



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING (COVID-19)
WEDNESDAY, MAY 6, 2020**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, May 6, 2020 at 9:00 a.m. The following instructions were provided to the public for meeting participation – in response to the COVID-19 pandemic:

*In order to view and listen to the Board meeting remotely, please register here:
https://nagsheadnc.zoom.us/webinar/register/WN_X3rSOv97QACYiHGinxB1Qw*

*Please email your comments for the Public Comment portion or for the Public Hearings here:
publiccomment050620@nagsheadnc.gov*

(Emailed comments will also be accepted during the Board meeting until the end of the Public Comment portion of the meeting or up until each Public Hearing is closed)

Comments should include your name and address and should be limited to five minutes when read aloud.

*If you would like to participate in any of the Public Hearings, please contact Carolyn F Morris at
carolyn.morris@nagsheadnc.gov or at 252-449-2009 until 9 am on May 6, 2020*

*(The town will provide a means to participate in the meeting remotely using video conferencing software)
If you need special accommodations, please contact Carolyn F Morris*

Board members Present:	Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley (all present in the Board Room)
Board members Absent:	None
Others present:	Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; and Karen Snyder (all present in the Board Room)
Present Electronically:	Planning Director Michael Zehner; Town Engineer David Ryan; Dep Planning Director Kelly Wyatt; Principal Planner Holly White; Assistant Engineering Technician Kate Jones; Johnny Martin and Brian Joyner of Moffat and Nichol; Jay Overton of Outer Banks Homebuilders Association; Porter Graham of Outer Banks Association of Realtors; and Town Clerk Carolyn Morris; Registered attendee list is provided as Addendum "A".

CALL TO ORDER

Mayor Cahoon called the meeting to order at 9:00 a.m. A moment of silent meditation was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the May 6th agenda as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

PUBLIC COMMENT

Mayor Cahoon read the three comments that were submitted via email for today's meeting:

PUBLIC COMMENT – DAN HUDSON

"Way too much attention has been paid to projections and models which have been inaccurate. Open up and give continued guidance to Seniors and those with pre-existing conditions to stay at home. If people don't feel safe they can choose to shelter in place. Otherwise its time to get the economy back on track for those who are ready to work and those who want to live normal lives. Government all over the country is now over-reaching - let's roll!

'Dan Hudson
Nags Head Property Owner since 2003"

PUBLIC COMMENT – CLINT SORRELL

"Good Morning, I am emailing to help drive the opening of Dare County, NC to visitors as soon as possible. For many families, this is there one get-away for the year. With all of the stresses put on people this year, many need this get-away.

'Dare County, NC remains the one of the only beach counties to not allow visitors. People who frequently utilize the beach know it's not difficult to maintain 6-ft from other people at all times. With all the additional measures in place at retail stores, I'm not sure why Dare County is preventing visitors at this time.

'Please open the county to visitors
Thank you"

PUBLIC COMMENT – DAVID BRAGG

"Good Morning, I have additional comments on each option, but will limit my comments and make a summary statement. Since I was not able to preview the results of the meeting that took place on May 5, I would only say the following. Unless that meeting resulted in a net zero cost or a net gain for the town for the recycling program, then the contract should be terminated. The town should focus on providing essential services to the residents and visitors during these financially difficult times. Recycling/Incineration of garbage are not essential to the town of Nags Head. The funds saved should be used to ensure that the police, fire fighters, or any other valued town employee would not be furloughed, fired, or have their hours reduced during the budget shortfall. The can has been kicked down the road long enough and a final vote on this matter should be taken today. Thank you."

PROCLAMATION – MAY 10 – 16, 2020 POLICE WEEK

Mayor Cahoon read the proposed Proclamation declaring May 10 - 16, 2020 as Police Week as follows:

"WHEREAS, The Congress and President of the United States have designated May 15th as Peace Officers' Memorial Day, and the week in which May 15th falls is National Police Week; AND

'WHEREAS, The members of the Nags Head Police Department play an essential role in safeguarding the rights and freedoms of the residents and visitors of the Town of Nags Head; AND

'WHEREAS, It is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; AND

'WHEREAS, The men and women of the Nags Head Police Department unceasingly provide a vital public service; AND

'WHEREAS, Let each of us take the time to reflect on the ultimate sacrifice Sgt. Earl Murray, Jr. made for the Town of Nags Head on May 15, 2009 and the rest of the officers that have done so nationwide. And let each of us keep their family, friends, and all fellow officers in our thoughts and prayers.

'NOW, THEREFORE, the Nags Head Board of Commissioners calls upon all citizens of the Town of Nags Head and upon all patriotic, civic, and educational organizations to observe the week of May 10 - 16, 2020 as Police Week with appropriate ceremonies and observances in which all our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

'THEREFORE, we do hereby proclaim the week of May 10 - 16, 2020, as Police Week and call upon all citizens of Nags Head to observe the 15th day of May 2020, as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes."

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

Comr. Brinkley asked the public and the Board to keep the Murray family in their thoughts and prayers. Peace Memorial Day family members are usually in Washington, D.C. for this but this year it has been cancelled due to COVID-19 and it will be a difficult time for them.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Tax Adjustment Report

Approval of minutes

Request for Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021, proposed CIP requests for FY 20/21 through FY 24/25, and updated Consolidated Fee Schedule

Request for Public Hearing to consider a text amendment to the UDO submitted by Kim Cowen and Megan Dixon to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District

MOTION: Comr. Renée Cahoon made a motion to approve the Consent Agenda with the March 4th Board meeting minutes amended to include additional detail re: Outer Banks Visitors Bureau Executive Director Lee Nettles presentation re: The Event Site during Public Comment. The motion was seconded by Comr. Brinkley which passed unanimously.

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

The request for Public Hearing re: FY 20/21 through FY 24/25 Budget, as approved, read in part as follows:

"Request that a Public Hearing be scheduled for the June 3rd Board of Commissioners meeting to consider citizen comment on the following:

- Town Manager's proposed operating budget for fiscal year July 1, 2020 – June 30, 2021,
- Proposed Capital Improvement Program (CIP) requests for FY 20/21 through FY 24/25, and
- Updated Consolidated Fee Schedule"

The request for Public Hearing re: a Tutoring Facility/Learning Center", as approved, read in part as follows:

"Kim Cowen and Megan Dixon have submitted a text amendment request to the Unified Development Ordinance which, if adopted, would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District. The applicants would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up.

'Staff Recommendation/Planning Board Recommendation

Planning staff finds that the proposal is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community. Staff would recommend that the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

'Tutoring Facility/Learning Center means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test preparation, or the teaching music and visual arts.

'Staff recommends adoption of the proposed amendment as presented. At their April 21, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as presented."

PUBLIC HEARINGS

Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Attorney John Leidy opened the Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities. The time was 9:10 a.m.

Planning Director Michael Zehner summarized the agenda summary sheet which read in part as follows:

"The proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) is seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2). The original proposal sought to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities; the applicant had explained that a vendor had approached the Outlets about the idea of having a kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Based upon input from the Planning Board, the original proposal was revised to the current version. The attached adoption ordinance and markup are as prepared by the applicant, with Staff's recommendations incorporated and highlighted.

'Planning Board/Staff Recommendation

Staff recommended to the Planning Board that the amendment be adopted with modifications to the standards to require that the sale and advertisement of items be confined to stands and to allow a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. Additionally, it is suggested that Sections 7.76.3 and 7.76.4. also be amended to provide for a maximum stand area and any time limitations, respectively, for the sale of tickets and reservations; a limitation of 150 square feet and a time limitation consistent with produce stands are likely sufficient. Finally, Staff recommended that the definition of Outdoor Stand be amended consistent with the amendment of Section 7.76.1.

