



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING (COVID-19)
WEDNESDAY, JUNE 3, 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, June 3, 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_fwSm-NDdTH6NMcr5oibp2Q

Please email your comments for the Public Comment portion or for the Public Hearings here:
publiccomment060320@nagsheadnc.gov

*(Emailed comments will also be accepted during the Board meeting until the end of the Public Comment portion of the meeting **AND** up to 24 hours after each Public Hearing is concluded for comments related to any of the Public Hearings)*

*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 June 3, 2020*

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; Amy Miller; Karen Snyder; and Town Clerk Carolyn Morris (all present in the Board Room)
Present Electronically:	Dep Planning Director Kelly Wyatt; Principal Planner Holly White; Town Engineer David Ryan; Chief Building Inspector Cory Tate; Johnny Martin and Brian Joyner of Moffat & Nichol; Kim Cowen; Megan Dixon; Attendee list provided as Addendum "A"

CALL TO ORDER

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

ADOPTION OF AGENDA

MOTION: Comr. Renée Cahoon made a motion to approve the June 3rd agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

PUBLIC COMMENT

Mayor Cahoon confirmed with the Town Clerk that there were no items submitted for public comment.

CONSENT AGENDA

The Consent agenda consisted of the following items:

- Consideration of Tax Adjustment Report
- Approval of minutes
- Consideration of resolution authorizing water payment plans resulting from State Exec Order #124
- Request for Public Hearing to consider UDO amendments re: outdoor stands

Town Manager Ogburn summarized the changes in Executive Order #142 which modified the dates (extended to July 29, 2020 for water payment plan) in item D-3 Water Payment Plan resolution.

MOTION: Comr. Renée Cahoon made a motion to approve the Consent Agenda as presented with the amendment to the resolution in item D-3 Water Payment Plan per the Governor's Executive Order #142. The motion was seconded by Mayor Pro Tem Siers 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 summary sheet for the resolution authorizing water payment plans read in part as follows:

"Governor Cooper's Executive Order #124 authorized local government to assist water customers during the COVID-19 pandemic re: past due accounts and reconnection fees. Reconnection fees may be waived and water service will not be disconnected due to non-payment until June 2, 2020.

"In accordance with the Governor's Executive Order #124, the attached resolution is provided for your consideration on June 3rd."

The resolution authorizing water payment plans, in accordance with the Governor's Executive Order #142, as adopted, read in part as follows:

"WHEREAS, on March 10, 2020, Roy Cooper, Governor of North Carolina, issued Executive Order No. 116 which declared a State of Emergency to establish the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina; AND

"WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; AND

"WHEREAS, on March 19, 2020, the North Carolina Utilities Commission issued an Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees; AND

'WHEREAS, on March 31, 2020, Executive Order No. 124 issued by Governor Roy Cooper, prohibits shut-offs, late fees, and reconnection fees of utilities; AND

'WHEREAS, on April 15, 2020 in accordance with the Governor's Executive Order No. 124, the Town of Nags Head authorized fees related to water past due accounts and reconnection fees be waived and water service will not be disconnected due to non-payment until June 2, 2020; AND

'WHEREAS, on May 30, 2020, Executive Order No. 142 issued by Governor Roy Cooper, states that Executive Order No. 124 shall remain in effect until 11:59 pm on July 29, 2020 and utility service providers shall reasonably inform their customers of this extension; AND

'WHEREAS, if a delinquency occurred between March 31, 2020 and July 29, 2020, the Town of Nags Head authorizes a 6-month repayment plan of 6 equal monthly installments for past due water account balances caused during the COVID-19 pandemic only; AND

'WHEREAS, any water service balance that became delinquent between March 31, 2020 and July 29, 2020 must be paid in full by February 5, 2021; AND

'WHEREAS, if the water service balance isn't paid according to the payment plan terms, the whole amount under the payment plan becomes due, the payment plan becomes void, and the Town of Nags Head has the right to disconnect the service and apply a late fee penalty; AND

'WHEREAS, all water service account balances that become delinquent after July 29, 2020 must be paid within noted due dates or the Town of Nags Head has the right to disconnect the service and apply a late fee penalty; AND

'WHEREAS, all payments received by the Town of Nags Head will be applied to the oldest outstanding balance first in accordance with existing policies.

'NOW THEREFORE BE IT RESOLVED that the Nags Head Board of Commissioners hereby authorizes a 6-month repayment plan of 6 equal monthly installments for water balances that became delinquent between March 31, 2020 and July 29, 2020 and must be paid in full by February 5, 2021."

