AGENDA
Town of Nags Head Planning Board
Tuesday, May 19th, 2020; 9:00 a.m.

This Meeting will be held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public will be able to attend the meeting using the ZOOM platform or app on their computer or smartphone, or by calling in using a phone.

Join from a PC, Mac, iPad, iPhone or Android device:
Please click the link below to join the webinar:
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Should you have questions about using this platform, or have technical difficulties during the course of the meeting, please email planning@nagsheadnc.gov or call 252-441-7016

A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

D. Approval Of Minutes
April 21, 2020 Planning Board Meeting

Documents:

APRIL 21 2020 DRAFT MINUTES.PDF

E. Action Items

1. Reconsideration Of A Text Amendment To The
Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities.

Documents:

MEMO TO PB RE OUTDOOR SALES AMENDMENT FOR TICKETS_5.15.2020.PDF

2. Reconsideration Of A Text Amendment To The
   Unified Development Ordinance pertaining to temporary uses or temporary alteration of uses related to declared emergencies.

   Documents:

   MEMO TO PB RE TEMPORARY USE PERMIT_5.15.2020.PDF

F. Report On Board Of Commissioners Actions
   May 6, 2020 BOC Meeting

   Documents:

   MAY 6 2020 BOC ACTIONS.PDF

G. Town Updates - As Requested

H. Discussion Items

1. Continued Discussion Of Legacy Establishments/Structures

   Documents:

   MEMO WITH ATTACH TO PB RE LEGACY ESTABLISHMENTS AND STRUCTURES_3.13.2020.PDF

2. Continued Discussion Of Residential Stormwater Regulations

   Documents:

   MEMO WITH ATTACH TO PB RE STORMWATER_3.13.2020.PDF

3. Continued Discussion Of FY20-21 Planning & Development Department
   and Septic Health FY2020-2021 Strategic Work Plan.

   Documents:

   MEMO FY20-21 PND STRATEGIC WORK PLAN_5-15-2020.PDF

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment

Town of Nags Head
Planning Board
April 21, 2020

The Planning Board of the Town of Nags Head met on Tuesday April 21, 2020. Due to Covid-19 restrictions, this meeting was held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public were invited to attend the meeting using the ZOOM platform or app, or by calling in using a phone.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Kristi Wright, Molly Harrison, Meade Gwinn, Megan Lambert, Gary Ferguson, David Elder

Members Absent

None

Others Present

Via Zoom: Michael Zehner, Kelly Wyatt, Andy Garman, Holly White, Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the April 1, 2020 meeting. David Elder moved to approve as presented, Megan Lambert seconded, and the motion passed unanimously.

Action Items

Consideration of a Text Amendment to the Unified Development Ordinance submitted by Megan Dixon and Kim Cowen to add the use "Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

Deputy Planning Director Kelly Wyatt presented a request for a text amendment to the Unified Development Ordinance, submitted by Megan Dixon and Kim Cowen, 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 both with Zoning Staff and the Senior Building Inspector 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.

Planning staff reviewed the request and found 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. Staff would recommend the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

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

Staff recommends approval of the proposed use as presented, with the changes noted. Ms. Wyatt stated that she as well as the applicants, Megan Dixon and Kim Cowen were available to answer any questions for the Board.

Mr. Gwinn noted that he thought it was a great idea. Ms. Harrison agreed.

The applicants confirmed for Ms. Wright that they were looking at hours between Nine AM and Three PM. The applicants also confirmed that they specifically serve the home school community. Their service supplements and complements the home school program.

There being no further discussion, David Elder moved to approve the proposed amendment with the noted changes. Megan Lambert seconded the motion and the motion carried unanimously.

Due to technical difficulties, the Board agreed to move forward in the agenda to give the Applicant for the second Action Item time to log-off and rejoin the on-line meeting.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the March 4, 2020 and April 15, 2020 Board of Commissioner Meetings. Of note were a presentation on Dowdy Park from Kelly Wyatt reviewing the 2019 season and plans for 2020 season; a presentation from Lee Nettles, OB Visitor's Bureau about the Soundside Event Site; Consent Agenda: Request for Public Hearings regarding Outdoor Stands and Correcting Errors on the UDO & Amendments to Floodplain Ordinance; a report from Mr. Zehner regarding permitting Status & trends; Adoption of an Electronic Meeting Policy; and a Grant Application for Improvements to the Huron Beach Access

Action Items (Continued)

Reconsideration of a Revised Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the

intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements.