'The Planning Board, at their February 18, 2019 meeting, voted 6-0 to recommend amendments to the UDO as recommended by Staff. In making their recommendation, the Planning Board acknowledged their opinion that the proposed amendments were consistent with the relevant policies contained in the Comprehensive Plan."

Planning Director Michael Zehner summarized Planning staff's memo which read in part as follows:

"The proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) is seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2). Initially, as discussed with the Planning Board on January 21, 2020, the proposal sought to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities. Mrs. Creef had explained to the Board that a vendor had approached the Outlets about the idea of having a

kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Mrs. Creef indicated that there would be a preference to allow two outdoor stands (where the regulations only allow for one) and confirmed for the Board that the plan was to locate the kiosk in the terrace area.

'Based upon the discussion and feedback provided by the Planning Board, the applicant modified the original proposal (consistent with the version before the Board) and returned to the Planning Board meeting on February 18, 2020. The Planning Board recommended approval, with changes recommend by Staff, detailed below.

'BACKGROUND

The current version of the allowances and standards for *Outdoor Stands, Accessory to Shopping Center & Group Development* are the result of numerous changes over the course of the last ten (10) years; actions of note are as follows:

- The allowance of outdoor fresh produce stands as an accessory use to shopping centers was first established in mid-2009;
- In late-2009, an amendment was adopted to allow hotdog vending stands as an accessory use to shopping centers;
- In early-2010, an amendment was adopted to allow coffee vending stands as an accessory use to shopping centers;
- In mid-2010, recognizing that one of each of the aforementioned stands could be permitted at any given shopping center, an amendment was adopted to limit the number of accessory outdoor stands at any shopping center site to one (1); additionally, the various stand uses were consolidated under a single use (Outdoor Stands);
- In late-2010, the Ordinance was amended to allow Italian ice and fudge sales;
- In early-2013 ice cream was added as an allowed sale item; additionally, in 2013, a request to expand the allowable number of stands from one (1) to (2) was denied; and
- The provisions were last amended in 2014 when the allowed locations for outdoor stands were expanded to allow as accessory to Group Development (aka Office/Retail Group Development).

'POLICY CONSIDERATIONS

There are no direct policies concerning outdoor stands. However, certainly economic development objectives and policies encouraging and supporting small businesses and the viability of existing commercial properties are applicable, and need to be balanced with objectives and policies focused on maintaining the Town's character.

'Generally, Staff believes that the request to allow the sale of tickets and reservations is consistent with applicable policies; however, Staff would suggest that the standards be clarified to require that the sale and advertisement of items be confined to stands. With respect to the number of allowed stands on any particular site, Staff would support a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge.

'PLANNING BOARD RECOMMENDATION - The Planning Board, at their February 18, 2019 meeting, voted 6-0 to recommend amendments to the UDO as recommended by Staff. In making their recommendation, the Planning Board acknowledged their opinion that the proposed amendments were consistent with the relevant

policies contained in the Comprehensive Plan.

STAFF RECOMMENDATION - Staff recommends that the amendments be adopted with modifications to the standards to require that the sale and advertisement of items be confined to stands and to allow a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. Additionally, it is suggested that Sections 7.76.3 and 7.76.4. also be amended to provide for a maximum stand area and any time limitations, respectively, for the sale of tickets and reservations; a limitation of 150 square feet and a time limitation consistent with produce stands are likely sufficient. Finally, Staff would recommend that the current definition of Outdoor Stand, as follows, be amended consistent with the amendment of Section 7.76.1."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, April 27, 2020 and on Sunday, May 3, 2020 as required by law.

Applicant Kate Creef spoke electronically on behalf of the Outlet Center Nags Head; they had been asked about interest in providing a space for displaying fishing photographs and taking reservations for inshore and offshore fishing trips; they felt this would be a great opportunity to enhance the offerings at the Outlet Center and could also apply to other recreational activities that would appeal to their shoppers such as dolphin tours.

Comr. Fuller confirmed with Planning Director Zehner that 11 shopping centers would be affected/eligible for the outdoor stands under this ordinance modification. It was noted that in 2013 the Planning Board turned down a similar request it was believed because it was related to multiple food stands. Comr. Fuller also confirmed with staff that currently some items can be sold in the requested manner in accordance with current ordinance.

Attorney Leidy confirmed that there were no other public comments on this text amendment and he concluded the Public Hearing at 9:23 a.m.

Comr. Fuller spoke in opposition to the request as he feels the service being requested already exists and has for years; he expressed concern that it in effect only adds more signage – signage for these types of businesses tend to look carnival-like and additional signage is not what the town is after right now. He also feels that the building itself would be used as signage.

Comr. Brinkley spoke indicating that he does not share the same concerns as Comr. Fuller and in addition he does not feel that it would create an increase in traffic or trash.

Mayor Pro Tem Siers said that he looks on it as an opportunity for others to experience more about the Outer Banks that they may not be aware of – he has no issues with the request.

Comr. Renée Cahoon discussed parking and Director Zehner stated that no additional parking spaces will be needed if 50 spaces are already provided.

Mayor Cahoon said that he had one reservation and that is adding another freestanding sign to the parking lot.

In response to a question from Comr. Renée Cahoon re: removal of the outdoor stands, Director Zehner said that the structure would essentially be permanent but would not be able to operate year-round.

Mayor Cahoon summarized some modifications as discussed such as location on site, visual impact, signage, and parking.

MOTION: Comr. Fuller made a motion to deny the request for outdoor stands as presented. Comr. Renée Cahoon seconded the motion with the friendly amendment (accepted by Comr. Fuller) that the proposal be sent back to the Planning Board for review and recommendation re: today's comments made by Board members.

WITHDRAWAL OF MOTION: Comr. Fuller withdraw his motion; Comr. Renée Cahoon withdrew her second.

MOTION: Comr. Brinkley made a motion to table the discussion and refer the outdoor stands proposal, along with the issues expressed today by Board members [re: location on site, visual impact, signage, and parking] back to the Planning Board for review and recommendation. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors

Attorney John Leidy opened the Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors. The time was 9:43 a.m.

Planner Holly White summarized her memo which read in part as follows:

"OVERVIEW - Since the adoption of the Unified Development Ordinance (UDO) on August 7, 2019, staff has located minor typographical errors throughout the document. This amendment will address minor numbering, punctuation, grammar, and contextual issues. Additional similar amendments will be necessary to address any other outstanding issues in the future.

'PLANNING BOARD RECOMMENDATION - The Planning Board recommended unanimous approval of this text amendment at their February 18, 2020 meeting.

'STAFF RECOMMENDATION - Staff recommends that the amendments be adopted as proposed."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, April 27, 2020 and on Sunday, May 3, 2020 as required by law.

Comr. Fuller confirmed no substantive changes in the ordinance; Comr. Renée Cahoon confirmed that all proposed changes were highlighted in red.

Comr. Fuller asked if the elimination of section 7.33.4 is substantive. Planning Director Zehner said that the change made to the UDO is part of the parking requirement for accessory dwellings – this IS more restrictive but there was an inconsistency in the code – the intent was to correct a discrepancy or lack of consistency between the two sections.

Comr. Fuller confirmed with Planning Director Zehner that there were no other substantive changes in the document.

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 9:49 a.m.