The Request for Public Hearing re: text amendment to the UDO for outdoor stands, as approved, 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). A public hearing on the request was held at the Board of Commissioners meeting on May 6, 2020. The Board of Commissioners voted to table consideration of the proposed amendments and refer the matter back to the Planning Board for further review, with consideration of issues pertaining to location, visual impact, signage, and parking. The Planning Board has recommended further changes to the proposed amendment, which are considered substantive and therefore require an additional public hearing to be held.

'Planning Board/Staff Recommendation

Initially, 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, maximum stand area and time limits were also suggested, as well as amendment of the definition of Outdoor Stand for consistency. Based on discussion by the Board of Commissioners, Staff further recommended to the Planning Board that consideration be given to limiting the option for two stands to sites greater than a certain size, limiting signage to a total of fifteen (15) square feet for all outdoor stands, and clarifying where stands may be located on a site, in terms of being located within parking areas or needing to be located no closer to a property line than the distance from a principal building on a site or within a certain maximum distance from a principal building.

'Upon reconsideration at their meeting on May 19, the Planning Board voted 6-0 to recommend that two stands only be allowed on sites with an area of ten (10) acres or greater, that signage for all stands be limited to a total of fifteen (15) square feet, and that stands used for reservations or ticket sales shall be located within shopping centers or group developments, such as within common areas or walkways, and shall not be located within any parking area."

PUBLIC HEARINGS

Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021 and the updated Consolidated Fee Schedule

Town Attorney John Leidy introduced the Public Hearing to consider citizen comment on the Town Manager's proposed budget for FY 20/21. The time was 9:05 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, May 20, 2020 and on Wednesday, May 27, 2020 as required by law.

Town Manager Cliff Ogburn provided an update to the proposed budget per last week's budget workshop. He provided the following details, as proposed:

- No tax rate increase
- No water rate increase
- No use of Fund Balance
- Add back to the proposed budget:
 - Part-time bath house cleaner; Public Works sprayer, Replacement residential trash truck, Facility Maintenance Pickup truck; Three police vehicles; Part-time Office Assistant
- Employee Cost of living allowance
- Dowdy Park Special Events
- Two HVAC maintenance contracts for Fire Stations 16 and 21

There being no one present who wished to speak and no comments submitted, Attorney Leidy closed the Public Hearing. The time was 9:09 a.m.

Comr. Fuller asked that this meeting be extended to next week's Budget Workshop so that the Board may take action if desired.

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

Town Attorney John Leidy introduced the Public Hearing to consider a text amendment to the Unified Development Ordinance (UDO) to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District. The time was 9:10 a.m.

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

"OVERVIEW & BACKGROUND

Megan Dixon and Kim Cowen have submitted the attached 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 have provided a detailed explanation of the nature and reason for their request. They would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up. Ms. Cowen has spoken with both me and the Senior Building Inspector, Steve Szymanski, about the proposed business use. In looking at the current UDO, similar uses include Child Care Facility and School, however, by definition, the proposed use would not meet either of these use classifications. Therefore, it was recommended to Ms. Cowen that a text amendment request to consider establishing this new use would be necessary.

'POLICY CONSIDERATIONS

Planning Staff finds the proposed use 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.

'PLANNING BOARD RECOMMENDATION

At their April 21, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as recommended by Staff.

'STAFF RECOMMENDATION:

Staff recommends adoption of the proposed amendment as presented, with the use 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 of music and visual arts."

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, May 20, 2020 and on Wednesday, May 27, 2020 as required by law.

Applicant Kim Cowen said that they are excited to begin this new service to help families.

There being no one else present who wished to speak and no comments that had been submitted, Attorney Leidy concluded the Public Hearing at 9:15 a.m.

MOTION: Comr. Brinkley made a motion to adopt the ordinance amendment to allow Tutoring Facility/Learning Center as a permitted use in the C-2 General Commercial zoning district as presented. The motion was seconded by Comr. Renée Cahoon 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 a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

Town Attorney John Leidy introduced the Public Hearing to consider a text amendment to the Unified Development Ordinance (UDO) pertaining to temporary uses or temporary alteration of uses related to declared emergencies. The time was 9:16 a.m.

Planning Director Michael Zehner summarized his memo which read in part as follows:

"The proposed text amendment is intended to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies. As the Board may be aware, Dan Lewis, President of the Outer Banks Restaurant Association, had emailed the mayors of the towns of Nags Head, Duck, Kill Devil Hills, Kitty Hawk, Manteo, and Southern Shores (attached) requesting the towns' consideration of regulatory changes that would allow for flexibility in restaurant operations in response to the COVID-19 Pandemic. This proposed text amendment is in response to that request, but has also been informed by further discussions between Staff and Mr. Lewis, Mark Ballog (owner of Lucky 12), and John Harris (owner of Kitty Hawk Kites); additionally, while in response to this immediate emergency, Staff believes that this provision will have application during other emergencies.

