



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, NOVEMBER 2, 2022**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, November 2, 2022 at 9:00 a.m. for a Regular Meeting.

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

Board members Absent: Comr. Renée Cahoon

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Steve Szymanski; Kim Thompson; Kate Jones; Amy Miller; Linda Bittner; David Ryan; Perry Hale; Christian Aguirre; Randy Wells; Phil Wolfe; Shane Hite; Roberta Thuman; Nancy Carawan; Bruce Erickson; Daniel Heath; Jonathon Bush; Josh Givens; Ray Schoonmaker; Karen Heagy; Chris Trembly; Denis Blackburne; Michael Strader; Brian Joyner; David Carroll; Samuel Torpy; David Bragg; Shelley Blackstone; Michael O-Brien; Steve Pauls; Susie Walters; John Harris; Tom Haddon; Ann Cabell-Baum; Duke Geraghty; Basil Belsches; George Barnes, Carol Sparks; Ralph Buxton; Sandra Allen; Holly Nettles; Bobby Harrell; and Town Clerk Carolyn F. Morris

CALL TO ORDER

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

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the November 2nd agenda as presented. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Renée Cahoon was excused.).

RECOGNITION

Public Services Director Nancy Carawan introduced the following new employees who were welcomed by the Board to Town employment: Sanitation Equipment Operator Daniel Heath; Water Distribution Technician Jonathon Bush; and Facilities Maintenance Technician Josh Givens.

Public Services Director Nancy Carawan introduced Water Distribution Superintendent Ray Schoonmaker who was congratulated by the Board for ten years of service.

Public Services Director Nancy Carawan introduced Administrative Supervisor Karen Heagy who was congratulated by the Board for fifteen years of service.

PRESENTATION – 2022 Earl Murray, Jr Employee of the Year Nominees

Department Heads introduced their nominee for 2022 Earl Murray Jr Employee of the Year as follows:

Public Services Dept Director Nancy Carawan introduced Facilities Maintenance Technician Bruce Erickson; Dep Town Manager/Finance Director Amy Miller introduced Tax Collector Linda Bittner; Town Clerk Carolyn F Morris introduced Permit Specialist Kim Thompson; Planning & Development Director Kelly Wyatt introduced Building Inspector Steve Szymanski; Fire Chief Randy Wells introduced Fire Captain Phil Wolfe; and Police Chief Perry Hale introduced Police Officer Christian Aguirre.

All nominees were congratulated by Board members, received \$200 and a Certificate of Appreciation.

PROCLAMATION - Veterans Day Proclamation

Mayor Cahoon read the Veterans Day Proclamation as follows:

“WHEREAS, at 11:00 AM on November 11, 1918, after four years of bitter conflict, the world rejoiced and celebrated the signing of an Armistice by the Allied Forces and the Federal Republic of Germany for the cessation of World War I; AND

‘WHEREAS, to remember the sacrifices that people made to ensure that lasting peace, on November 11, 1919, Woodrow Wilson, the 28th President of the United States, proclaimed an Armistice Day in the United States; AND

‘WHEREAS, on June 4, 1926, the United States Congress passed a concurrent resolution requesting Calvin Coolidge, the 30th President of the United States, to issue another proclamation to observe November 11th with all the appropriate ceremonies; AND

‘WHEREAS, on May 13 1938, twenty-years after World War I, Congress passed an Act making November 11th in each year a federal holiday, a day to be dedicated and celebrated thereafter as Armistice Day; AND

‘WHEREAS, for a grateful Nation to pay homage to veterans of all wars, on June 1, 1954, Dwight Eisenhower, the 34th President of the United States, signed into law a bill introduced by U.S. Representative Edwin Rees from Kansas renaming Armistice Day to Veterans Day; AND

‘WHEREAS, in 1971 Richard Nixon, the 37th President of the United States, declared Veterans Day to be observed on the second Monday in November; AND

‘WHEREAS, because the commemoration of Veterans Day was a matter of historic and patriotic significance, on September 20, 1975, Gerald Ford, the 38th President of the United States, signed Public Law 94-97 (89 Stat. 479), which returned the annual observance of Veterans Day to its original date of November 11; AND

'WHEREAS, Veterans Day continues to be observed on November 11th, regardless of what day of the week on which it falls.

'NOW THEREFORE, BE IT RESOLVED, the Nags Head Board of Commissioners does hereby proclaim and call upon all residents and visitors in the Town of Nags Head to observe a moment of silence at 11:00 AM on Friday, November 11, 2022, in remembrance of all the Veterans who fought to safeguard our heritage and freedom, and to celebrate and proudly display the flag of the United States of America throughout the Town of Nags Head on Friday, November 11, 2022, Veterans Day."

MOTION: Comr. Brinkley made a motion to adopt the Veterans Day Proclamation as presented. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Renée Cahoon was excused.).

PRESENTATION – Affordable Housing - Woda Cooper Company

Denis Blackburne from Woda Cooper presented a PowerPoint presentation which is attached to and made a part of these minutes as shown in Addendum "A". Some highlights:

- Woda Cooper was formed in 1990
- Owns 400+ properties
- Manages over 16,000 units with 30,000 residents
- There are many long-term owners
- Proposal title: Sanderling Commons Nags Head
- Different levels of income determine amount of rent paid
- A site plan was displayed of the proposed site

Mayor Pro Tem Siers noted that the housing wouldn't fit a lot of the Town's residents – he asked if Mr. Blackburne had reviewed the Town's white paper on its web site; Mr. Blackburne had not but stated that he would review the paper. Mayor Pro Tem Siers questioned if the proposed housing is a good fit for Dare County and for Nags Head.

Mr. Blackburne said that lease of the land from Dare County is to make sure the property remains this type of housing.

Comr. Brinkley said that he would have liked there to have been more transparency but he hadn't heard about the project until approximately two weeks ago.

Mr. Blackburne stated that Dare County has worked on this project for the past three years; the Outer Banks Hospital gave him an invitation and that was the first time he (Mr. Blackburne) became involved.

Comr. Brinkley noted that the Town's starting (lowest paid) police officer or firefighter would not qualify for the housing; Citizens may feel we are turning our back on affordable housing but that is not the case – not many would qualify as their salary is too high.

Comr. Sanders agreed stating that if the proposal is for workforce housing, teachers would not even qualify.

Mr. Blackburne said that he would review the white paper, obtained from the Town's web site, and would then respond.

Board members thanked Mr. Blackburne for his time and his presentation.

PUBLIC COMMENT

Attorney Leidy invited those present to speak during Public Comment:

David Bragg, Nags Head resident; if people are needed he can bring people – the Woda Cooper proposal is not doing anything for the community; he can find another piece of property in Manteo; wages include benefits; board of education should be concerned about retention; one of the big reasons why Board of Education's teachers, etc. left is compensation; in order to live here most would need to have a roommate; he is opposed to the proposed development.

Shelley Blackstone, owns property between Conch and Hollowell; she agreed with the comments made – this would not even solve the workforce housing issue; the property is porous behind the single-family homes; urban development doesn't make sense in that area; she feels there are other more appropriate locations to build this type of community; community needs to come together as a wake-up call to solve this problem themselves.

Michael O'Brien, Nags Head resident; representing the Friends of Jockey's Ridge; he appreciated the Town's support in opposing the proposed building of the Rogallo Museum in the park.