MOTION: Comr. Fuller made a motion to adopt the ordinance amending the UDO to correct the identified errors as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

Public Hearing to consider numerous text amendments to the Unified Development Ordinance as it pertains to the updated flood maps and update of the Flood Damage Prevention Ordinance

Attorney John Leidy opened the Public Hearing to consider numerous text amendments to the Unified Development Ordinance as it pertains to the updated flood maps and update of the Flood Damage Prevention Ordinance. The time was 9:50 a.m.

Comr. Fuller disclosed that he listened to an interested party concerning this issue; Attorney Leidy said that since this is a legislative matter, that would not be a problem.

Planning Director Michael Zehner summarized the agenda summary sheet which read in part as follows:

"The proposed text amendments serve to adopt the updated Flood Insurance Rate Maps and Flood Insurance Study by amendment of the Flood Damage Prevention Ordinance; additionally, amendments are included to Article 4, Development Review Process, Section 8.6.4., Building Height, Section 11.5.3. Standard for Depth or Elevation of Fill, and Appendix A. Definitions. In addition to the Ordinance, also attached is the PowerPoint presentation made to the Planning Board at the meeting on April 1, 2020 and a letter from the Outer Banks Home Builders Association providing comments on the draft ordinance that was submitted during the Planning Board's meeting.

'Planning Board/Staff Recommendation - Staff recommended to the Planning Board that the text amendments be adopted as proposed, with changes requested by the State's NFIP Office. The Planning Board recommended unanimous approval at their meeting on April 1, 2020, with the incorporation of those requested changes. The attached draft of the Ordinance includes these changes. The Planning Board meeting materials and a recording of the meeting are available at www.nagsheadnc.gov/floodmaps."

The Planning staff memo was presented to the Board and read in part as follows:

"OVERVIEW - As the Board of Commissioners is aware, the Town received the Letter of Final Determination concerning the updated FEMA Flood Insurance Rate Map (F.I.R.M.) as of December 19, 2019. As previously relayed, the updated F.I.R.M. becomes effective no later than 6 months after receipt of the letter (June 19, 2020), requiring local adoption by the Town prior to this date.

'The schedule for adoption is as follows:

- ~~Early March 2020—Community Information Meeting; information materials made available online~~
- ~~April 1, 2020—Planning Board Meeting; consider recommendation~~
- ~~April 15, 2020—Board of Commissioners Consent Agenda; request to schedule public hearing~~
- May 6, 2020 - Board of Commissions Public Hearing; Final Action (or continued consideration to June 3, 2020 meeting)
- June 19, 2020 - Effective Date (no later than)

'BACKGROUND - The Board of Commissioners and Planning Board met jointly at the Planning Board's meeting on February 18, 2020 to review and discuss an initial draft of the updated Flood Damage Prevention Ordinance, along with updated building height measurement and fill provisions, to be considered in concert with the updated F.I.R.M. covering the Town. Additionally, a Community Informational Meeting was held on Monday, March 9, 2020. The Planning Board considered the proposed text amendments at a meeting on April 1, 2020; the Planning Board recommended unanimous approval of the draft flood maps and flood damage prevention ordinance with the incorporation of requested changes from the State's NFIP Office (which have been incorporated in the version of the ordinance before the Board). Meeting materials presented to the Planning Board and a draft of the ordinance are available at www.nagsheadnc.gov/floodmaps.

'SUMMARY OF MAP CHANGES - The preliminary F.I.R.M., released in June of 2016, revealed that many areas of the Town will be removed from the Special Flood Hazard Area. There is an overall reduction of properties located in flood zones in the Town on the preliminary F.I.R.M. This includes fewer properties in AE and VE flood zones and an overall increase in properties located in X flood zones, even on the oceanfront. Further, mapped base flood elevations (BFE's) are being reduced from a current BFE of 8-10' in the AE flood zone to 4-5' on the preliminary F.I.R.M. In addition, a new AO flood zone has been added to the area west of the primary frontal dune. Staff does not believe that the F.I.R.M. accurately represents the overall risk of flooding in the Town.

'SUMMARY OF ORDINANCE CHANGES - In conjunction with the updated F.I.R.M. and flood insurance study, the Town is required to update its Flood Damage Prevention Ordinance consistent with the most recent version of the State Model Ordinance for Coastal Areas. There are changes in the State Model Ordinance that the Town must adopt in order to remain in the National Flood Insurance Program (NFIP). These changes are reflected in the attached Adoption Ordinance for the Flood Damage Prevention Ordinance. In conjunction with amendment of the Flood Damage Prevention Ordinance, it will also be necessary to update relevant portions of Article 4. *Development Review Process*, concerning Floodplain Development Permits; Article 8. *District Development Standards*, concerning the measurement of height; and Article 11. *Environmental Provisions, Part 1 Stormwater, Fill, and Runoff Management*, concerning the regulation of fill. These changes are also represented in the Attached Adoption Ordinance for the Flood Damage Prevention Ordinance.

'Due to a significant number of properties with known flooding histories becoming X or Shaded X on the preliminary maps, a local elevation standard ("LES") is proposed as part of the Flood Damage Prevention Ordinance adoption. The development of the local elevation standard has been a joint effort between Dare County and the Towns of Manteo, Nags Head, Kill Devil Hills, Kitty Hawk, Southern Shores, and Duck. The LES is a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. For properties east of NC 12 and SR 1243, the LES is 12' and development in this coastal high hazard area would have to comply with the standards for VE construction. For properties west of NC 12 or SR 1243, the LES is 10' and the standards that apply to development in this area would be like those that apply in the AE flood zone now.

'Since currently there are no regulations that apply to properties in X flood zones, a key part of the ordinance development and new LES language had to be written that applies to properties in Shaded X and X flood zones. There are a set of new, additional standards developed to specifically apply to areas mapped as Shaded X or X. In these areas:

- Substantial improvement/damage definitions (the 50% rule) does not apply;
- Remodeling/renovations of existing habitable area are allowed as long as footprint of the structure does not increase;

- Areas within existing structures cannot be converted for use as conditioned, temperature-controlled space unless the reference level is located to or above the RFPE; and
- Lateral additions - structures located west of NC 12 and SR 1243 (where the reference level of existing conditioned, temperature-controlled space is located below the RFPE)-may be increased by 25% at the same level, without having to be elevated to or above the RFPE.

These standards would apply in addition to other specific standards.

ADDITIONAL CONSIDERATIONS - The Outer Banks Home Builders Association submitted a letter to the Planning Board, dated April 1, 2020, which has been provided to the Board of Commissioners. The Association raised the following points, with Staff responses for consideration:

A. OBHA:

OBHBA members began working in early 2017 with the surveying and engineering community to assist local planning staff in designing new flood prevention measures to address an anticipated reduction in the 2006 FIRM's flood zone elevations in Dare County. Extensive consideration of historical flooding, previous FIRMs, and topographical data informed a consensus among county and municipal planning staff that administration of eight-foot standards to a revised reference level, the bottom of the lowest floor or utility, would ensure adequate flood protection in X and Shaded X zones.

Staff Response:

Town Staff participated in meetings beginning in 2017 with Dare County, other municipalities, and OBHBA representatives. However, during this process, Nags Head Staff did not commit that administration of an eight-foot standard would ensure adequate flood protection in X and Shaded X zones within the Town.

The Town has been documenting rainfall-based flood occurrences for the past 20-years. Staff has observed an increase in the frequency and intensity of rainfall events, whether it be a series of events or a single event. Significant rainfall-based flood events have been documented in the Town 11 out of the past 20 years and more importantly, every year for the last 4 years.