'In short, this text amendment would allow for the issuance of a Temporary Use Permit only during an emergency declared by the Mayor (pursuant to Town and State laws) or due to impacts associated with a declared emergency. In these instances, Temporary Use Permits would be authorized to be issued jointly by the Town Manager and UDO Administrator for temporary uses or the temporary modification of uses; the drafted provisions allow for broad latitude in their application, however, there are limitations on eligible uses and modifications, and ultimately, a Permit could be rejected for any activity or accommodation, in the opinion of the Town Manager and UDO Administrator, that would be contrary to the purposes of the emergency declaration and/or the interests of the public health, safety, and welfare.

'Obviously, the Town of Nags Head and the other Outer Banks' municipalities are not unique in the need to address this issue. Please find attached a blog post from the American Planning Association titled *7 Ways to Respond to Regulation Rollbacks*, intended to present perspectives and options for municipalities to address the Pandemic, while complying with applicable regulations and statutes.

'The Planning Board reviewed the proposed text amendment at their meeting on May 19, 2020 and forwarded their recommendation in support to the Board of Commissioners. The Board of Commissioners discussed the proposed text amendment at their meeting on May 20, 2020, in consideration of scheduling a public hearing. The Board voted to schedule a public hearing for June 3, and requested that Staff incorporate changes into the proposed text amendment that would allow for parking to be reduced by up to 25%, and make changes to proposed Section 4.11.5.3. to improve clarity consistent with intent.

'POLICY CONSIDERATIONS

The most direct policy in the Comprehensive Plan pertaining to the proposed text amendment and the basis for the amendment is policy NR-11, 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.

In Staff's opinion, the proposed amendment is consistent with the intent of this policy, despite a lack of expectation for the current circumstances.

'PLANNING BOARD RECOMMENDATION

The Planning Board reviewed the proposed text amendment at their meeting on May 19, and voted 6-0 (with one abstention) to recommend adoption as proposed.

'One member of the Board did request, without objection from other members, that Staff verify that appropriate allowances were in place for businesses to display menu signs, and if not, request consideration of this aspect by the Board of Commissioners. The proposed text amendments allow for provisions of the Sign Ordinance to be waived, but limit additional temporary signs to no more than one. Additionally, the Sign Ordinance does not require a permit for signs less than 3 square feet in area. Staff believes these two provisions appropriately accommodate menu signage.

'STAFF RECOMMENDATION

Staff recommends approval of the text amendments as provided in the attached ordinance. As requested, Staff has made the following modifications of the text amendments:

- Generally, the allowed maximum parking reduction within Section 4.11.5.2. has been increased from 20% to 25%; however, Staff recommends that it be an allowed reduction of existing parking versus required parking. Given parking requirements for some use categories, particularly shopping centers, administration and compliance could prove difficult. The attached ordinance includes the following amended provision:

- The reduction of ~~required existing~~ parking by greater than ~~twenty (20%)~~ twenty-five percent (25%);

- Section 4.11.5.3. of the attached ordinance has been amended as shown to improve clarity consistent with intent:

- 4.11.5.3. Duration and Extension. Temporary Use Permits shall be issued with an expiration date, not to exceed ninety (90) days from the date of issuance. Generally, at the discretion of the Town Manager and UDO Administrator, such temporary use permits shall expire upon the termination of the declaration of emergency, the end of the circumstances under or impacts associated with the declaration causing the need for the accommodations, or upon the timeframe set by the Mayor, whichever is ~~sooner~~ later. Upon expiration, all temporary accommodations shall cease or otherwise be considered violations of the UDO, as applicable. Subject to the same limitations and discretion, the expiration date of a Temporary Use Permit may be extended, with such requests submitted no later than ten (10) business days prior to the pending expiration date.

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

3.5.3. Action by the Planning Board.

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

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

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

3.5.4. Action by the Board of Commissioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, May 20, 2020 and on Wednesday, May 27, 2020 as required by law.

Planning Director Zehner suggested that the Board may want to consider waiving the temporary permit fee for 45 days (as being done with other permit fees) if the amendment is adopted.

Comr. Fuller confirmed with staff and Attorney Leidy that a temporary permit would be for 30 days but could not be longer than 90 days.

There being no one present who wished to speak and no comments that had been submitted, Attorney Leidy concluded the Public Hearing at 9:33 a.m.