Steve Pauls, FarmDog Beach concierge services co-owner; spoke concerning regulations for his business; they set up cabanas, umbrellas on the beach for the public; many use their services such as families, grandparents, etc. and they are happy to help people enjoy the beach more; there are no regulations for folks who purchase their own cabana/umbrella and set up on their own on the beach; he and his partners are available to work with the Board/Town as necessary and to please call at any time to meet.

Susie Walters, Nags Head resident since 1983; disheartened with the recent actions concerning the proposed Rogallo Museum at Jockey's Ridge State Park; she would like to correct some misinformation – Rogallo group started in 2017; she read her letter describing the process since then; many in business wear multiple hats; spoke concerning the Town's letter to Dep Director Strong – the Rogallo Foundation was not contacted prior to writing the letter - it appears no research was done to glean any information – several news sites have made up its own information; it is incumbent on each of us to do our own research; she asked the Board to not adopt the resolution today concerning this issue and to rescind its letter to Dep Director Brian Strong so a more informed decision can be made. Her letter is attached to and made a part of these minutes as shown in Addendum "B".

John Harris, Rogallo Foundation; NC Policy Watch Foundation; they were told by the State that no long-term leases for State Parks were allowed; they contacted Sen. Sanderson about having legislation drawn up and found out that legislation was not needed as long-term leases for State Parks are allowed; unfortunately, now the educational portion of the museum will not be built; unfortunately no one took the time to obtain additional information; he loves Jockey's Ridge State Park and does not want to see any environmental harm come to the Park; he addresses the Town letter sent to Dep Dir Strong – no input from the Rogallo Foundation was obtained before writing the letter – bullet points in the letter were incorrect; presentations were made but no responses were received.

Tom Haddon, Nags Head resident since 1974; spoke of Francis and Gertrude Rogallo; we often forget about the stature of them and the importance of their achievements; they deserve to be in the same conversations as the Wright Brothers; the point is that Jockey's Ridge State Park is the proper place to honor them; more have learned to fly there than anywhere else in the world.

Ann Cabell-Baum, Nags Head property owner; she forwarded a petition after the last Board meeting with over 2600 names in opposition to the Rogallo Museum being built at the Park; no true opposition to the museum only the location; the community is proud that the Rogallos lived in this community.

Duke Geraghty, President of the Outer Builders Homebuilders Association; he is supportive of the affordable housing project; entry-level employees need a place to live; there is no place for people to live in this area; this issue is not limited to Nags Head; Dare County has been working on this for the past three years; everyone wants affordable housing but nobody wants it in their neighborhoods; he has been listening to the need for multi-family housing for many years; let's not be selfish and let's take the first step to help solve this problem; he thanked Town Manager Garman for the white paper; he asked the Board to follow-up on the proposal for affordable housing.

Basil Belsches, Nags Head resident; spoke on the Woda Cooper project; seniors may end up there but that may not be the needed workforce housing; 54 units on that property are being proposed and even if it was 54 luxury condos, it would not be in line with the historic character of that area; he supports the moratorium currently in place.

George Barnes, Nags Head resident and Park Superintendent for over 30 years; worked with KHK to get the Visitors Center in the Park; knew the Rogallos also; do not think that JR is the appropriate location for another museum; State has a museum being renovated; location for the Rogallo Museum is in the protected area and would have to go through a process to build there; the visitors center/museum were part of the original master plan, as the superintendent he would have thought mentioned it to him but he heard about it from Ms. Baum from an Outer Banks Voice article; some misinformation on the project; the Rogallo Museum is not appropriate at the State Park; as former Park Superintendent he is responsibly telling the public he is all for the museum just not at the Park.

David Carroll, Nags Head resident; spoke on the Woda Cooper proposed project; the project is absolutely necessary for the community; salaries being compensated for teachers, police officers, etc. but the numbers can be reworked; work force is in the service sector; people can't afford to live here; happy to hear the Homebuilders Association weigh in on this; very much needed.

Carol Sparks, TOSS resident and property owner in Nags Head; Vice Pres of the Dare Co Chapter Retired School Personnel and Board member of the Rogallo Foundation; in addition to inventing the flexible wing they also worked hard to make Jockey's Ridge a State Park to make sure the dunes were not going to be developed; spoke in favor to have a museum and educational landmark at the Park.

Ralph Buxton, Nags Head resident; already written a letter re: Rogallo project and ask that it be entered into the record; requests the Board to support the project; and listened to the sincerity of the comments spoken today; unfortunately, the Town took a position prematurely and that affected the State's position; was done so quickly before enough information was researched; these are good people and asked the Board to revisit its actions.

Sandra Allen, former Nags Head resident; she is disappointed to have to be here today to defend her reputation; the Rogallo Foundation support of a museum has never been a secret; she is here as a volunteer member of the Rogallo Foundation and CPA of Kitty Hawk Kites; all rules were followed to make sure there was no benefit to a for-profit business from the non-profit foundation; in its letter to the State the Board indicated misinformation about the gift shop as the proceeds would only benefit the Park. She asked the Board to publicly correct the statement in the Board's letter to the State; Her comments are attached to and made a part of these minutes as shown in Addendum "C".

Holly Nettles, Nags Head resident; the Visitors Center at Jockey's Ridge with its planned renovations will be approximately 7000 square feet as compared to the proposed museum of 12000 square feet; this is not

a large piece of property compared to other State Parks and there is no way the proposed museum would not have an adverse environmental impact on the Park.

Bobby Harrell, Real estate broker, owns property and an office in Nags Head; need for the housing project in Nags Head; spoke with similar figures from last meeting on Oct 19th; the density and number of people coming and going on the adjacent properties is far more than the proposed development; spoke of several restaurants that close for one or two days/week due to lack of staff due to lack of housing.

There being no one else present who wished to speak, Attorney Leidy concluded the live portion of Public Comment at 11:17 a.m.

Mayor Cahoon read the written comments from Bruce Weaver and GW Meadows in favor of the Rogallo Museum in Jockey's Ridge State Park. Their comments are attached to and made a part of these minutes as shown in Addendum "D".

Mayor Cahoon thanked all who showed up today to speak.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Budget Amendment #6 to FY 22/23 Budget
Consideration of Tax Adjustment Report
Approval of minutes

MOTION: Comr. Brinkley made a motion to approve the Consent Agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.).

Budget Amendment #6, as approved, is attached to and made a part of these minutes as shown in Addendum "E".

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

PUBLIC HEARINGS

Public Hearing to consider Special Use/Site Plan Review submitted by Michael Strader, P.E. of Quible & Associates, P.C. for the construction of a Trade Center. The property is zoned C-3, Commercial Services and is located on Lot 2a of the Charles L. Sineath Subdivision (PIN# 989317113533), vacant lot directly behind TW's Bait and Tackle

Attorney Leidy introduced the Public Hearing to consider a Special Use/Site Plan submitted by Michael Strader, P.E. of Quible & Associates PC for the construction of a Trade Center. The property is zoned C-3, Commercial Services and is located on Lot 2a of the Charles L Sineath Subdivision (PIN# 989317113533), vacant lot directly behind TW's Bait and Tackle. Attorney Leidy explained that the Board sits as a quasi-judicial body and must make its decision: 1) based on competent material and substantial evidence - and those presenting must be sworn in 2) based on information presented, and 3) Board members must be recused if there is basis for believing that they would not be able to be an impartial decision maker - to

include a commissioner having a fixed opinion not susceptible to change. He verified that Board members had no potential conflict and nothing to disclose at this time. The time was 11:25 a.m.