In addition to documenting areas of flooding throughout Town, we have also documented flood depths, relative to mean sea level (msl). Hurricane Matthew was documented at a maximum flood elevation of 10' msl. Areas of flooding in the Vista Colony Subdivision were measured as much as 11.25' msl in 2012 from a series of rainfall events. Other smaller scale rainfall-based events have resulted in flood depths exceeding 8' msl.

Noting Commissioners' previous concerns that the maps are flawed, Staff has attempted to address this concern by proposing an LES of 10' west of NC 12 and SR 1234. In Staff's opinion, an LES of 8' would not be responsive to these concerns; based upon analysis, an LES of 8' would result in approximately 36% (1,916) of the properties in Town being regulated to a lesser standard than they are presently. In contrast, an LES of 10' west of NC 12 and SR 1234, would result in approximately 2% (133) of the properties being regulated less stringently than under current regulations

B. OBHA:

Section 11.42.3.1.2. of Nags Head's draft ordinance proposes a 10 foot RFPE for properties west of NC HWY 12. While we recognize that each jurisdiction must determine RFPEs and other important planning objectives on localized bases, the OBHBA urges planning board members' attention to the potential consequences Nags Head's proposed ten foot RFPE poses in light of additional proposed

restrictions on lateral additions. Section 11.44.2.7.9.2. would require that lateral additions to nonconforming structures in X and Shaded X zones be elevated to the proposed ten foot RFPE if they would increase the square footage of the adjacent floor by 25% or more. This presents a problem for homeowners interested both in useably enlarging a floor that falls below the proposed RFPE and in maintaining a level floor.

Staff Response: Based upon analysis completed by Staff, there are currently an estimated 1,004 (19%) structures that are FEMA non-compliant with respect to elevation. If a proposed LES of 10' is adopted, the number of FEMA non-compliant structures would increase by 174 (3%). Of the proposed FEMA non-compliant structures with an LES of 10', seventy-eight percent (78%) will be located in a flood zone X, all having ground elevations of less than 11'. In contrast, Staff's analysis indicates that 4,514 (85%) of the 5,277 structures in Nags Head have estimated first floor elevations of 10' or greater.

Given the significant number of existing FEMA non-compliant structures that will now be located within an X flood zone, coupled with the effect of establishing an LES of 8' versus 10' (and vice versa), staff believes that a 10' LES results in better protection of existing and proposed development, and is more consistent with current regulation.

C. OBHA:

The OBHBA respectfully requests that you allow existing maximum lot coverage restrictions to regulate additions and remove the arbitrary 25% threshold.

Staff Response: Staff believes that allowing maximum lot coverage restrictions to regulate additions will not comprehensively address additions below RFPE in the town. Based upon analysis by staff, there are existing structures with floor area below the current RFPE, but which would now be in an X flood zone, where as much as 1,800 square feet (16%) of lot coverage is still available. The 25% percent threshold was intended to allow small additions at the same level for homes that have heated area below the RFPE in the X flood zone.

D. OBHA:

We believe that the category of possible lateral additions that would expand properties with a demonstrated flood history, that would conform to maximum lot coverage, and that would be large enough to constitute a compelling regulatory interest is almost vanishingly narrow.

Staff Response: Assuming an LES of 10' (areas west of NC 12 and SR 1243), and without a limit on lateral additions, approximately 622 of existing non-compliant structures would be eligible to maximize lot coverage, where they are currently precluded from doing so under current regulations.

E. OBHA:

We believe that the size of lateral additions to the many moderately sized homes in Nags Head should not be rigorously constrained by a regulation with such a limited intended function.

Staff Response: The goal of the National Flood Insurance Program and the Flood Damage Prevention Ordinance is to protect human life, safety, and health as well as to minimize damage to private and public property due to flooding. The regulations proposed are consistent with these goals. The proposed regulations do not preclude lateral additions, rather, they would limit additions below the 10' LES in a shaded X or X flood zone to 25% of the existing floor area below the LES; lateral additions in excess of this limit could maximize allowable lot coverage if elevated to meet the LES.

'POLICY CONSIDERATIONS - The most direct policies and actions in the Comprehensive Plan pertaining to floodplain management are contained in Section 3.3.2 Hazard Mitigation as follows:

'NR-11 Ensure that the town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster event.

'NR-11i: Explore resilient construction techniques and higher regulatory standards to protect existing and future development from frequent localized flooding events.

'NR-13 Support the town's continued participation in the National Flood Insurance Program (NFIP) and Community Rating System (CRS). Participation in the NFIP is key in making federally backed flood insurance available within the town and to improve the town's CRS rating.

'PLANNING BOARD RECOMMENDATION - At their meeting on April 1, 2020, the Planning Board recommended unanimous approval of the text amendments as proposed, with incorporation of changes recommended by Staff as requested by the State's NFIP Office.

'STAFF RECOMMENDATION - Staff recommends adoption of the text amendments as proposed."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, April 27, 2020 and on Sunday, May 3, 2020 as required by law.

Planner Holly White presented the powerpoint slides associated with this item which are attached to and made a part of these minutes as shown in Addendum "D".

Mayor Cahoon pointed out that if there was no limit to build below 10' local elevation standards then theoretically they could add 1800 sq ft lot coverage; Ms. White said that due to standards for parking they would not be able to use all 1800 square feet.

Director Zehner mentioned staff's concern that lateral additions could be built without any LES limitations – these are structures with floors that are currently below the 10' BFE.

Board members questioned where the 25% figure came from. Director Zehner said that staff and representatives from Outer Banks Homebuilders and Association of Realtors got together and discussed what would be a reasonable figure; they felt that 25% would not preclude someone from meeting the local elevation standard (LES). Director Zehner stated that he did not base what he is recommending on sea level rise data – he based it on actual flood figures from the last five years.

Director Zehner said they would need to see some positive outcomes before making it a regulatory standard.

Attorney Leidy asked if there were any public comments.

Planning Director Zehner read the Outer Banks Association of Realtors letter dated May 6, 2020 which is attached to and made a part of these minutes as shown in Addendum "E".

Planning Director Zehner read the Outer Banks Homebuilders Association letter dated May 1, 2020 which is attached to and made a part of these minutes as shown in Addendum "F".

Jay Overton, spoke on behalf of the Outer Banks Homebuilders Association; he thanked staff here and throughout the County for working together for the past three years; he feels fortunate to be able to live in a community where everyone can work together; he feels property owners will see restricting uses of their property in more ways than intended; he asked that if possible to delay action so everyone can come together one more time for discussion; to make sure everyone can continue what they have been doing for the past three years.

Porter Graham, spoke on behalf of the Outer Banks Association of Realtors; he expressed appreciation for Director Zehner's continued availability to discuss the ordinance with them; this whole process was a response to the revision of the 2006 flood rate map and reduction of the base flood zones – he wanted to emphasize to the Board that the June 19th date feels like it is approaching fast but the ordinance doesn't have to be codified today – he feels that there is additional opportunity to consult with staff and others.

As there were no other public comments, Attorney Leidy concluded the Public Hearing at 10:50 a.m.

Mayor Cahoon said that he feels staff has done a good job - the 25% lot coverage figure is always going to be an arbitrary number.

Comr. Renée Cahoon said that her two major areas of concern are the LES reference point with a difference of one foot – and the arbitrary 25% lot coverage which she feels is restrictive.