MOTION: Comr. Brinkley made a motion to adopt the ordinance amending the Unified Development Ordinance pertaining to temporary uses or temporary alteration of uses related to declared emergencies as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MOTION: Comr. Renée Cahoon made a motion to waive the fees that are associated with the Unified Development Ordinance amendment re: temporary uses or temporary alteration of uses related to declared emergencies for the next 45 days. 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 "D".

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

Update from Planning Director

Planning Director Michael Zehner presented his memo 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 June 3, 2020.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for April 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, April 1 - Planning Board Meeting
- Monday, April 6 - Munis - CSS Training
- Tuesday, April 7 - Technical Review Committee Meeting
- Wednesday, April 8 - Arts & Culture Committee Meeting
- Wednesday, April 15 - Board of Commissioners Meeting
- Tuesday, April 21 - Planning Board Meeting
- Wednesday, April 29 to Friday, May 1 - American Planning Assoc Virtual National Conf

'Impact of Coronavirus on Permitting

As previously reported, a total of 67 building permits (non-trade) were applied for in both March 2020 and March 2019. For April, 48 building permits were applied for in both 2020 and 2019. Finally, between May 1 and May 28, a total of 53 building permits were applied for in 2020, compared to 39 in 2019. With regard to permits applied for since March 16 through May 28, 114 permits were applied for in 2019 and 136 were applied for in 2020.

'With regard to trade permits, a total of 363 were issued in March, April, and May of 2019; from March 1 through May 28 of 2020, a total of 182 trade permits have been applied for.

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

'Online Permitting

As of May 8, 2020, online permitting has been activated for all residential and commercial building and trade permit types, with the exception of permits for moving of residential or commercial structures; moving permits are expected to be added when updated fees are approved. Staff will continue to work to make improvements to the platform, publicize the availability of the resource, and refine documents providing guidance to the Town's customers.

'Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan

As discussed at the Board of Commissioners retreat in January, Staff has prepared a Work Plan for the next fiscal year, the *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan* ("Plan"; attached). The Plan was discussed with the Planning Board, and while there were delays due to the Pandemic, the Board indicated their support for the Plan at their meeting on May 19, 2020, with a request that an Electric Vehicle Action Plan be added; the attached Plan has been updated

to include this project.

'Based upon this Plan, Staff prepared consistent budget narratives for the Department and Septic Health Division (with the Electric Vehicle Action Plan needing to be added), which are helpful to review in conjunction with the Plan, as well as the most recent memo to the Planning Board (attached) which provides an overview of the considerations in developing the Plan. As noted in the memo, Staff is cognizant that this Plan will be affected by the Coronavirus Pandemic and impacts to the Town's budget.

'However, for those projects most dependent on funding, Staff is actively exploring and applying for grants and assistance to offset budget shortfalls, and looking for opportunities to phase certain projects with initial tasks being performed internally.

'Hazard Mitigation Plan Update

As noted in my last Report, we were notified on April 28, 2020, that the final Hazard Mitigation Plan received approval from the State and would soon be reviewed by FEMA. Based upon the State's review, minor changes were necessary (an updated draft is available here: <http://www.obx-hmp.com/draftDocuments.html>), and the Plan will be sent to FEMA for review soon. Due to a backlog of reviews, the project consultant expects FEMA's approval to be delayed beyond June/July. Therefore, given the June 11, 2020 expiration of the Plan currently covering the Town, it would be prudent to consider adoption of the Plan by resolution at the Board's July 1 meeting.

'Planning Board - Pending Applications and Discussions

The May 19, 2020 meeting of the Planning Board was held virtually on the Zoom platform (as were the April 1 and April 21 meetings of the Board). The agenda included reconsideration of a text amendment regarding the allowed principal sale items from outdoor stands, consideration of a text amendment regarding temporary uses related to declared emergencies, continued consideration of options and recommendations pertaining to legacy establishments/structures and residential stormwater regulations, and review of the *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*.

'In addition, the Planning Board did express their willingness to assist the Board of Commissioners in developing a plan to address recycling within Town, if the Board of Commissioners determined that further consideration was necessary.

'The Planning Board's next meeting is scheduled for June 16, 2020. At this time, the agenda is expected to include continued consideration of legacy establishments/structures, residential stormwater regulations, the regulation of events within residential dwelling units, and the regulation of large occupancy homes, as well as reconsideration of the preliminary plat for the Coastal Villas subdivision.

'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%; as of April 28, the self-response rate for the Town was 14.5%; as of May 27, the self-response rate for the Town was 16.7%.

'As previously indicated, 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. Dare County has begun releasing the information on the rate depicting more accurate response rates based upon the number of occupied homes in the various communities.