Mr. Zehner explained that the (Planning) Board first reviewed this proposal in December and it was sent to the Board of Commissioners with a favorable recommendation. The BOC reviewed this at their January 8th meeting. At that meeting there were numerous public comments made by residents in the Southridge neighborhood with concerns about the access through the subdivision into the new subdivision, which consists of 17 lots.

The Commissioners tabled action until their March meeting, which has since been continued until their May meeting. The Commissioners asked Staff to facilitate a discussion between the developer and owners of the properties on Fourth Street a public paper street to the south of the proposed subdivision. Staff met with the parties several times and had a joint meeting with the parties to discuss reorienting the development. The result of those conversations is a revised plat which Mr. Zehner shared with the Board. Because of the nature of the revisions, Staff felt that it needed to come back to the (Planning) Board for review. The revised plat proposes a new street with access directly from US 158, eliminating the street/vehicular connection to Sea Bass Court) and extends the proposed street to allow for connectivity to the existing Fourth Street right-of-way. The developer is not proposing to make improvements to Fourth Street as part of this proposal however the plat does provide for a cul-de-sac to be developed where the proposed new street terminates, with allowances for the cul-de-sac to be removed if the existing Fourth Street right-of-way to the south is improved.

For additional consideration, Staff was contacted by a property owner along Sea Bass Court requesting that consideration be given to landscape screening of the proposed multi-use path extension through the Mariners Way paper right-of-way, if not also locating the path more central within the right-of-way. Staff believes this is reasonable, and would request consideration to this change, with details for this section of path and any landscaping to be provided in the required construction drawings.

Mr. Zehner noted that he had received a few questions from the Board. The first one had to do with NC DOT. The applicant indicated and provided documentation that they had provided the plat to the appropriate office for some preliminary comments, but they have not yet heard back. The applicant is fully aware of NC DOT permitting and approval requirements and would expect to submit for those approvals following the approval of the preliminary plat and prior to any land development activities.

They would not release construction drawings until they had those approvals from DOT. In concept, the proposed intersection and how it enters US158 would ultimately be subject to review by NC DOT. It is entirely possible that there would need to be some redesign of this that may or may not require this to come back in some form, prior to final approval.

There have been at least two landscape enhancement projects within the NC DOT right of way, one in the 90s and then again in 2000-2003. There was a question as to whether there were any proposed landscape improvements planned within the area along US 158 that would be disturbed by the project and there were none.

Finally, there was a question about the ability to require an undisturbed buffer that are in place in some areas of town where there are residential subdivisions that back up or front along US 158. Mr. Zehner noted that is a specific requirement in the R3 district however this property is zoned R2.

Staff is of the opinion that the submitted and now revised Preliminary Plat complies with all applicable requirements and that the applicant has addressed all issued comments. The applicant would like to name the new right of way Coastal Breeze Way. Given that 4th Street is an unimproved paper public street, Staff may need to coordinate with those property owners it it's improved in the future.

Mr. Zehner stated that he, as well as Cathleen Saunders, on behalf of the applicants, was available to answer questions for the Board.

Cathleen Saunders, Professional Engineer with Quible and Associates, addressed the Board. Ms. Saunders noted that the water is very similar to what the Board had seen before. They still have a loop system and will be modeling all of that for public water supply and will be submitting for a permit. On-site septic will be used for the individual lots and they have done a preliminary evaluation for all of the on-site septic systems throughout the subdivision. Ms. Saunders also noted that Stormwater had previously been discussed, and they have accounted for the Town's and the State's Stormwater Requirement which is an inch and a half; they actually have two and half inches of storage throughout the site.