Mayor Pro Tem Siers said that the 8' elevation is most likely going to be 10' elevation due to freeboard – he expressed concern that a lot of the character between the highways in Nags Head is the single-family, one-level home and when you start adding space for stairs – it could change the whole look/architecture of the beach.

Comr. Fuller feels that a lot of square footage could be added with the 25% figure. There may end up being a lot of houses torn down and re-built.

Mayor Cahoon confirmed that it was Board consensus to table the discussion for more information and discussion that would help with the decision making.

Comr. Fuller confirmed with the attorney that the two controlling items – 10' to 8' LES and the 25% lot coverage - are not substitutive changes and would therefore not need to go back to the Planning Board.

MOTION: Comr. Renée Cahoon made a motion to table the Flood Map and the Flood Damage Prevention ordinance discussions to the June 3rd Board of Commissioners meeting. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MOTION: Comr. Renée Cahoon made a motion that the action taken at the June 3rd Board of Commissioners meeting concerning Flood Maps be a standalone motion and not tied to the Flood Damage Prevention ordinance. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

Update from Planning Director

Planning Director Michael Zehner summarized his report for the Board; the memo portion of his report 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 May 6, 2020.

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

- Wednesday, March 4, 2020 - Board of Commissioners Meeting
- Friday, March 6, 2020 - NC State Sustainability Studio Midsemester Review
- Monday, March 9, 2020 - Flood Map/Ordinance Community Information Meeting
- Tuesday, March 10, 2020 - Flood Map/Ordinance Meeting with OBHB Association representatives
- Wednesday, March 11, 2020 - Outer Banks 2020 (J-1) Community & Employer Forum
- Wednesday, March 11, 2020 - Arts & Culture Committee Meeting
- Thursday, March 12, 2020 - Mayors J-1 Housing Discussion with Dan Bullock
- Tuesday, March 17, 2020 - Planning Board Meeting Cancelled
- Wednesday, March 18, 2020 - CRS Pre-Planning Meeting
- Monday, March 30, 2020 - NCDOT Great Trails State Plan - Division 1 Stakeholder Meeting

'Impact of Coronavirus on Permitting - As previously reported, a total of 67 building permits (non-trade) were applied for in both March 2020 and in March 2019. With regard to permits applied for since March 16 through April 23, 66 permits were applied for in 2019 and 72 were applied for in 2020; in the most recent two weeks, there were 23 permits applied for in 2020 and 9 permits applied for in 2019.

'Our previous reporting on permit numbers did not include trade permits. For comparison purposes, a total of 202 trade permits were issued in March and April 2019; at present, from March 1 through April 23, a total of 110 trade permits have been applied for.

'With the opening of the County to non-resident property owners, Staff does have an expectation that the number of permit-eligible projects will increase as owners begin to prepare properties for the season. We will continue to monitor and report any impacts to permitting.

'Online Permitting - As previously reported, as of April 15, 2020, online permitting has been activated for the following additional permit types:

- Sign permits
- Commercial and residential repair permits
- Residential demolition permits
- Residential remodel permits (without additional heated square footage)

'Staff is working to activate online permitting for all other permits by the week of May 4, 2020.

'Building Code Effectiveness Grading - The Town recently received the attached Building Code Enforcement Evaluation Report from the Insurance Services Office (ISO). The Building Code Effectiveness Grading

Schedule ("BCEGS") evaluates the building codes adopted in a community and the community's enforcement of these codes. BCEGS particularly emphasize building-code requirements designed to mitigate losses from natural hazards. The Town received a classification of 3 for 1- and 2-family residential property and 3 for commercial and industrial property; the classification range is 1-10, with class 1 representing "exemplary commitment."

'As noted by Cory Tate, the Town's Chief Building Official, "the Town of Nags Head scored slightly higher than the other jurisdictions on the Outer Banks mainly due to the amount of experience and levels of certification of our inspections staff. All jurisdictions received nearly the same amount of credit for the edition of codes enforced, having an all hazards approach in our collective hazard mitigation plans (including similar flood damage prevention ordinances), and similar requirements for staff members to obtain continuing education credit as mandated by the state. Where Nags Head exhibited a slight edge over other jurisdictions on the Outer Banks comes from a higher level of experience and professional certifications. Both full-time inspectors have level 3 certifications from the NC Code Officials Qualification Board in building, electrical, plumbing, and mechanical trades. Both full-time inspectors are Certified Floodplain Managers. Additionally, Steve Szymanski has level 2 certification in fire prevention, and I have level 3 certification in fire prevention. We also received additional credit for the fact that I have a bachelor's degree and a building contractor's license from the NC Licensing Board for General Contractors, and that Steve and I both have an electrical contractor's license from the NC Board of Examiners of Electrical Contractors. We also scored higher because the Town of Nags Head inspectors have more years of experience as building inspectors, compared to most full-time inspection staff members employed by other jurisdictions on the Outer Banks."

'Outer Banks Beachcomber Museum - The Town's Arts & Culture Committee recently agreed to request that the Board of Commissioners discuss the status and future of Mattie Midgette's store and house at 4008 South Virginia Dare Trail, more popularly known as the Outer Banks Beachcomber Museum (<http://www.osob.net/>). As the Board may be aware, the current owners, Dorothy Hope and Chaz Winkler, have expressed an intent in selling the property, and at least last year, there was an active listing for the property on the Preservation North Carolina website. A recent article in the Outer Banks Voice (<https://www.outerbanksvoice.com/2020/04/09/out-of-the-woods/>) documented the historic value of the property.

'In short, the Arts & Culture Committee believes that the property and Museum are both an important and unique historic resource, as well as a collection, and are concerned that the store, house, and/or collection could be lost, no longer serving as an important contributor to the character of the Town of Nags Head and the Nags Head Beach Cottage Row Historic District. The Committee would strongly encourage the Board of Commissioners to discuss the property, including any options or interest for the acquisition and preservation of the property and collection, either directly or indirectly involving the Town. If the Board has an interest, Staff could further explore partnerships or grants that may support the preservation of the property.

'Planning Board - Pending Applications and Discussions - The April 21, 2020 meeting of the Planning Board was held virtually on the Zoom platform, as was the April 1, 2020 meeting of the Planning Board. The agenda for the April 21 meeting included consideration of a revised plan for the preliminary subdivision plat for Coastal Villas (a new street is now proposed to access the subdivision from US 158/S. Croatan Highway and provide connection to the paper street known as Fourth Street), and consideration of a text amendment to add the use "Learning Center" as a permitted use in the C-2 zoning district; the Planning Board recommended approval of both items, with the Board noting that they did have a preference for the earlier iteration of the preliminary plat without access from US 158. The agenda also included further consideration of options and recommendations pertaining to legacy establishments/structures, residential stormwater regulations, and the *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, but those items

were continued to the Board's May meeting due to technical difficulties with the Zoom platform.

The Planning Board's next meeting is scheduled for May 19, 2020. At present, the agenda is expected to include previously discussed and considered items noted above, as well as continued discussion regarding the regulation of events within residential dwelling units and the regulation of large occupancy homes.

Additional Updates

- 2020 Census - The 2020 Census is open and collecting responses. As of April 13, 2020, the self-response rate for the Town of Nags Head was 13%, compared to a 22% response rate for Dare County and 45.4% response rate for the State. As of April 28, 2020, the self-response rate for the Town was 14.5%, compared to a 24.8% response rate for Dare County and a 49.4% response rate for the State.