- 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.
- Skate Park Renovation - Phase 1 - Staff is working to prepare a survey and other outreach methods to determine community preferences for any future renovation of the Skate Park. Staff has also discussed the project with the Arts & Culture Committee, who are supportive of incorporating public art within the Park. Finally, Staff is working to identify funding opportunities to support the project.
- CAMA Land Use Plan Update - Staff has prepared and submitted responses and proposed draft revisions responding to comments issued by DCM staff. A determination of Plan completeness is pending, which is required before further review is initiated.
- UDO Reference Manual & Permitting Workflow - Staff continues to develop Reference Manual materials, including identifying and refining workflows, to be brought to the Board of Commissioners for approval at a later date.
- Art Masts - The Art Mast project, coordinated with the Arts & Culture Committee, has resulted in three completed art panels. Kerry Sanders completed her mast last summer, depicting lifeguards and thus it was displayed at Bonnet Street Beach House; it is hoped to be reinstalled soon. Rob Snyder completed an Art Mast this month depicting a Bodie Island Lighthouse Rescue scene that we also hope to have displayed soon. James Melvin also completed his Art Mast this month, it is in honor of the work of Glenn Eure including references to his "Stations of the Cross", "Clowning Around", "Monument to a Century of Flight," and his boat paintings. Artist Taylor Williams is currently working on completing a fifth Art Mast. The Arts & Culture Committee will soon be discussing where best to locate the new Art Masts, and is excited for the community to get to see and enjoy the beautiful pieces that have been created.
- Decentralized Wastewater Master Plan - Staff intends to prepare and present a draft project scope for the update of the Decentralized Wastewater Plan to the Commissioners at an appropriate meeting in June.
- Islington Street Beach Access - Subject to DCM/CAMA and CIP funds to improve the access, Staff will be working to prepare plans for permitting, with the review process expected to be initiated in July 2020.
- Legacy Establishments/Structures - Staff continues to discuss options with the Planning Board. Draft options are expected to be presented to the Planning Board in June 2020.
- Review of Residential Stormwater Regulations - Staff continues to work with the Planning Board. At the Planning Board's May 2020 meeting, the Board requested that Staff return with some explicit actions for improved education surrounding the regulations, as well as additional or altered incentives.

- NC Marine Debris Action Plan - Kate Jones, Engineer Technician, will be participating on a Public and Local Government Subcommittee to advance strategies and actions laid out within Goal 2 of the NC Marine Debris Action Plan (<https://www.nccoast.org/wp-content/uploads/2020/03/N.C.-Marine-Debris-Action-Plan-FINAL.pdf>)
- Dowdy Park Farmer's Market - The Arts & Culture Committee has completed their selection of vendors for the 2020 Dowdy Park Farmers Market. The Market is scheduled to run every Thursday in the months of July and August with a wide range of vendors including fresh produce, local honey, seafood, wood carving, ceramics, pottery and other handmade crafts. Staff is working to determine and establish appropriate protocols related to social distancing and general measures to ensure the public's health and safety.
- 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 sent a further update in early May to publicize the new online permitting options.

- Grants and Assistance
 - Staff had submitted a request under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan. Staff recently learned that funding under that event was no longer being considered, but that the request was being considered under funding decisions related to Hurricane Dorian,
 - Staff submitted a Letter of Interest ("LOI") under the Hazard Mitigation Grant Program related to Hurricane Dorian for the acquisition of property, and assisted Fire Chief Wells in the submission of an LOI for replacement of a generator; we have been notified that the generator request has been selected for further consideration, and have also learned that the request for funds for property acquisition also continues to be considered.
 - An LOI has been submitted for a National Fish and Wildlife Foundation – National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan. Additionally, a preapplication was submitted for the 2020 North Carolina Attorney General Environmental Enhancement Grant for the same project, for which the Town was approved to submit a full application, which was submitted on May 28, 2020.
 - Staff submitted a CAMA Access Grant preapplication for improvements to the Huron Street Beach Access on May 15, 2020.
 - Staff is reviewing additional grant and assistance opportunities for prioritized projects, including NCDOT's CASSI Autonomous Shuttle Pilot and the National Endowment for the Arts Our Town Grant.