Mayor Pro Tem Siers noted that he has knowledge of this item and after discussion with the Town Attorney, asked to be recused.

MOTION: Comr. Brinkley made a motion to recuse Mayor Pro Tem Siers from this item. The motion was seconded by Comr. Sanders which passed 4 - 0 (Comr. Renée Cahoon was not present.).

Sworn in by Town Clerk were Planning Director Kelly Wyatt and Michael Strader from Quible & Associates

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

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

GENERAL INFORMATION

Applicant: Quible & Associates, PC. on behalf of Mazzi LLC.

Application Type: Special Use/Site Plan Review.

Purpose/Request: Construction of an 11,200 square foot building that includes 8 units operating as a "Trade Center", with parking and all associated site improvements.

Property Location: 2A-1R, Charles Sineath Division, 0 Satterfield Landing Rd, Nags Head.

Existing Land Use: Vacant.

Zoning Classification of Property: C-3, Commercial Services Zoning District.

Zoning Classification of Surrounding Properties: Property to the north, directly across Satterfield Landing Road is zoned C-2, General Commercial and developed commercially (OBX Bowling Center). Property to the south is zoned R-2, Medium Density Residential and it is undeveloped. Property to the west, is zoned C-3 Commercial Service and is developed commercially (Village Realty & Management Service). Property to the east is zoned C-2, General Commercial and developed commercially (TW's Bait & Tackle).

Flood Hazard Zone of Property: Property is located in an X Flood Zone, per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. The first floor of the trade center is proposed at 11 feet msl and is therefore compliant.

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

SPECIFIC INFORMATION

Applicable Zoning Regulations:

- Use Regulations: Section 6.6, Table of Uses and Activities lists "Trade Center" as a Special Use within the C-3, Commercial Services District, with supplemental regulations set forth in Section 7.72 and included below.

Trade centers are permitted in accordance with [Section 6.6](#), Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

- Each individual unit may contain an office/sales area; however, this area shall not exceed twenty-five (25) percent of the gross floor area of the unit.
- Each individual unit shall at a minimum contain a commode, shower facility and lavatory.
- All work conducted on-site shall be entirely within the enclosed structure.

The proposal consists of eight (8) 1,400 square foot units. Approximately 14% of each unit is dedicated to office use and restroom facilities. The remaining area is dedicated to parking area and storage. Sheet A1.1 of the submittal package shows the floor plan for the units, note that a toilet and sink has been shown in each unit. With regard to the requirement for each unit to contain a "shower facility", staff has reviewed the minutes from the Planning Board and Board of Commissioners meetings in 1988 in hopes of gaining insight on this requirement. Unfortunately, there was no discussion in the minutes related to the shower requirement. Given the nature of the trade center use, where one may be working with, exposed to, or come into contact with injurious corrosive materials it seems fitting that eye wash stations and safety showers would be required to allow for quick drenching and flushing of the eyes and body in emergency situations. Staff would add that while one proposed tenant of a trade center unit may not be working with materials that would necessitate shower facilities, a future tenant may so, as a matter of consistency in approval, each unit should provide a shower or emergency shower for safety purposes. A combination eye wash and shower station has been proposed and shown on sheet A1.2 of the plan set. Lastly, the applicant has noted in the site narrative included in the packet that there will be no outdoor display areas or storage of materials.

- **Lot Coverage:** Section 8.6.6.4 of the UDO sets forth allowable lot coverage within the C-3, Commercial Services district as it pertains to the developments distance from the Fresh Pond AEC. This property is not located within the Fresh Pond AEC.

Distance from Fresh Pond	Maximum Permeable Pavement	Maximum Impermeable Surface	Minimum Open Space
0—500 feet	25%	30%	45%
Over 500 feet	25%	45%	30%

Proposed impermeable surfaces on this site are 44.8% and therefore compliant. The proposed permeable surfaces on this site are 10.1% and therefore compliant. As proposed, over 44% of the site is retained in open space and therefore compliant.

- **Height:** The maximum allowable building height within the Town is 35 feet; however, pursuant to Section 8.2.1, Dimensional requirements, total height may be increased to 42 feet with the use of an 8:12 roof pitch or greater. The applicant has proposed a structure with an overall height of 20'-5", therefore height is compliant.
- **Architecture Design Standards:** Section 10.82 of the UDO, Applicability, states that Commercial

Design Standards shall not apply to projects located within the C-3, Commercial Services Zoning District.

- Parking: Pursuant to Article 10, Table 10-2, Required Parking by Use, Warehouse/Light Industrial, Trade Centers shall provide parking at one (1) parking space for each 750 gross square feet of floor area in each unit, but no less than 3 parking spaces per unit. With eight (8) units proposed, a total of 24 parking spaces is required. A total of 24 parking spaces has been proposed therefore parking is compliant. Note that the applicant has proposed 14 of the parking spaces to be interior to the trade center as such the building will be designed to provide fire suppression.

With regard to the loading zone requirements, Section 10.17.1. sets forth the requirements for the number and type of loading zone required based upon the use. This section also states, "A loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the use. The Town Engineer shall determine the sufficiency of loading space but in no case shall the use of such space hinder the free movement of vehicles and pedestrians over a street, sidewalk, parking lot or alley". The applicant has requested that consideration be given to a reduced loading and unloading zone. Based upon the anticipated use and building size, the applicant is requesting a 12' x 30' dedicated loading zone. The applicant anticipates limited product pick-up and delivery with deliveries expected to include UPS and FedEx.

Section 10.92.14.4 of the UDO, Surface Materials, requires a minimum of twenty (20) percent of the surface area of the parking area and drive aisles to be constructed of permeable surface material. The applicant has proposed developing approximately 40% of the exposed surface of the parking area in a permeable surface material.

- Buffering/Landscaping: Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:

- Section 10.92.6.2 of the UDO, Parking and Drive Aisle Setbacks, requires that where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way. Where the proposed parking along the northern boundary is adjacent to Satterfield Landing Road, the applicant has proposed a compliant 10-foot-wide buffer yard with the appropriate number of plantings.

- Section 10.93.3.2 of the UDO, Commercial Transitional Protective Yards, requires increased landscaping to be provided and maintained when non-residential land uses are adjacent to a residential use or residential zoning district. Additionally, Section 10.93.3.3 lists "Trade Center" as a High Impact Use. Section 10.93.3.2.2. states that where a high impact use abuts a residential zoning district, a buffer strip of at least twenty-five (25) feet in width along the entire length of the lot shall be provided. The buffer yard shall consist of three rows of plant material. A compliant 25-foot-wide transitional protective yard has been proposed along the southern property line where this property abuts the R-2, Medium Density Residential Zoning District.

- Section 10.93.3.7, Interior Parking Lot Landscaping and Section 10.93.3.8, Vegetation Preservation/Planting Requirements are not applicable to projects within C-3, Commercial Services District pursuant to Section 10.82, Applicability of Commercial Design Standards.

- Lighting: A lighting plan compliant with the requirements of Article 10.37.1 of the Unified Development Ordinance will be required prior to the issuance any development permits. In addition, a light audit will be required prior to issuance to occupancy permits. Staff is currently reviewing the lighting information submitted with this Special Use application.

- Signage: No signage is being proposed at this time; however, any signage will need to be reviewed and approved prior to installation.

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

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

Stormwater Management: Stormwater management has been reviewed and approved by the Town Engineer with a condition that the roadway swale on the west side of the proposed driveway apron be extended to the western property corner. See all engineering comments in the attached email correspondence dated September 16, 2022.