Staff has been in communication with Census officials who have offered guidance and suggestions for increasing the Town's response rate. Additionally, Census officials have noted that the number/percentage of vacant vacation/rental homes in Town would skew the response rate, as the rate is not adjusted at this time to account for those homes. As an example, if the Town's actual occupancy rate is 30%, and the reported response rate is 15%, then the actual response rate for occupied homes would be 50%.

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

- Septic Health - Staff intends to prepare and present a draft project scope for the update of the Decentralized Wastewater Plan to the Commissioners, likely later in May or in June.

- Hazard Mitigation Plan - As of April 28, 2020, the final Plan has received approval from the State. Minor changes were necessary (and updated draft is available here: <http://www.obx-hmp.com/draftDocuments.html>), and the Plan will be sent to FEMA for review soon. Final consideration and adoption by the County and towns anticipated in June/July 2020.

- Grants - A request is pending under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan.

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

- An LOI has been submitted for a National Fish and Wildlife Foundation – National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan. Additionally, a preapplication has been submitted for the 2020 North Carolina Attorney General Environmental Enhancement Grant for the same project, to cover or supplement costs.

- Staff intends to submit a CAMA Access Grant preapplication for improvements to the Huron Street Beach Access.

- Staff is reviewing additional grant opportunities for prioritized projects, including an AARP Community

Challenge Grant.

- UDO - Staff continues to develop Reference Manual materials. Publishing on the Municode platform has been completed. Staff is assessing the budget for printing hardcopies of UDO; however, this would likely wait to include incorporation of the updated Flood Prevention Ordinance.
- Permitting - Staff had previously contacted representatives of the Outer Banks Home Builders Association to coordinate a schedule for a workshop/forum for the building community. However, given current circumstances, this effort will be placed on hold. Staff has begun an email distribution to contractors registered with the Town to provide updates on changes to permitting and inspection procedures associated with the Coronavirus Pandemic and response. Staff intends to send a further update before the end of the week to publicize the new online permitting options.

Upcoming Meetings and Other Dates

- Tuesday, April 28 - P&D Staff Meeting
- Thursday, April 29 - Septic Tipping Points Discussion
- Monday, May 4 - NC State Sustainability Studio Project Presentations
- Wednesday, May 6 - Board of Commissioners Meeting
- Wednesday, May 13 - Arts & Culture Committee Meeting
- Tuesday, May 19 - Planning Board Meeting”

Continued - Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann

The applicant has requested a continuance to the June 3, 2020 Board of Commissioners meeting.

Continued - Consideration of a Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements

The applicant has requested a continuance to the June 3, 2020 Board of Commissioners meeting.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETING

From Mar 4th Board meeting – Beach Nourishment Coastal Engineering and Design Services presentation from Moffatt & Nichol

The memo from Town Manager Ogburn was presented to the Board and read in part as follows:

“At its March regular meeting, the Board of Commissioners passed a motion to invite Moffat & Nichol to make a presentation to the Board, and to authorize the Town Manager to enter into contractual negotiations for coastal engineering services with all relevant material to come back to the Board. The Board also passed a

motion to authorize the Town Manager to enter into contractual negotiations with McKim & Creed for beach surveying services.

'At the upcoming meeting, the Board will hear a presentation from Johnny Martin of Moffat & Nichol which will outline the general services and qualifications of his firm as well as the anticipated services that may be provided to support the town in its shoreline management efforts. Staff is recommending that the Board consider a limited scope of services this year, to include surveying services and preparation of a beach monitoring report as well as preliminary engineering to support future modeling and project alternatives analysis. This work could be completed utilizing the existing project ordinance and budgeted funds. The presentation will also describe potential master planning efforts that would be part of future phases of work. It is anticipated that this phase of work would require a new project ordinance and budget which could be considered with the FY 2021/22 budget or at any point deemed necessary by the board.

'Staff is coordinating the development of the scope of services and contracts with McKim and Creed and Moffatt and Nichol and anticipates presenting those to the Board in June. This would allow us to get underway in time for our summertime pre-hurricane survey efforts and preparation of the annual monitoring report. Attached is the presentation provided by Moffat and Nichol as well as the proposals submitted by Moffat and Nichol and McKim and Creed in response to the town's two RFQs."

Dep Town Manager Andy Garman introduced Johnny Martin and Brian Joyner of Moffatt & Nichol.

Johnny Martin and Brian Joyner of Moffatt & Nichol summarized their slide presentations which are attached to and made a part of these minutes as shown in Addendum "G".

Their presentations were well received by the Board.

From Apr 15th Board meeting - Discussion of 2020 Fireworks

Town Manager Ogburn summarized the discussion from the last Board meeting concerning 2020 fireworks. Comr. Renée Cahoon said she wants to be very cautious with this decision. Comr. Fuller said the only responsible thing to do is to cancel this year's fireworks display and follow the federal/state recommendations. Comr. Brinkley agreed stating that with the amount of people on the beach and everywhere else, there will not be opportunity for social distancing.

Mayor Cahoon said he would be voting with his heart, for once during this entire pandemic process, instead of his head, for this one vote.

MOTION: Comr. Renée Cahoon made a motion that staff notify the Town's fireworks vendor to cancel this year's Fourth of July fireworks display – with a return to fireworks in 2021. The motion was seconded by Comr. Fuller which passed 4 – 1 (Mayor Cahoon cast the NO vote.).

From Apr 15th Board meeting – Discussion of status of recycling program

Town Manager Ogburn summarized his memo re: recycling which read in part as follows:

"At your May 6 meeting, I will ask the Board to render a decision on the town's recycling program. As the Board is aware, the town amended its contract with Bay Disposal earlier this year to allow for the incineration

of recycling materials. This resulted from the changes to the recycling market and the substantial increases in costs to process recycling materials. At your April 15 meeting, I shared that the NC State Department of Environmental Quality has found a processing facility with reasonable costs that could serve northeastern North Carolina communities. Details about this continue to evolve. Since our last meeting, we have been offered a combination of pricing from the new processing facility, RDS of Portsmouth, VA, and Bay Disposal which is equivalent to the pricing of our current contract. This would allow us to continue with our current program as is. I have included a brief pricing analysis in the sidebar on the following page. I have concerns about the RDS contract since it includes penalties for contaminated loads which would create uncertainty as to how this would increase our costs. Additionally, RDS would like us to execute a five-year contract, which I would not recommend, primarily since our current hauling contract expires in 2022. I believe the town would need to align these contract terms and our preference would be to contract with one vendor for these services.

'On Monday, May 4th, Bay Disposal is meeting with RDS to discuss a contract between the two entities. The goal of this discussion would be to provide Bay Disposal with terms that would allow the town to contract solely with them for recycling hauling and processing. We think this would eliminate the concerns about the misalignment of contract timelines as well as surcharges for contaminated loads. My intent is to provide the Board with these additional details as soon as they are available in advance of the meeting.

'If Bay is successful in negotiating this contract the Board will need to determine if it wishes to continue recycling at the same price or suspend the program to realize a cost savings.

If the Board chooses to suspend the program to realize a cost savings, all material would be diverted to the Dare County Transfer Station @ \$76 per ton. Several adjustments to our program need to be considered with this option. This would include any schedule changes and how we would treat the existing blue recycling carts. Our initial thought is that we will treat the blue carts as trash carts. If the schedule is not changed, we would be collecting trash two days in a row on the red and green routes, since the blue recycling carts are collected one day after the green trash carts.

