wrightsville Ave/E Bonnett St sidewalk project
- W Barnes Street sidewalk project
- Seachase Drive to entrance of Nags Head Golf Links sidewalk
- Old Nags Head Cove watermain replacement
- Epstein bath house replacement
- Public Services Master Plan/Project
- Beach Nourishment scheduled for Summer 2022

Board members thanked Engineer Ryan for his update.

Consideration of proposed Budget Calendar for FY 21/22

Town Manager Andy Garman summarized the proposed budget calendar.

He pointed out that the draft budget documents will be presented at the March 2nd Board meeting.

Comr. Brinkley stated that he will be leaving directly after the March 2nd meeting; Mayor Pro Tem Siers said that he can zoom in at the March 2nd meeting but will not be able to be present; Comr. Sanders stated that while he can zoom in he will not be able to be present at the April Board meeting.

Board members spoke in favor of the dates provided as follows:

<u>Budget Planning Workshop</u>	Wed. March 2, 2022; following 9 am Board of Commissioners meeting
<u>Capital Improvement Program/Budget Workshop</u>	Wed. March 23, 2022; 9 am
<u>Presentation of Manager's Recommended Budget and Capital Improvement Program</u>	Wed. May 4, 2022; 9 am
<u>Capital Improvement Program/Budget Workshop</u>	Wed. May 11, 2022; 9 am
- If continuation is needed	Wed. May 18, 2022; following 9 am Board of Commissioners meeting
<u>Budget Public Hearing</u>	Wed. June 1, 2022; 9 am
<u>Capital Improvement Program/Budget Workshop</u> - If continuation is needed	Wed. June 1, 2022; following 9 am Board of Commissioners meeting
<u>Budget Adoption</u>	Wed. June 15, 2022; 9 am

BOARD OF COMMISSIONERS AGENDA

Mayor Pro Tem Siers - Sand

An oceanfront resident approached Mayor Pro Tem Siers recently concerning sand that has blown onto his property. The resident is paying to have sand pushed. Mayor Pro Tem Siers questioned if the resident's costs can be offset by the Town due to the high cost of taxes he pays. Staff was directed to look into this and return for Board discussion.

CLOSED SESSION

MOTION: Comr. Renée Cahoon made a motion to enter Closed Session pursuant to GS 143-318.11(a)(2) to prevent the premature disclosure of an award; pursuant to GS 143-318.11(a)(3) to consult with the Town Attorney re: the 205 Baltic Street litigation and other matters within the attorney/client privilege; and pursuant to GS 143-318.11(a)(6) to discuss confidential personnel matters. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 12:10 p.m.