Fire: The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance. The building will be sprinkler protected and the structure design will meet the appropriate fire ratings as required.

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

ANALYSIS

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

During the Sketch Plan Review for this Special Use/Site Plan application there were questions concerning the types of uses that would be permissible within the proposed units. As the property is located within the C-3, Commercial Services Zoning District, only those uses permitted within this district would be allowed. Furthermore, only uses that meet the intent of the Trade Center use would be permitted. The definition of Trade Center is provided below:

Trade center means a structure containing two or more individual units, primarily devoted to service and wholesale operations and the storage of materials for off-site work.

Reviewing Section 6.6, Table of Permitted Uses and Activities, the following are examples of uses allowed in the C-3 District within the use categories devoted to service and wholesale operations that are representative of the uses that would be permitted, this is not a comprehensive list: Carpet Installation, Fire Safety Equipment Services, Locksmiths, Real Estate Rental Management Facility, Security System Services, Wallpaper Installation, Water Well Drillers Services, Assembly and Packaging of Articles, Canvas, Fabric and Upholstery, Electrical Equipment storage. Note, automobile repair is not permissible in the C-3 District and would not be permitted as part of the proposed "Trade Center" use.

STAFF RECOMMENDATION

Based upon Staff's review of the proposal and conditioned on the Town Engineer's requirement that the roadway swale on the west side of the proposed driveway apron be extended to the western property corner, staff recommends approval of the Special Use/Site Plan Review as presented.

PLANNING BOARD RECOMMENDATION

At their September 20, 2022, meeting the Planning Board voted unanimously to recommend approval of the Special Use Permit/Site Plan Review conditioned upon the Town Engineer's request that the proposed driveway apron be extended to the western property corner.

The applicant has addressed the Town Engineer's request that the driveway apron be extended to

the western property corner in the submittal for Board of Commissioner consideration.

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

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

Mr. Strader, on behalf of the applicant, stated that the project is in conformance with the Town's UDO and LUP and compliant with all local and state permits; he appreciates the Board's consideration."

There being no one else present who wished to speak, Attorney Leidy concluded at 12:04 p.m.

MOTION: Comr. Brinkley made a motion to approve the special use/site plan for the construction of a Trade Center with the five (5) required findings as follows:

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

The motion was seconded by Comr. Sanders which passed 3 – 0 (Mayor Pro Tem Siers and Comr. Renée Cahoon were excused.).

Mayor Pro Tem Siers returned to the meeting.

Update on Beach Nourishment – Moffat & Nichol

- 2022 Project
- Annual Survey
- Master Plan

Town Engineer David Ryan introduced the three Beach Nourishment items and Brian Joyner of Moffat & Nichol. The *Summer 2022 Annual Beach Monitoring Survey Evaluation – Final Report* - was distributed to Board members.

Mr. Joyner discussed the status of Post-Dorian Beach Nourishment Update and the Annual Survey as well as the Beach Nourishment Master Plan Update

Mr. Joyner's presentation slides are attached to and made a part of these minutes as shown in Addendum "G".

Mayor Cahoon questioned when the sand fencing is expected to be installed; Town Engineer Ryan said that Great Lakes had sand fencing under their responsibility and a response was due by the end of this week – sub contractor for Great Lakes who is in Avon right now but will leave there and hopefully come up to this area.

Mayor Pro Tem Siers asked if there had been any discussions with National Park Service officials yet re: their adjoining property at the south end of Nags Head. Mr. Joyner indicated no direct talks yet.

Public Hearing to consider Special Use/Site Plan Review submitted by the Town of Nags Head for the redesign and construction of various Public Works facilities as a result of the Public Services Facilities Master Plan. The properties involved are zoned C-3, Commercial Services and located at 2110 S. Pond Avenue and 2200 S. Lark Avenue

Attorney Leidy introduced the Public Hearing to consider a Special Use/Site Plan Review submitted by the Town for the redesign and construction of various Public Works facilities as a result of the Public Services Facilities Master Plan. The properties involved are zoned C-3, Commercial Services and located at 2110 S Pond Avenue and 2200 S Lark Avenue. Attorney Leidy explained that the Board sits as a quasi-judicial body and must make its decision: 1) based on competent material and substantial evidence - and those presenting must be sworn in 2) based on information presented, and 3) Board members must be recused if there is basis for believing that they would not be able to be an impartial decision maker - to include a commissioner having a fixed opinion not susceptible to change. He verified that Board members had no potential conflict and nothing to disclose at this time. The time was 12:35 a.m.

Sworn in by Town Clerk Carolyn F. Morris were Town Manager Andy Garman, Planning Director Kelly Wyatt, and Town Engineer David Ryan

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

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

"GENERAL INFORMATION

'Applicant: Consultant Oakley Collier on behalf of the Town of Nags Head.

Application Type: Special Use/Site Plan Review.

Purpose/Request: The project consists of the redesign and construction of town public services facilities. These properties are being developed under a common design scheme.

Property Location: 2110 S. Pond Ave. & 2200 and 2208 S. Lark Ave., Nags Head.

Existing Land Use: Existing Public Services Facilities.

Zoning Classification of Property: C-3, Commercial Services Zoning District.

Zoning Classification of Surrounding Properties: Property to the north is located within the Town of Kill Devil Hills and is developed with the KDH Water Plant. Properties to the east and south are zoned C-3, Commercial Services and developed commercially (Coastal Ready Mix, Satterfield Landing Shopping Center, mini-storage). Property to the west is zoned SED-80, Special Environmental District and includes Fresh Pond.

Flood Hazard Zone of Property: Property is located in an X Flood Zone, per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. The proposed first floor of all of the proposed structures is at or above 12 msl and is therefore compliant.

Land Use Plan Map/Policies: The 2022 Comprehensive Plan/Certified CAMA Land Use Plan Future Land Use Map classifies this property as Institutional/Community Services. This proposal is consistent with this land use classification and stated Land Use Policies.

'SPECIFIC INFORMATION

'Applicable Zoning Regulations:

Distance from Fresh Pond	Maximum Permeable Pavement	Maximum Impermeable Surface	Minimum Open Space
0—500 feet	25%	30%	45%
Over 500 feet	25%	45%	30%

- Use Regulations: Section 6.6, Table of Uses and Activities lists “Public Works Facility” as a Special Use within the C-3, Commercial Services District, with supplemental regulations set forth in Section 7.39.2 and included below.

- ***Public Works Facilities.***

Municipal facilities, including public works and water production, distribution and storage facilities are permitted in accordance with [Section 6.6](#), Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

- *Areas used for storage of materials shall be maintained permeable and shall be calculated as permeable lot coverage. These areas shall be clearly delineated on the site plan, and any expansion of such areas shall be considered a site modification for which approval by the Board of*

Commissioners is required.

- *Vehicle maintenance areas shall be permitted, the use of which shall be for the repair and upkeep of municipal vehicles. All maintenance conducted shall be either entirely within an enclosed or covered structure or on a paved surface which is designed to contain on-site all stormwater in accordance with the requirements of [Article 11](#), Part I, Stormwater, Fill, and Runoff Management.*
- *No bulk storage of fuels or oils for sale shall be allowed. For the purpose of this subsection, bulk storage shall be any amount in excess of 200 gallons. However, bulk storage for consumption in municipal vehicles shall be allowed, provided that such storage facilities are designed to equal or exceed the minimum requirements of any applicable federal, state or local agencies. There shall be no fuel or oil storage within 500 feet of the Fresh Pond.*

Staff finds the proposal to be consistent with the Supplemental Regulations noted in Section 7.39.2 of the Unified Development Ordinance.