'Staff feels as though the best option regarding the schedule would include very limited changes to avoid confusion so close to the season. Staff recognizes the inefficiency of collections two days in a row on these routes; we believe we have the capacity to collect both green and blue carts on the same day however this would create a change to the schedule on two of our routes. The Board would need to determine if it is better to leave things the way they are this summer in order to maintain continuity, or to eliminate a day of back to back service. If we decide it is better to eliminate the back to back collection, we would recommend collecting both carts on Tuesday on the red and green routes. We recognize that now the

Option A – Recycle w/ Bay and RDS

Recycling Processing with RDS = \$57 per ton
Approximately 902 tons @ \$57 = \$51,414
Hauling w/ Bay Disposal = \$162,810
Additional Bay hauling charge per ton = \$23
Approximately 902 tons @ \$23 per ton = \$20,746
Total cost for both contracts = \$234,970
(\$51,414 + \$162,810 + \$20,746)
*(*Does not include any charges for contaminated loads; this could add an additional \$121 per contaminated ton)*

Option B –Current contract w/ Incineration

Previous contract pricing:
Hauling = \$195,000 (includes processing of materials collected by Bay Disposal)
Processing for materials delivered by town forces = \$70 per ton; 579 tons at 70 per ton = \$40,530
Total cost for current contract = \$235,530
(\$195,000 + \$40,530)

Option C – Eliminate Recycling

Bay contract price for hauling and processing of materials collected by Bay Disposal = \$195,000
Bay collects approximately 323 tons which are included in their price; 323 tons diverted to Dare County @ \$76 per ton = \$24,548
579 tons collected by the town @ \$70 per ton would increase to \$76 per ton = \$3,420
Total savings over current costs = \$167,032
(\$195,000 - \$24,548 - \$3,420)

green route would essentially receive one day of trash service, however they would have additional cart capacity since the recycling carts would be used for trash. I think the Board and staff believe that a suspension of this service would be temporary due to the current economic circumstances, and that our program could be reinitiated at some point in the future.”

Board members discussed recycling material currently being incinerated or recycled for other purposes and noted that while committed to recycling for many years, the Town is looking for ways to lessen the financial impact to the Town and its services due to the COVID-19 pandemic.

MOTION: Comr. Fuller made a motion to suspend the Town’s recycling program to be revisited at a future date. The motion was seconded by Comr. Brinkley.

Comr. Brinkley confirmed with the Board that this is a suspension, not an elimination, of the recycling program.

CONTINUATION OF MOTION: The motion passed unanimously.

Trash schedule was also discussed and Town Manager Ogburn is to make sure everyone is aware of the two sites (Town Hall and Public Works) available for people to take their recycling; property managers are to be notified of these changes.

NEW BUSINESS

Committee Reports

Comr. Fuller - Dare County Tourism Board (DCTB) – Grants Committee – the Tourism Board sent the grants back to the Grants Committee to be reduced; many agencies won’t be receiving the grants they thought they were going to receive due to the COVID-19 impacts. Comr. Fuller said that he would like to tell the Grants Committee to take the fireworks funds that the town won’t be using to more fully fund other grants.

Mayor Cahoon – Dare County Bulletin – Mayor Cahoon reported on a just-received email with the latest Bulletin announcing that visitors would be allowed entry into Dare County at 12:01 a.m. on Sat, May 16th.

Comr. Brinkley – Jennette’s Pier Advisory Committee – Comr. Brinkley stated that he would be following up on an upcoming meeting via Zoom with the Jennette’s Pier Advisory Committee.

Comr. Renée Cahoon – She thanked Mayor Cahoon for providing the COVID-19 updates from the Dare County Control Group to Board members in a very timely manner to Board members.

Consideration of Board/Committee appointments

The agenda summary sheet was presented to the Board and read in part as follows:

“At the May 6th Board of Commissioners meeting, request appointments/reappointments be made to the following:

‘Planning Board
Board of Adjustment

David Elder – term expires 5/3/20
Don Milbrath (ALT) – term expires 6/7/20

Personnel Grievance Panel
Firemen's Relief Fund Board
Firemen's Relief Fund Board

Jean Flanigan (ALT) – term expires 6/7/20
Annette Ratzenberger – term expires 6/20
Rose Lay – term expires 5/20

'All have indicated their interest in being reappointed.

'Attached please find the Candidate Charts of those interested in serving on the Planning Board, Board of Adjustment and Firemen's Relief Fund Board. Also attached are tracking charts with current rosters for each."

MOTION: Comr. Renée Cahoon made a motion to reappoint David Elder to another three-year term on the Planning Board. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MOTION: Comr. Brinkley made a motion to reappoint Don Milbrath to another three-year term as Alternate on the Board of Adjustment. The motion was seconded by Comr. Fuller which passed unanimously.

MOTION: Comr. Fuller made a motion to reappoint Jean Flanigan to another three-year term as an Alternate on the Personnel Grievance Panel. The motion was seconded by Comr. Brinkley which passed unanimously.

MOTION: Mayor Pro Tem Siers made a motion to reappoint Annette Ratzenberger and Rose Lay to additional terms on the Firemen's Relief Fund Board. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy - Discussion of legislation re: participation in open meetings during state of emergencies

Attorney Leidy discussed with the Board new legislation re: regulation of remote participation in open meetings – during State of Emergencies – in House Bill 1043/Senate Bill 704. The bill was signed by Governor Cooper on May 4th and became effective immediately; it is only effective during states of emergency declared by the Governor or Legislature; requires all votes to be by roll call; and requires the meeting notice to include that comments on public hearings will be allowed to be submitted up to 24 hours AFTER the public hearing.

Attorney Leidy pointed out that the Town is currently already doing what is required except for allowing public comment for 24 hours after each public hearing.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Update on plans for summer 2020 re: tents on the beach, lifeguards, and enforcement of social distancing on the beach

Town Manager Ogburn reviewed his memo with Board members – his memo read in part as follows:

"At Commissioner Fuller's request, I will update and discuss with the Board plans for the upcoming summer (2020) to include tents on the beach, lifeguards, and enforcement of social distancing as part of relevant state and local orders.

'As of May 1, 2020, the Town of Nags Head is under a State of Emergency Order with restrictions to maintain the public's health, safety, and welfare due to the impacts of COVID-19. The Governor's Executive Order No. 121, issued on March 27, 2020, prohibits gatherings of more than 10 people and requires social distancing to the extent individuals are using shared or outdoor spaces outside their residence. All individuals must keep a six-foot distance between one another unless they are part of the same family.

'Dare County's Stay at Home Order, which the Town included in its most recent State of Emergency proclamation, further requires that all individuals are required to wear a mask or cloth face covering in public settings where other social distancing measures are difficult to maintain. This requirement is in place, currently, until May 22. The earliest a decision will be made regarding visitor entry into Dare County is May 8.

'On April 23, 2020, NC Governor Cooper held a press conference to announce several important updates regarding the stay at home order and plans to reopen the state. First, he announced that the original stay at home order from Executive Order 121, which was set to expire on April 29th, has now been extended through Friday, May 8th. Governor Cooper also laid out a multistep plan for reopening the state in phases after May 8th, provided that certain metrics are met pertaining to the trajectory of cases, the ability to test and trace, and the availability of personal protective equipment. If and when those metrics are met, the state's reopening would impact the town's beach as follows:

'Beginning May 8 - Phase 1

- Continue to limit gatherings to no more than 10 people.
- Continue to recommend face coverings in public spaces when 6 feet of social distancing isn't possible, which is required as part of the Dare County Order.
- Encourage employers to continue teleworking policies.
- Continue rigorous restrictions on nursing homes and other congregant care settings.
- Local emergency orders with more restrictive measures may remain in place.