Mr. Saunders confirmed for Chair Vaughan that what was originally presented a tech review had a connection to the bypass but what was submitted and approved by the Board in December did not have the cut into the bypass. During the TRC meeting there was a recommendation to connect through Mariner's Way so that future residents would have access to go out to a stoplight rather than taking a left onto Croatan Highway. That is what they submitted and got approved by the Planning Board. However, when they went in front of the Commissioners, several Southridge residents expressed concerns so that is what brought them back to this original plan.

Mr. Zehner confirmed that Staff raised questions during TRC about whether having the access on US 158 was an ideal condition and how NC DOT would ultimately view that. They also discussed the possibility of a thru connection from US 158 to unimproved Mariner's Way but that was ultimately not pursued perhaps because it would have resulted in a reduction of the number of available lots. Mr. Zehner noted that the current proposal complies, and staff cannot dictate an alternative, provided that NC DOT gives final approval.

Mr. Ferguson noted that Southridge subdivision had a myriad of pre-platted lots that were platted back in the 30's, 40's and 50's. Mr. Ferguson asked if there were any platted lots underlying this subdivision? Mr. Zehner stated that he was unaware of any and if there were at some point they may have been recombined.

Ms. Saunders confirmed that based on their rough research for the boundary survey they don't have any documentation of previously platted lots. Ms. Saunders stated she was not familiar with the history of the parcel other than at one point it was being looked at to be rezoned commercial, but it stayed residential.

Mr. Zehner confirmed for Ms. Wright that the proposal does comply with the Subdivision Ordinance. There are multiple ways to do this and Staff is appreciative of all the parties working together to come up with a solution that seems to be consistent with the expectations and direction that they heard from the Board of Commissioners. It allows for those lots along Fourth Street to have a future connection and perhaps allows for a thru street looping back to 158 so it's a good outcome.

Ms. Lambert noted that when this was presented a lot of residents were really unhappy then at the Board of Commissioners meeting the applicants were really encouraged to work with the affected parties and it is encouraging to see that they did just that; they made it work.

Mr. Zehner confirmed for Chair Vaughan that there is no formal agreement between the parties. They discussed some initial designs and it was Staff's opinion that the new road had to extend all the way to the common property line to meet the subdivision requirements.

Mr. Zehner confirmed for Chair Vaughan that it was possible that they may end up with two curb cuts between Soundside Road and the Post Office. It will depend on what the Town allows, if and when Fourth Street is improved and also what NC DOT will allow.

Chair Vaughan expressed concern over the proposed curb cut onto the bypass for Coastal Villas and believes it to be a safety issue especially when there is a possibility that the Town might end up with two curb cuts so close to each other. There are already safety issues with cars coming out from Soundside Road. Chair Vaughn feels that what was presented to them in December was the safer option and stated there were minimal concerns since it is a small subdivision with only 17 lots.

Mr. Zehner stated that he did not feel that this was enough basis for denial of the proposed plat as it does comply with the ordinance requirements.

Mr. Zehner confirmed for Ms. Harrison that ultimately it would be up to NC DOT to issue any approvals or permits for those curb cuts and what type of restrictions they impose.

Mr. Zehner explained for Ms. Wright and the Board that the fact that the parties have not come to an agreement yet has no bearing on the application approval process.

Mr. Ferguson stated that he was still concerned about the history of this parcel and how it came about, especially since it is less than 10 acres. Mr. Zehner stated that he does not know that it would ultimately have any bearing on the subdivision, but Staff can certainly investigate.

Chair Vaughan reiterated her concerns related to the curb cut being so close to Soundside Road where there are already existing safety issues, noting she would have preferred access from Mariner's Way. Ms. Wright suggested, and Mr. Elder agreed, that the safety concerns be included with any Planning Board recommendation.

After some further discussion, Chair Vaughan moved to recommend approval of the Preliminary Plat to include the Board's concerns related to safety due to the potential for possibly two curb cuts on 158 and noting that they preferred the plat they approved in December. Molly Harrison seconded and the motion carried unanimously.

Adjournment

Due to ongoing technical difficulties with the online platform, a motion to table the remaining items and adjourn the meeting was made by David Elder. The time was 10:39 AM.