- **Lot Coverage:** Section 8.6.6.4 of the UDO sets forth allowable lot coverage within the C-3, Commercial Services district as it pertains to the developments distance from the Fresh Pond AEC. This property is not located within the Fresh Pond AEC.

Distance from Fresh Pond	Maximum Permeable Pavement	Maximum Impermeable Surface	Minimum Open Space
0—500 feet	25%	30%	45%
Over 500 feet	25%	45%	30%

Portions of this proposed redevelopment is within 500 ft of the Fresh Pond. Within this area impermeable surfaces cannot exceed 30% of the lot area. Proposed impermeable surfaces in this area are at 29% and therefore compliant.

The remainder of this development is beyond 500 feet from Fresh Pond where impermeable surfaces cannot exceed 45% of the lot area. Proposed impermeable surfaces in this area are 38.7% and therefore compliant.

- **Height:** The maximum allowable building height within the Town is 35 feet; however, pursuant to Section 8.2.1, Dimensional requirements, total height may be increased to 42 feet with the use of an 8:12 roof pitch or greater. As proposed, all structures affiliated with the redesign are well below 35 feet in height and therefore compliant.
- **Architecture Design Standards:** Section 10.82 of the UDO, Applicability, states that Commercial Design Standards shall not apply to projects located within the C-3, Commercial Services Zoning District.
- **Parking:** Pursuant to Article 10, Table 10-2, Required Parking by Use,

Warehouse/Light Industrial, Public Works Facilities shall provide parking at two (2) parking spaces for each three employees, but no less than five spaces plus a minimum of one per oversized vehicles or trucks. With 41 employees a total of 28 parking spaces are required. A total of 50 parking spaces are proposed and therefore compliant. Covered storage is provided for all oversized vehicles.

Section 10.92.14.4 of the UDO, Surface Materials, requires a minimum of twenty (20) percent of the surface area of the parking area and drive aisles to be constructed of permeable surface material. The applicant has provided a sufficient area of permeable materials therefore this requirement has been satisfied.

- Buffering/Landscaping: Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:
 - Section 10.92.6.2 of the UDO, Parking and Drive Aisle Setbacks, requires that where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way. Where proposed parking is shown adjacent to the Lark Avenue right-of-way a compliant 10-foot-wide buffer yard with the appropriate number of plantings has been proposed. Note that there are also several areas where existing vegetation will be preserved.
 - Section 10.93.3.7, Interior Parking Lot Landscaping and Section 10.93.3.8, Vegetation Preservation/Planting Requirements are not applicable to projects within C-3, Commercial Services District pursuant to Section 10.82, Applicability of Commercial Design Standards.
- Lighting: A lighting plan compliant with the requirements of Article 10.37.1 of the Unified Development Ordinance will be required prior to the issuance of any development permits. In addition, a light audit will be required prior to issuance to occupancy permits. Staff are currently reviewing the lighting information submitted with this Special Use application.
- Signage: No signage is being proposed at this time; however, any signage will need to be reviewed and approved prior to installation.

Water and Sewage Disposal: The applicant is currently working with the Dare County Health Department for wastewater approval. The issuance of the Authorization to Construct has been delayed by the preparation of an easement document to cover the multiple septic components being located on multiple properties. This authorization will be required prior to the issuance of any development permits.

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

Stormwater Management: Stormwater management has been reviewed and approved by the Town Engineer.

Fire: The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

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

CAMA: The Major Permit review is in progress and will be required prior to the issuance of the any development permits.

ANALYSIS

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

STAFF RECOMMENDATION

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

PLANNING BOARD RECOMMENDATION

At their September 20, 2022 meeting the Planning Board voted unanimously to recommend approval of the Special Use/Site Plan Review as proposed.

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

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

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 12:42 p.m.

MOTION: Comr. Brinkley made a motion to approve the Special Use/Site Plan for the redesign and construction of various Public Works facilities as a result of the Public Services Facilities Master Plan as presented and with the following required five findings of fact:

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

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

The motion was seconded by Mayor Pro Tem Siers.

Mayor Cahoon expressed his appreciation to staff for all of their work and input on this project.

CONTINUATION OF MOTION: The motion passed 4 – 0 (Comr. Renée Cahoon was excused.).

Public Hearing to consider application for NC Division of Coastal Management (DCM) Planning and Management Grant

Attorney Leidy introduced the Public Hearing to consider an application for a NC Division of Coastal Management (DCM) Planning and Management Grant. The time was 12:42 p.m.

Dep Town Manager/Finance Director Amy Miller summarized the agenda summary sheet which read in part as follows:

“The attached NC Division of Coastal Management Planning & Management Grant Application is for the Town’s Multi-Decadal Beach Nourishment Master Plan – Borrow Area S1 Analysis. The project includes engineering analysis of sedimentation borrow areas to define borrow area sites for the long-term nourishment of the Town’s beaches to protect existing infrastructure and to maintain recreational public access.

“The Public Hearing is part of the grant procedures and the attached application describes the project in detail.”

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

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 12:45 p.m.

MOTION: Mayor Pro Tem Siers made a motion to approve the application for the North Carolina Division of Coastal Management (DCM) Planning and Management Grant as presented. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was excused.).

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

Update from Planning Director

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

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on November 2, 2022.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for September 2022*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, October 4th – Technical Review Committee Meeting
- Wednesday, October 5th – Board of Commissioners Meeting
- Thursday, October 6th, CRS Users Group Meeting
- Friday, October 7th – Movie at Dowdy Park.
- Thursday, October 13th – Board of Adjustment (No items)
- Thursday, October 13th – ETIPP Project Team Meeting.
- Wednesday, October 12th – Committee for Art and Culture Meeting
- Tuesday, October 18th – Planning Board Meeting
- Thursday, October 20th – Internal staff meeting, sand relocation
- Tuesday, October 25th – PARTF AFP Grant Public Meeting
- Thursday, October 27th – VSSS Working Group Meeting

'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, October 18, 2022 and included a review of proposed text amendments to the UDO as it relates to clarifying and strengthening the existing tree removal and preservation regulations. These proposed amendments reflected the guidance provided by the Board of Commissioners at their October 5th meeting. It was also the consensus of the Planning Board to have staff begin researching potential amendments to the Flood Damage Prevention Ordinance as it relates to V Zone Certification requirements for work conducted east of NC 12/1243.

'The Planning Board's next meeting is scheduled for November 15, 2022. At this time, the agenda is expected to include consideration of a Special Use/Site Plan Review submitted by TW's Bait and Tackle for the use of bicycle racks in lieu of required parking, discussion of possible text amendments as it relates to V Zone Certifications, and possible discussion of research and studies to be conducted in light of the recent moratorium on all non-residential development between Danube Street and Hollowell Street, between US 158 and NC12.