At least 2-3 weeks after Phase 1 (May 22-29) - Phase 2

- Lift Stay at Home order with strong encouragement for vulnerable populations to continue staying at home to stay safe.
- Increase the number of people allowed at gatherings.

At least 4-6 weeks after Phase 2 (June 19 – July 3) - Phase 3

- Lessen restrictions for vulnerable populations with encouragement to continue practicing physical distancing and minimizing exposure to settings where distancing isn't possible.
- Further increase the number of people allowed at gatherings.

'Ocean Rescue Staffing for Summer 2020

At the present time, the status of 16 of our 22 J-1 Visa Ocean Rescue staff is uncertain. The earliest date they may enter the US for employment has been moved from May 15 to June 15. Six of these guards have confirmed that they will not be able to wait until the June 15th date, seven are undecided, and nine are committed to coming at that time. Captain Motz has been able to recruit a few guards locally. At this time, it is unknown when visitors will be permitted entry into Dare County or what the beach population will be this summer. Ocean Rescue must be prepared ahead of a re-entry decision for visitors due to the need for advance training and education. Guards will be prepared for Memorial Day but with a reduction in the number

of Lifeguard stands from 15-10. In addition to the guards assigned to those stands, six guards will patrol the beach via ATV, four supervisors will be split coverage on the beach and one Captain will be assigned daily, bringing the total daily staffing number to 21 guards for 11 miles of beach. This is a process that is continuously evaluated with the goal of having a highly trained and capable Ocean Rescue staff ready when the visitors are allowed reentry. Guards will train in groups of 10 or less. They will undergo daily health screenings to include temperature checks. Guards will be instructed to adhere to social distancing restrictions as much as possible.

'Additionally, we will be following the suggestions made by Peter Wernicki, Medical Advisor of the USLA:

- Follow the directives of your employing agency, which should be informed by and consistent with the directives of state and local public health authorities.
- Use social distancing at work, avoiding large meetings, close training, and close proximity to others (example: one guard per stand/tower).
- Practice good personal hygiene, including regular hand washing.
- Use universal precautions when providing medical aid. Avoid mouth to mouth or mouth to mask resuscitation. Use a bag-valve-mask or positive pressure ventilator.
- Regularly clean the surfaces with which you, your fellow lifeguards, and the public come in contact.
- Avoid touching other people, including your fellow lifeguards, unless necessary.
- Consider regular temperature checks by lifeguards.
- If you feel ill, advise your supervisor.

'Tent Monitoring and Removal

The Public Works Facilities Maintenance Division will conduct beach monitoring & removal of unattended equipment from 5am to 7am, Monday thru Saturday, from May 23, 2020 to September 7, 2020. Ocean Rescue staff will tag tents on Sunday and Public Works will tag tents Monday to Saturday. All tagged tents will be photo documented and logged. Tagged tents will be removed by FM staff Monday through Saturday. Staff will hand out pamphlets explaining the rules and providing visitors with town staff contact info if they have any questions. If the collection crews are stopped by an owner prior to the removal of a tent, staff would leave the equipment, provide the owner with the pamphlet, and answer any questions they may have. Large umbrellas are included in the monitoring and removal process. After collection, all items are treated as trash and disposed of. No retrieval is possible.

Two trucks will be used for the process; one will run north to south beginning at Eighth Street and another will run south to north beginning at McCall Court. Facilities Maintenance will adjust the process as necessary to develop a successful and consistent program.

'Social Distancing – Enforcement on the Beach

While these requirements remain in effect per state and local orders, the Town's Beach Ambassador and Ocean Rescue staff will educate and inform our beach goers of the importance of gathering in groups of less than 10 individuals while maintaining a six-foot distance between parties. Obviously, enforcement will be nuanced and it is impractical to enforce distancing requirements on related or affiliated groups. Where we see

the greatest potential for conflict is when someone establishes their location on the beach and another party places their equipment too close. While the town's beaches are spacious and most beachgoers are at least six feet apart, occasionally this may happen and someone may become uncomfortable and ask for assistance; most likely from our Ocean Rescue staff. Our protocol will be to ask the offending party for voluntary compliance followed by a response from the Town's Beach Ambassador or other Police staff if necessary. Our efforts will be strongly focused on compelling compliance through education and signage; not with heavy-handed enforcement. We do understand that even after the social distancing and mass gathering mandate is lifted, we may still receive calls from concerned citizens. We will play a role in mediating any disputes in order to provide a safe environment for our residents and visitors. Police staff will be training our Ocean Rescue staff in conflict resolution and de-escalation techniques to help them in these situations until LE arrive.

'I am concerned that the public will expect that we strictly enforce this requirement. If visitation resumes before state and local orders are lifted, it will create practical difficulties with enforcement of these requirements. A clear effort from our staff to educate the public will hopefully show that we are making an attempt to inform the public of the social distancing requirements.

'It is important to note that the town has not increased staffing levels to enforce social distancing and we will do our best to keep the beaches safe and our visitors compliant while maintaining a friendly visitor experience. We do not plan to try and limit beach populations via partial beach access closures or using any other means, as has been done in southern beach communities. If there is an inherent conflict between local and state orders, additional limitations may be something that the board should discuss.

'Public beach bathhouse facilities will remain closed at this time until further guidance is received from Health Department officials regarding their safe opening.

'I have attached a rendering of a potential sign for education purposes that will be placed at beach accesses and on lifeguard stands."

Town Manger Ogburn pointed out that lifeguards will have some responsibility to communicate social distancing; in addition, emphasis will be placed on making sure lifeguards stay healthy.

Town Manager Ogburn - Request for Closed Session

Town Manager Ogburn requested a Closed Session to discuss a personnel matter.

BOARD OF COMMISSIONERS AGENDA

Comr. Renée Cahoon – Encourage use of facial masks

Comr. Renée Cahoon noted that since more people are now starting to come back to the area that it would be smart to continue to encourage everyone to wear their face masks. The Town should encourage this via its social media pages as should others such as the Chamber of Commerce.

Comr. Renée Cahoon – Thank you to community

Comr. Renée Cahoon thanked the community for their response in opposition to the letter that was being placed on out of town vehicle windshields, posted on Facebook, etc. with rude comments re: out of town property owners. She appreciated that people realized that the letter does not define the character of those living on the Outer Banks.

Mayor Pro Tem Siers – Emergency alerts not received

Mayor Pro Tem Siers stated that he has not received any emergency alerts from the County – his cellular phone company is Verizon - Mayor Cahoon said that he would follow up on this with the County.

MAYOR'S AGENDA

Mayor Cahoon – Outdoor dining for restaurants

Mayor Cahoon said that the potential in the near future may be for restaurants to be allowed to re-open with minimal indoor dining and the ability to establish outdoor dining. It was Board consensus to agree to have Planning staff provide some information concerning flexibility in accommodating outdoor dining for restaurants, to include food trucks, at the June 3rd Board meeting.

CLOSED SESSION

MOTION: Comr. Fuller made a motion to enter Closed Session to discuss a personnel matter in accordance with GS 143-318.11(a)(6). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 12:43 p.m.

OPEN SESSION

The Board re-entered Open Session at 12:59 p.m. Attorney Leidy reported that the Board did take action during Closed Session but there was nothing to report at this time.

ADJOURNMENT

MOTION: Comr. Renée Cahoon made a motion to recess to the May 20th Board mid-month meeting at 9 a.m. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 1:03 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: June 3, 2020

Mayor: _____
Benjamin Cahoon