Upcoming Meetings and Other Dates

- Wednesday, June 3 - Board of Commissioners Meeting
- Monday, June 8 - P&D Staff Meeting
- Wednesday, June 10 - Board of Commissioners Budget Workshop
- Wednesday, June 10 - Arts & Culture Committee Meeting
- Tuesday, June 16 - Planning Board Meeting

- Wednesday, June 17 - Board of Commissioners Budget Meeting"
-

Planning Director Zehner's report was well received by the Board.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From May 6th Board meeting - Consideration of numerous text amendments to the Unified Development Ordinance as it pertains to updated Flood Maps; Consideration of update to the Flood Damage Prevention Ordinance (Public Hearing held May 6, 2020)

The agenda summary sheet was presented and 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. The Board continued consideration of these amendments from the meeting on May 6, 2020.

'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."

Comr. Renée Cahoon stated that she does not like the flood maps and does not want to see the consequences from them; she encouraged everyone to keep their flood insurance as, if cancelled, it will be expensive to renew.

Director Zehner emphasized that the ordinance changes only affect the ordinance - they do not affect the flood maps.

MOTION: Comr. Renée Cahoon made a motion to modify the Flood Damage Prevention Ordinance by removing "by 25%" from Section 11.44.2.7.9.2. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MOTION: Mayor Pro Tem Siers made a motion to adopt the ordinance with the Local Elevation Standard (LES) modified from 10' to 9' for areas west of NC 12 and SR 1243. The motion was seconded by Comr. Fuller.

Comr. Renée Cahoon asked if the Homebuilders Association would be interested in giving a presentation at an upcoming Board meeting.

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".

From May 6th Board meeting - Discussion of scope of work from Moffat & Nichol - Beach Nourishment Project Coastal Engineering and Design – and McKim and Creed Beach Surveying Services

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

“Attached please see professional service proposals from Moffat & Nichol related to the Beach Nourishment Coastal Engineering and Design Services and McKim & Creed for Beach Surveying Services. The fee proposals are being provided in response to the Request for Qualifications the Town had recently advertised. The Beach Monitoring Surveys, Summer 2020 submitted by McKim & Creed encompasses services necessary to complete the annual beach condition survey in accordance with the Town’s Beach Monitoring and Maintenance Plan. The scope of work includes the base project data acquisition of 126 profiles in conjunction with additional transect information data acquisition north of the project area, south of the project area and within reaches 3 and 4. Acquisition of the additional survey information will provide a more comprehensive data set for modelling and planning of future nourishment projects.

‘The Year 1 (2020) Coastal Engineering and Consulting Proposal submitted by Moffat & Nichol divides the proposal into four main tasks: Task 1- Annual Beach Monitoring and Analysis (Year 1), Task 2- Beach Nourishment Master Plan (Year 1), Task 3-Coastal Storm Damage Mitigation Grant Application support and Task 4-Post-Dorian Beach Restoration Engineering Services.

‘Available funding can support the 2020 Beach Monitoring Survey and Tasks 1-3 of the Coastal Engineering Proposal. Task 4 will be considered at a later date, once the new Beach Nourishment Capital Budget Ordinance has been established.”

In response to Comr. Fuller, Dep Town Manager Andy Garman stated that additional areas were added to test some north and some south of the testing area to determine more erosion areas. Comr. Fuller asked why the Town would be doing extra surveys on Park Service property and Mayor Cahoon answered that it helps to know where sand goes south of the project.

MOTION: Comr. Brinkley made a motion to authorize the Town Manager to enter into professional service contracts with Moffat & Nichol for Tasks 1 (Beach Monitoring/Analysis), 2 (Master Plan), and 3 (Coastal Storm Damage Mitigation Grant application support) at a cost not to exceed \$279,499; and with McKim & Creed for the Annual Beach Condition Survey in accordance with the Town’s Beach Monitoring and Maintenance Plan at a cost not to exceed \$63,100 - upon review by the Town Attorney. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

CONTINUANCES

Mayor Cahoon noted the continuance to the July 1, 2020 Board of Commissioners meeting of the following:

- Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann
- 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; the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements

NEW BUSINESS

Committee Reports

Comr. Brinkley - Jennette's Pier - He reported that Jennette's Pier is ready to open; Director Mike Remige has no specific date yet.

Mayor Cahoon - Dare County Control Group - He reported that the Control Group now meets as necessary.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy - Request for Closed Session

Attorney Leidy requested a Closed Session, at the appropriate time, to discuss with the Board the Blackburn lawsuit against the County/Towns re: no entry for non-resident property owners during the COVID-19 emergency.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Ogburn - From May 20, 2020 Board meeting – Recycling

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

“At the May 20th Board of Commissioners meeting, Town Manager Ogburn was asked to look into response to the Board’s recycling inquiries – from the Board actions:

‘Comr. Fuller – Recycling subscription – The Board unanimously passed a motion that staff:

a) Look into facilitating subscriptions for a curbside recycling service for residents that are interested – equivalent to that being done in the Towns of Kitty Hawk, Kill Devil Hills, and Manteo and in mainland Dare County,

b) Develop an information campaign to further describe the decision-making process and what’s currently available as well as all the conditions around recycling and,

c) Develop a program (or at least an outline) to encourage reduction, re-use, and recycling as well as other environmentally-friendly approaches to waste to be brought back to the Board.