'Board of Adjustment – Pending Applications

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

'Additional Updates

- DWMP/Voluntary Septic Subscription Service – The third meeting of the working group was held

Thursday, October 27th at 10am in the Board Room. Planning staff, Planning Board member Megan Lambert, and Commissioner Kevin Brinkley attended this meeting in person. Bob Muller attended this meeting virtually. The working group had previously charged staff with working with the Town Attorney to identify any potential liability issues for the town related to the potential subscription service. For this meeting staff prepared a comparison of the existing services available through the septic health initiative and a potential framework of services offered through a septic system subscription service. This exercise highlighted services that would require additional funding beyond what has currently been allocated, the increasing costs of pump outs, and concerns with how the subscription program would address mid-program home sales, or failure to pay the subscription fee, and the likely need to create an enterprise fund to handle the collection of subscription fees. Staff also updated the working group on information obtained from the Town Attorney concerning the program including cautions that accepting a payment for services may compromise the immunity of the town. Accepting a fee for services may place the town in a perceived contractual duty, which may open the door for litigation from a displeased subscription participant. After discussion among all the members of the working group, it was the consensus that the town does not pursue the voluntary septic subscription service at this time given the concerns. Members felt as though efforts would be better spent improving upon the existing program, putting increased energy and efforts into more community outreach and education, having a more visible role in the community, and participating in activities to help inform citizens of the program. Members brainstormed many wonderful ideas that staff will begin researching and working on. Members of the working group and staff agreed that having an on-going septic health advisory committee, that met quarterly, to discuss the successes and challenges of the program and to provide input as we begin to implement the recommendations of the DWMP would be beneficial. If this is something that the Board of Commissioners is willing to entertain, staff would be prepared to present an updated charge for the committee and perhaps request additional appointments to the committee at the Boards December 7th meeting.

- Estuarine Shoreline Management Plan – Staff met virtually with the consultant, Biohabitats on Thursday, October 25th to review preliminary conceptual design ideas for the three selected sites (1. Harvey Tract/OBVB Site, 2. Soundside Road area of high energy erosion and 3. “High Bank” area of Nags Head Woods Road where road is located, back to the Villas). Next steps are continuing design development of the three sites and a scoping meeting with the Division of Coastal Management which has been requested, but not yet scheduled.
- NC Resilient Coastal Communities Program – Survey work and geotechnical work is now occurring. The well driller has placed a transect of subsurface wells in the proximity of the Juncos Street Beach Access, allowing the ability to collect groundwater data that will be incorporated into hydraulic modeling simulations for siting and sizing or the dune infiltration components. A preliminary design has been prepared and reviewed by the design team. A scoping meeting is being arranged with the various state and federal regulatory agencies to receive feedback on the system design in advance of a formal application submission.
- Electric Vehicle Action Plan – Staff is continuing to work through and follow up on the comments received through the NC Planners List Serve regarding their use of electric vehicles and experiences with them in their communities. Staff will report on any potential grant opportunities.
- ETIPP Project/Program – No new updates currently.
- NC AIA Activate Technical Assistance – This project is now complete; the Residential Energy and Water Conservation Guide is accessible on the Town’s website and staff will advertise it as a resource for the community.

- Whalebone Park: Phase 1 Planning – Staff held a Public Meeting for the PARTF Accessibility for Parks (AFP) grant on Tuesday, October 25th from 5pm – 7pm in the Board Room. On Wednesday, October 26th, a meeting was held with a group of current and former Dare County Schools physical therapists, exceptional children’s teachers, and behavioral specialists regarding Whalebone Park accessibility. The meeting was extremely informative, allowing staff to hear the perspectives of those who work daily with children and teens with special needs. Staff will have a complete submission of the AFP grant ready in advance of November 1st. Staff have been notified that we have received \$112,000 from the OBVB TIG grant to construct an accessible restroom.
- LID Stormwater Demonstration Project –Staff will be working with Access Design to have a sign made similar to that located in the pollinator garden at Dowdy Park.
- Dune Management Cost Share Program – The dune management cost share program application period opened on Saturday, October 1st and we have received/accepted 22 applicants thus far. All 22 of these applicants have applied for sand relocation in their scope of work as well. The sand relocation program opens on November 15th, we will begin accepting applications on or around November 1st.
- 2022 CRS Recertification – The Planning and Development Department was notified that we received a correctness rate of 100% in the annual review of our Elevation Certificates. Special thanks to planning staff members Kelly Brady and Lily Nieberding for their hard work and patience through this process.
- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – We will be showing a movie in the park on Friday, November 4th, at dusk. Event Coordinator Paige Griffin is preparing for the upcoming Holiday Markets. Would like to note that when the application to vend opened on the morning of October 13th, the entire market filled up in less than 20 minutes.

‘Upcoming Town Events that the Committee for Art and Culture have been working on include:

- Holiday Market Dates
Saturday, November 12th & 26th, December 10th (9am – noon) Thursday, December 1st (4pm – 7pm)
- Townwide Holiday Decorating Contest, Committee for Art and Culture will be judging entries on the evening of December 13th.
- 2nd Annual Tree Lighting Ceremony, Saturday, November 26th (5pm – 7pm)
- Flashlight Candy Cane Hunt, Thursday, December 15th (5pm)

‘Upcoming Meetings and Other Dates

- Tuesday, November 1st - Technical Review Committee Meeting
- Wednesday, November 2nd - Board of Commissioners Meeting
- Friday, November 4th – Movie at Dowdy Park
- Friday, November 4th – Planning to participate in Realtor Fest
- Wednesday, November 9th - CRS Users Group Meeting
- Wednesday, November 9th – Committee for Art and Culture Meeting
- Thursday, November 10th – Board of Adjustment (no hearings)
- Saturday, November 12th – Dowdy Park Holiday Market

- Tuesday, November 15th – Planning Board Meeting
- Saturday, November 26th – Dowdy Park Holiday Market
- Saturday, November 26th – 2nd Annual Tree Lighting Ceremony”

Director Wyatt stated that the Volunteer Septic Subscription Service Committee may be requesting a new charge and a different schedule for meetings; she will present this request at an upcoming meeting. Overall, her report was well received by the Board.

Presentation/Discussion of beach concierge services

Code Compliance Officer Chris Trembly summarized the agenda summary sheet which read in part as follows:

“Code Enforcement Officer Chris Trembly will provide the Board of Commissioners with an update on citizen feedback, and code enforcement observations and concerns pertaining to the Beach Concierge Services operating within the town. At this time, staff are requesting discussion and direction on the current regulations, their effectiveness, and any desire to consider revisions or amendments to the codes.

Staff Recommendation

Having witnessed numerous noncompliant scenarios and received several concerns from citizens, staff recommends that the Board of Commissioners review and discuss the current regulations within the Unified Development Ordinance and Code of Ordinances pertaining to Beach Concierge Services’ set-up operations, signage, beach saturation, and storage.”

Mr. Trembly stated that he would prefer "shall" be used in order for more enforcement.

Mayor Cahoon feels the ordinance language needs to be clarified so it’s easier to enforce.

Staff has no specific action to take at this time except to meet with the beach concierge companies to review the issues noted.