Respectfully submitted,

Lily Campos Nieberding

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: May 15, 2020

Subject: Reconsideration of a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

OVERVIEW

The proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) is seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2). Initially, as discussed with the Planning Board on January 21, 2020, the proposal sought to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities. Mrs. Creef had explained to the Board that a vendor had approached the Outlets about the idea of having a kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Mrs. Creef indicated that there would be a preference to allow two outdoor stands (where the regulations only allow for one) and confirmed for the Board that the plan was to locate the kiosk in the terrace area.

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

The Board of Commissioners held a public hearing and considered the proposed amendment at their meeting on May 6, 2020. Ultimately, the Board voted unanimously to table consideration and refer the amendment back to the Planning Board for review and recommendation, requesting that the Planning Board consider the issues raised by the Board. The following excerpts are from the draft minutes of the Board of Commissioners' meeting:

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

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND

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

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

Beyond comments made by the Commissioners concerning the necessity of the service proposed and the proposal to allow up to two outdoor stands on a property, concerns raised with respect to location, parking, and signage are relevant under current regulations. Currently, outdoor stands are 1) allowed to be located on a site in compliance with minimum district yard regulations for principal use structures, 2) are allowed to be located on a site with fifty (50) or more existing parking spaces without providing additional parking spaces, or provide a minimum of three (3) additional parking spaces for sites with less than fifty (50) parking spaces, and 3) install a temporary sign with an area up to fifteen (15) square feet.

POLICY CONSIDERATIONS

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

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

PLANNING BOARD RECOMMENDATION

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

STAFF RECOMMENDATION

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

> *Outdoor stand means an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice, and fudge occurs from a cart or structure.*

Staff's previous recommendations have been incorporated into the attached adoption ordinance and markup of Section 7.76, highlighted to differentiate from the applicant's proposal.

Based upon feedback from the Board of Commissioners, Staff would recommend that the Planning Board consider whether additional changes to the standards contained in Section 7.76, or limitations on signage, are warranted, especially in instances where two stands may be located on a site. Options to consider may include:

- 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;
- 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.

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 mater 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.

Attachments:

1. Zoning Amendment Application;
2. Proposed Ordinance; and
3. Markup of Section 7.76, Outdoor Stands, Accessory to Shopping Centers & Group Development

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head

Mailing address 7100 South Croatan Hwy Nags Head, NC 27959

Explanation of request

- [x] Zoning Ordinance - Section(s) _____
  Attach amendment in ordinance form.
- [ ] Zoning Map
  Attach copy of current Zoning Map with affected property outlined in red.
  Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

Request to allow reservation kiosks for on-site and off-site recreational activities as permitted use within retail shopping centers.

Reason for request

To enhance property use and customer shopping experience.

Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head
Applicant

12/10/19
Date

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO THE REGULATION OF OUTDOOR STANDS, ACCESSORY TO SHOPPING CENTERS & GROUP DEVELOPMENT

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, an owner of the property within the Town of nags Head proposed the amendment of the Unified Development Ordinance to alter regulations for outdoor stands, accessory to shopping centers and group development; and

WHEREAS, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Unified Development Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipsis ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Section 7.76.1 ~~and~~, 7.76.2, 7.76.3, and 7.76.4** be amended as follows:

7.76.1 The principle sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice, ~~and~~ fudge, and reservations or ticket sales.

7.76.2 ~~Only one~~ Two outdoor stands shall be allowed per site, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. The stands shall not be required to be a permanent structure and may, with the exception of stands for reservations or ticket sales, be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice, ~~and~~ fudge, and reservations or ticket sales stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce and reservations or ticket sales stands shall be temporary and may be operated for a period of time not to exceed 180 days annually~~.~~; the ~~The~~ dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

PART II. That the definition of **Outdoor Stand, as contained in Section A.4, Definitions, of Appendix A, Definitions, of the UDO,** be amended as follows:

Outdoor stand means an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice, ~~and~~ fudge, or reservations or ticket sales occurs from a cart or structure.

ARTICLE IV. Severability.
All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect on the adopted effective date of the Unified Development Ordinance.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST: _____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____ AYES ____ NAYS

SECTION 7.76 OUTDOOR STANDS, ACCESSORY TO SHOPPING CENTERS & GROUP DEVELOPMENT.