‘Attached please find Town Manager Ogburn’s memo in response to the Board’s inquiries on May 20th.”

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

"Subscription Service

At the May 20, 2020 Board of Commissioners meeting, the Board discussed the recent decision to suspend the Town's curbside recycling program. At the request of the Board, we have been working to determine if it is feasible to initiate a subscription recycling service within the Town. We have learned that Bay Disposal would consider but has not committed to a subscription program if the Town can compile a list of at least 300 potential subscribers. The cost for this service is estimated at \$15-\$25 per month per household. Property owners and residents would contact the Town to be placed on a list. Once we reach the minimum number of subscribers, the list would be provided to the vendor and they would reach out to each subscriber directly to create an account and establish service. The day of the week is yet to be determined. Bay Disposal would provide their own cart to provide the service. The Town may need to enter into a franchise agreement with Bay Disposal before the service can begin. This program will take time to initiate and the Town will need to make a concerted effort to advertise the service and solicit subscribers. It is unlikely that this program could be initiated by the end of the summer season; however, this will depend on the time required to generate the list of subscribers and establish accounts.

'Information on Decision to Suspend Curbside Recycling

Below is information that staff has compiled to educate Town residents and property owners on the Board's decision to suspend the curbside recycling program. After the Board's review, staff will continue to work to develop this into a format for public consumption and distribution.

'Included below is a timeline that shows the progression of recycling services in the Town from initiation of the original subscription service in 2011 through the decision in May of 2020 to suspend the curbside program. Numerous changes have occurred over the years; many of these changes were made to enhance the Town's services and improve the recycling collection rate within the community. After the Town initiated the curbside program in 2016, there were several changes that led to cost increases, some of which were done deliberately to provide desired service levels; others were the result of changing market conditions associated with the increased cost to process materials.

'While the budgetary conditions associated with COVID were a consideration in the decision to suspend the Town's recycling service, contractual issues, rising costs since the program began, uncertainty in the recycling market, and the lack of processing options were all factors in the decision. In the timeline and data provided on the following pages, you will note that the cost per ton for trash has remained relatively fixed since FY 2017 (\$143 and \$157 per ton respectively). The cost for recycling has increased during this same time frame from \$297 to \$439 per ton (see table on page 4; the cost per ton for the vendor only portion of this service went from \$221 per ton to \$604 per ton from FY 2017 to FY 2019). This is largely due to a change in 2019 to move the schedule on the Beach Road to Monday as well as the increase in cost for processing materials from \$0 per ton to \$70 per ton. An important consideration in the decision, which is reflected in the timeline, is the rapidly changing conditions that affect the ability to establish predictable costs.

'The Board has received numerous comments from residents and property owners recently and over the last several years regarding recycling. Some comments reflect a strong desire to maintain the Town's curbside program and continue to absorb the costs within the town-wide tax base. Others believe that, largely because of the problems that the Town has experienced associated with costs and lack of bona fide processing options, the program should be offered on a subscription basis with the costs borne solely by those who wish the service.

'The Board may wish to consider a process after the summer season to collect further input on the future of the recycling program. The process would assist the Board in determining community values related to recycling to establish a balance between cost, benefits, and service levels. The Board's decision has been to temporarily suspend the program. This still leaves opportunity to consider a wide range of options based on the Town's values refined by community input.

'Recycling Timeline

April 2011 – Town initiates a franchise agreement for recycling subscription services.

'May 2014 – Town initiates Beach Road pilot program that provides curbside services to all residences along NC 12 and SR 1243.

'January 2016 – Town initiates town-wide curbside recycling service which supersedes the pilot and subscription programs – initial cost = \$88,480 for collection; the Town was paying \$0 per ton for processing the material. This cost does not include internal costs for hauling by town forces or the cost of recycling carts.

'January 2017 – Town modifies schedule to Friday only – cost was reduced to \$77,980. Again, this does not include internal costs for hauling by town forces or any cart costs.

'January 2019 – Town modifies schedule to Monday and Friday – cost was increased to \$195,000. This cost included the tonnage collected by the hauler. The cost for tonnage collected by the Town increased from \$0 to \$70 per ton. With 522 tons collected by the Town, this increased the cost to \$231,540 (\$195,000 + \$36,540). The increased tonnage price was a result of failing market conditions for recycling.