Consideration of acceptance of Coastal Villas Subdivision

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

“Quible & Associates, PC on behalf of Nags Head Construction and Development, Inc. has submitted the final plat for Coastal Villas Subdivision (17-lot Major Subdivision) accompanied by an offer of dedication of improvements for review and approval by the Board of Commissioners. Improvements considered for dedication include:

- W. Coastal Way Roadway, constructed to Town standards, confirmed by Town Engineer.
- Mariners Way Waterline Extension, NC DEQ has accepted.
- Fire Hydrants

‘Pursuant to Section 4.24.6.1 Performance Guarantees, upon reaching an agreement with the Town to allow for final plat approval prior to the completion of required improvements, the subdivider shall provide a performance guarantee in the amount of the reasonably estimated cost of completion. The developer

has submitted a performance bond in the form of a cashier's check made payable to the Town of Nags Head guaranteeing that the following improvements will be completed:

- Vegetative ground cover established for stabilization purposes (\$25,488)
- Streetlights, installed by Dominion (\$23,577)

'The Preliminary Plat for Coastal Villas was approved by the Board of Commissioners at their August 5, 2020 meeting. Section 4.24.2.2 of the UDO outlines procedures for final plat approval. Section 4.24.2.2.1 of the UDO states, "The UDO Administrator shall determine whether or not the final plat substantially agrees with the approved preliminary plat. If the final plat substantially agrees with the preliminary plat, the UDO Administrator shall approve the final plat after the Board of Commissioners has accepted the publicly dedicated improvements or approved a performance bond.

'Staff Recommendation:

The UDO Administrator finds that the final plat substantially agrees with the approved preliminary plat and as such recommends that the Board accept the improvements as made and identified on the as-built titled "As- Built Survey for Coastal Villas" dated 5/27/22 and prepared by Quible & Associates, PC and further, that W. Coastal Way be officially accepted into the Town's street system and included on the Town's Powell Bill Map."

MOTION: Comr. Brinkley made a motion to adopt the resolution accepting for dedication the improvements made to the Coastal Villas Subdivision as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.).

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

"WHEREAS, The Preliminary Plat for the Coastal Villas Subdivision (17-lot Major Subdivision) was approved by the Board of Commissioners at their August 5, 2020 meeting; AND

'WHEREAS, In conjunction with the development of the Coastal Villas Subdivision, the property developer (Nags Head Construction and Development, Inc.), has submitted the final plat accompanied by an offer of dedication of improvements; AND

'WHEREAS, Improvements considered for dedication include:

- W. Coastal Way Roadway (constructed to Town standards, confirmed by Town Engineer); Mariners Way Waterline Extension and Fire Hydrants (accepted by NC DEQ); AND

'WHEREAS, The UDO Administrator finds that the final plat substantially agrees with the approved preliminary plat and recommends acceptance of the improvements as made and identified on the as-built as prepared by Quible & Associates, PC; AND

'WHEREAS, The developer has submitted a performance bond in the form of a cashier's check made payable to the Town of Nags Head guaranteeing that the following improvements will be completed:

- Vegetative ground cover established for stabilization purposes (\$25,488)
- Streetlights, installed by Dominion (\$23,577); AND

'WHEREAS, Further, that W. Coastal Way be officially accepted into the Town's street system and included on the Town's Powell Bill Map.

'NOW, THEREFORE BE IT RESOLVED That the Board of Commissioners of the Town of Nags Head accepts the Coastal Villas Subdivision improvements as made and identified on the as-built drawing titled "As-Built

Survey for Coastal Villas" dated "5/27/22" and that W Coastal Way be officially accepted into the Town's street system to include incorporation onto the Town's Powell Bill Map."

NEW BUSINESS

Committee Reports

Mayor Pro Tem Siers reported that the Dare County Tourism Board provided grant funds to the Town for the Whalebone Park restrooms; he noted the information provided by Planning Director Wyatt in her monthly report.

Comr. Brinkley had no current information for the Jennette's Pier Advisory Committee; he noted the information provided by Planning Director Wyatt in her monthly report concerning the update on the Voluntary Septic Service Subscription (VSSS) Committee.

Comr. Sanders reported on the information provided by Planning Director Wyatt in her monthly report on the Estuarine Shoreline Management Plan; meetings are being scheduled with the consultant, Biohabitats, to review conceptual design of the three selected sites.

Mayor Cahoon attended the Governor's Offshore Wind Energy Task Force meeting on November 1st where there was a discussion with some people from England who deal with companies that service the units.

Consideration of request from Dominion Energy for easement on Old Nags Head Woods Road

Samuel Torpy, right-of-way specialist with Pike Engineering, contracted with Dominion Energy, was present.

The agenda summary sheet read in part as follows:

"At the May 4, 2022 Board of Commissioners meeting, the Board approved the easement request from Dominion Energy to install underground utilities along Old Nags Head Woods Road [2042 along the Town right-of-way to 2300 ONHW Road]. This was part of the Dominion's Strategic Underground Program in which Pike Engineering provides outage-prone customers increased reliability.

'The Nature Conservancy did not approve their request for easement so this item is back for Board review/approval of an easement described as follows:

Requested easement starts at the corner of the 2042 Old Nags Head Woods Road property bordering the Nature Conservancy parcel in the Town right-of-way; then it proceeds along the right side of the road way making a crossing to the left side once the easement reaches the parcel owned by the Town of Nags Head which was signed off on in May.

'At the November 2nd Board of Commissioners meeting, on behalf of Dominion Energy, Pike Engineering Right-of-Way Specialist, Samuel Torpy, will be present to answer any questions.

'The right-of-way agreement is attached for review."

Comr. Sanders confirmed with Mr. Torpy that a date has not been scheduled yet due to supply issues.

MOTION: Comr. Brinkley made a motion to approve the easement request by Dominion Energy/Pike Engineering for Old Nags Head Woods Road as presented. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Renée Cahoon was excused.).

Old Nags Head Cove Traffic Control Measure Request

Town Engineer David Ryan summarized his memo which read in part as follows:

“On May 4, 2022, the Town of Nags Head received an e-mail request for the Old Nags Head Cove Homeowner’s Association with several requests pertaining to pedestrian sidewalk connectivity, speed limit reduction and the installation of 3-way stop signs at the intersections of S. Cobia Way and Fin Lane and W. Sandpiper Terrace and S. Sandpiper Court. The stop sign installation request was based upon concern related to observed vehicular speeding along the S. Cobia Way and W. Sandpiper Terrace.

‘Following the date of this request, the Board of Commissioners approved a reduction of the posted speed limits within west side neighborhoods to 20 mph. The Board of Commissioners also authorized the installation of a 5’ wide concrete sidewalk along W. Old Cove Rd. and along S. Cobia Way through to W. Sandpiper Terrace to the intersection of S. Pamlico Way.

‘The Town Police Department subsequently deployed the mobile radar trailer w/ digital readout display at two different time periods along S. Cobia Way and W. Sandpiper Terrace to collect localized traffic data. The trailer was placed near the intersection of S. Sandpiper Ct./W. Sandpiper Terrace between the dates of July 19, 2022 and August 25, 2022 and placed near the intersection of W. Fin Lane and S. Cobia Way between April 22, 2022 to May 2, 2022. It should be noted active construction was ongoing during a portion of the time the radar trailer was placed along S. Cobia Way as part of the Old Nags Head Cove watermain replacement project. The placement of the radar trailer along W. Sandpiper Terrace followed completion of watermain construction along W. Sandpiper Terrace.

‘The collected data was analyzed utilizing the WANCO Traffic Analyzer V 1.3.2. The metrics for analyzing the data is based upon the 85th percentile speed which is the speed at or below which 85 percent of the drivers travel on a road segment. Motorists traveling above the 85th percentile speed are considered to be exceeding the safe and reasonable speed for road and traffic conditions. The W. Sandpiper Terrace radar board location for the 40-day time period indicated an 85th percentile speed of 25.5 mph.