'December 2019 – Hauler notifies Town that materials are being incinerated rather than recycled due to market conditions. Hauler offers to continue recycling at \$130 per ton or incinerate at \$70 per ton. The Town amends its contract to allow for incineration on a temporary basis rather than paying for the increased processing cost.

'Spring of 2020 – Town and NC DEQ continue to search for a vendor to process rather than incinerate recycling materials. The Town learns that a new vendor, RDS of Portsmouth, VA, can process recycling for \$70 per ton. The Town would now need two agreements, one for hauling and one for processing. The processing contract would require the Town to pay an additional \$121 per ton for contaminated loads. Based on discussions with the processor and hauler, it was estimated that up to 18% of tonnage could be considered contaminated. The Town's hauler and RDS continued negotiations to allow for the hauler to contract directly with the Town for both hauling and processing at a fixed price. As of May 2020, these negotiations were ongoing, and the Town was unable to secure favorable terms that would provide a predictable fixed rate for service.

'In May of 2020, the Town temporarily suspends the recycling program prior to the summer season as well as the commencement of the annual vendor service contract."

Comr. Fuller asked staff to move quickly and get the word out as soon as possible with one point of contact at the Town identified – the public/customers can then call the Town and get the information they need concerning recycling.

Town Manager Ogburn agreed; he also stated that a recycling roll-off trailer is being placed at Public Works in addition to the one at Town Hall. His presentation was well received.

Mayor Cahoon asked that staff get the portal at the Town opened as soon as possible and as this is a big issue for a lot of people in the Town, he would like to see a group of interested citizens serve on a committee. The Clerk is to advertise for volunteers to serve on a committee of interested citizens with the charge, as described in Town Manager Ogburn's memo, as follows: "... to collect further input on the future of the recycling program. The process would assist the Board in determining community values related to recycling to establish a balance between cost, benefits, and service levels".

Comr. Brinkley wants to make sure staff is transparent with the public re: costs, etc. to include that while recycling is being suspended, it is not being cancelled. He wants the public to be aware of all associated recycling costs; he also thanked Town Manager Ogburn for the additional co-mingled roll-off trailer at the Public Works site (staff is to advertise this site) and he appreciated the information Town Manager Ogburn provided.

It was Board consensus to authorize the Town Manager to take appropriate action as necessary to accommodate the Board's request that a point of contact for recycling be identified and that a request for volunteers to serve on a Recycle Committee be advertised. Staff is also to make sure the public is informed re: actual costs of recycling and the reasoning behind the Board's decisions. The public is to be notified of the placement of the additional recycle co-mingle trailer at Public Works.

Town Manager Ogburn – Request from tent vendor

Town Manager Ogburn stated that the Town's ordinance requires tent vendors to remove their items from the beach by 6 p.m. He has been contacted by a tent vendor to be allowed another hour, until 7 p.m., in order to sanitize their tent equipment before removing it from the beach.

It was Board consensus that a proposed ordinance be prepared for Board consideration at the June 17th mid-month meeting to allow an additional hour for tent vendors to remove their equipment from the beach.

Comr. Fuller complimented staff as conversations between lifeguards and police on the beach have been very positive.

BOARD OF COMMISSIONERS AGENDA

Comr. Renée Cahoon - Multi-use path Update

Town Manager Ogburn responded to Comr. Renée Cahoon's request for an update on the US 158 multi-use path construction. He stated that he, Deputy Town Manager Garman and Town Engineer Ryan met yesterday with the contractor, RPC Contracting, and discussed completion dates and traffic patterns. With the contractor providing some additional resources to the project, the substantial completion date of June 19th still stands.

MAYOR'S AGENDA

Mayor Cahoon – Moment of silence

Mayor Cahoon held a moment of silence for former Town firefighter Ryan Dodson who died tragically in an accident and for Kill Devil Hills residents Ravann and her son, Sebi, who died tragically in a house fire.

CLOSED SESSION

MOTION: Comr. Brinkley made a motion to enter Closed Session to discuss a personnel matter in accordance with GS 143-318.11(a)(6) and to consult with the attorney and protect attorney/client privilege (re: Blackburn litigation) in accordance with GS 143-318.11(a)(3). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:48 a.m.

OPEN SESSION

The Board re-entered Open Session at 12:48 p.m.

ADJOURNMENT

MOTION: Comr. Fuller made a motion to recess to a Budget Workshop on Tuesday, June 9th at 10 am in the Board Room. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 12:49 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: **July 1, 2020** _____

Mayor: _____
Benjamin Cahoon