‘Conclusions and Recommendations

Speeding on residential streets is a common complaint. It is often believed that stop signs, traffic signals and speed bumps will control vehicle speeds. While stop signs and traffic signals are important control devices, they should not be used to control vehicle speeds. The purpose of stop signs and traffic signals is to assign right of way at intersections. Overuse of stop signs and traffic signals reduce both their effectiveness and driver compliance, (*North Carolina Department of Transportation- Speed Limits, published August 2018*). Studies have also shown that more stop signs can have the opposite effect to slow traffic as drivers will go faster between signs to make up for “lost” time.

‘Speed limits are traditionally based upon the 85th percentile speed, meaning that 85% of the vehicles traveling along the street are traveling at or below that speed at a given point under free-flow conditions. The 85th percentile speed recorded on S. Cobia Way location was 25.9 mph using the dynamic speed board data, where the previously posted speed limit was 25 mph. At the secondary location the radar speed board registered an 85th percentile speed of 25.5 mph, where the posted speed limit is currently 20 mph. In both instances, the recorded speeds would typically be deemed acceptable for this classification of street. Drivers will tend to travel at speeds that they are most comfortable as determined by the conditions

of the street, meaning that if the intent is for drivers to travel at a slower speed, a traffic calming device would be recommended to impact the tendencies of the drivers.

'The town has recently employed several different calming devices at several key locations to increase speed limit compliance. Several radar speed limit signs have been employed In the Whalebone Junction area of S. Virginia Dare Trail as a traffic calming measure. Radar speed limit signs and speed cushions have recently been installed along the east/west portion of W. Soundside Rd. Both have proven effective controls in speed reduction.

'The radar signs not only provide a digital readout for motorists to track their speed in relation to the posted speed limit, but also provides a mechanism to collect traffic counts and speed related information. This cloud-based system permits the signs to operate in stealth mode, where the digital readout is not displayed but the vehicular data is collected. A comparative analysis can be performed to monitor driver speeds with and without digital display.

'Utilizing this capability, a 3-day comparative analysis was recently conducted at the Whalebone Junction radar sign locations to measure the effectiveness of the digital readout in comparison to the stealth mode operation. The data indicated varying degrees of reduction of speed limit compliance ranging between 10% to 60% in comparison to the digital readout display option. An example of this comparative data collected on Thursday October 13, 2022, indicated 18% of the recorded traffic travelling southbound on S. Virginia Dare Trail was in exceedance of the speed limit in comparison to the 30% exceedance level of the recorded southbound traffic with the digital display turned off. This abbreviated analysis supports the effectiveness of the radar speed limit signs as a speed management reduction tool.

'Staff recommends the placement of (4) radar speed limit signs to be placed within the Old Nags Head Cove subdivision to cover the northbound/southbound traffic along S. Cobia Way and the eastbound/westbound traffic along W. Sandpiper Terrace. The proposed signs will be affixed to a 4"x 4" wooden post and can be relocated, as needed, within the same neighborhood or other neighborhoods as either a temporary or permanent placement. It would be necessary for the town to purchase the additional signage which is valued at approximately \$2800 per sign.

'Staff is seeking Board of Commissioners guidance on the preference in proceeding with the submitted request."

David Carroll of the Old Nags Head Cove Home Owners Association – he feels that speed controls are needed in the neighborhood.

It was Board consensus to agree with staff's recommendation to include the placement of four (4) radar speed limit signs within the Old Nags Head Cove Subdivision to cover northbound/southbound traffic along S Cobia Way and the eastbound/westbound traffic along W Sandpiper Terrace.

MOTION: Mayor Pro Tem Siers made a motion to approve the budget amendment for the speed signage as presented. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was excused.).

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman - Discussion of Rogallo Museum and Jockey's Ridge State Park

Mayor Pro Tem Siers felt more facts were needed from both groups – from those in favor and those against – the Rogallo Museum being constructed in Jockey's Ridge State Park.

Comr. Brinkley apologized for any reputation bashing in the Town's letter to the State – he is not against the Rogallo Foundation as he agrees it is a story that needs to be told.

Comr. Sanders also emphasized his respect for the Rogallo Foundation; he would prefer to table this issue and obtain more information/clarity.

MOTION: Comr. Brinkley made a motion to table consideration of the Rogallo Museum/Jockey's Ridge State Park resolution until the December 7th Board of Commissioners meeting. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.).

Town Manager Garman - Discussion of Short-Term Rental Registration/Business License

Town Manager Garman presented a verbal update on recent actions concerning short-term rental registrations for Board discussion. Due to a recent court case in the City of Wilmington which resulted in the end of short-term rental registrations, staff will be re-evaluating its ordinance – for submittal to the Planning Board followed by presentation to the Board. It was Board consensus to agree with Town Manager Garman to move forward with this process.

Town Manager Garman - Update on Community Care Clinic lease

Town Manager Garman provided an update on the Community Care Clinic lease. He explained that the requirement is to advertise the lease modification for 30 days as it is being proposed to be extended until 2030. A resolution to amend the lease will be presented for consideration at an upcoming meeting.

MAYOR'S AGENDA

Mayor Cahoon - Consideration of resolution in support of Dare County Elections Staff and Workers

A resolution was presented in support of the Dare County Elections Board, staff, and workers.

MOTION: Comr. Sanders made a motion to adopt the resolution in support of Dare County Elections staff and workers as presented. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was excused.).

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

"WHEREAS, November 7, 2022, has been declared "Election Hero Day," which is a 501(c)(3) nonprofit program that was created by the Civic Responsibility Project in an effort to recognize the immense importance and work of election administration staff members and poll workers across the nation; and

'WHEREAS, the Dare County Board of Elections is governed by a five-member board appointed by the North Carolina State Board of Elections and has the responsibility for safeguarding the will of the people, protecting democracy, and establishing fairness and equity for all in the process of self-governance; and

'WHEREAS, it is the mission of the Dare County Board of Elections to provide open, honest and professionally managed election services to the community, and the Dare County Board of Elections ensures that these elections are free, fair, accurate, convenient and accessible to all voters in Dare County; and

'WHEREAS, Dare County recognizes election workers as being all Dare County staff members, appointees and support personnel who assist with an election's preparation, execution and reporting process; and

'WHEREAS, there are approximately 100 precinct workers from throughout Dare County who work diligently to support local elections staff at the county's three early voting locations, as well as all 16 precincts on Election Day, to help administer a smooth voting process for the citizens of Dare County.

'NOW, THEREFORE, BE IT RESOLVED, as the Board of Commissioners of Dare County, North Carolina, has declared November 7, 2022 as "Election Hero Day", we, the Board of Commissioners of the Town of Nags Head do hereby express our sincere appreciation and support for the Dare County Board of Elections, Dare County Elections department staff members, poll workers and precinct workers."

CLOSED SESSION

MOTION: Mayor Pro Tem Siers made a motion to enter Closed Session pursuant to GS 143-318.11(a)(1) to consider the 2022 Earl Murray Jr Employee of the Year honorarium and to consider, pursuant to GS 143-318.11(a)(3) several attorney/client matters to include the Cherry, Inc. litigation. The time was 1:58 p.m. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was excused.).

OPEN SESSION

The Board re-entered Open Session at 2:30 p.m. Attorney Leidy reported that during Closed Session the Board did discuss the items it noted before entering Closed Session.

ADJOURNMENT

MOTION: Mayor Pro Tem Siers made a motion to recess to a Board Retreat at the Villas Clubhouse on Villa Dunes Drive on Friday, November 18th at 8:30 a.m. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was excused.). The time was 2:31 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: December 7, 2022

Mayor: _____
Benjamin Cahoon