Outdoor stands, accessory to shopping centers and group development, 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:

7.76.1. The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice, ~~and~~ fudge and reservations or ticket sales. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.

7.76.2. ~~Only one~~ Two outdoor stands shall be allowed per site, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. The stands shall not be required to be a permanent structure and may, with the exception of stands for reservations or ticket sales, be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice, ~~and~~ fudge, and reservations or ticket sales stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce and reservations or ticket sales stands shall be temporary and may be operated for a period of time not to exceed 180 days annually~~.~~; the ~~The~~ dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

7.76.5. All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

7.76.6. When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

7.76.7. When the regulations contained in the subsection are in conflict with the general regulations of Town Code Section 12 Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

cc: Mayor and Board of Commissioners

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: May 15, 2020

Subject: Consideration of a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

OVERVIEW AND BACKGROUND

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.

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.

STAFF RECOMMENDATION

Staff intends to review the provisions in more detail with the Board at their meeting on May 19, 2020. Staff is scheduled to present the proposed amendments to the Board of Commissioners or May 20, 2020, and if the Planning Board has issued a recommendation, request that the Board of Commissioners consider the scheduling of a public hearing for June 3, 2020. Planning Staff recommends adoption of the amendments as proposed, but welcomes and will take into consideration the Planning Board's questions and feedback.

With regard to the Planning Board and 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 mater 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.

Attachments:

1. Proposed Text Amendment Ordinance;
2. Email from Dan Lewis, President, Outer Banks Restaurant Association; and
3. American Planning Association blog post *7 Ways to Respond to Regulation Rollbacks*

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO TEMPORARY USE PERMITS DURING DECLARED EMERGENCIES

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, pursuant to applicable provisions of Chapter 14, Emergency Management, of the Nags Head Town Code, and N.C.G.S. § 166A, the Town, through the Mayor, has the authority to declare the existence of state of emergency; and

WHEREAS, the Board of Commissioners find that it is necessary to enact provisions allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies; and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes policies that seek to ensure that the Town is a disaster resilient community that can survive, recover from, and thrive after a disaster event; and

WHEREAS, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Unified Development Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (<u>underline</u>) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipsis ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Section A.4, Definitions, of Appendix A, Definitions, of the UDO**, be amended by adding the following term and definition in the appropriate alphabetical order:

Temporary use permit means a permit issued by the Town Manager and UDO Administrator that allows for reasonable accommodations in zoning regulations for the temporary use or temporary modification of use of property.

PART II. That the definition of **Site Plan, and specifically Site Plan, Minor, as contained in Section A.4, Definitions, of Appendix A, Definitions, of the UDO,** be amended as follows:

Site plan means a plan provided that reflects existing and proposed conditions on a site that is intended for construction. This may include but is not limited to topography, structures or additions, grading, drainage, erosion control measures, trees to be saved or planted to comply with the applicable standards of this UDO as well as other requirements of the Town Code of Ordinances.

(1) ***Site plan, major*** means all site plans not meeting the requirements for a minor site plan.

(2) ***Site plan, minor*** includes the following: increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development, and/or any temporary changes to sites as part of activities eligible for and subject to the issuance of a Temporary Use Permit.

PART III. That **Section 3.8.6., Binding Effect, as contained in Article 3., Legislative/Quasi-Judicial Procedures, Part III., Quasi-Judicial Procedures, Section 3.8, Conditional Use Permits, of the UDO,** be amended as follows:

3.8.6. Binding Effect.
Any conditional use permit shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Commissioners. Uses subject to a conditional use permit and the conditions thereof may be temporarily modified pursuant to Section 4.11.5. and Section 6.4.6. in a manner that would not be in compliance with the issued conditional use permit; such temporary modification shall not constitute a modification or change of the conditional use permit pursuant to Section 3.8.8., Change in Conditional Use Permit.

PART IV. That **Section 4.4., Applications Reviewed by Staff, as contained in Article 4., Development Review Process, Part II., Development Review Process, of the UDO,** be amended as follows:

SECTION 4.4 APPLICATIONS REVIEWED BY STAFF

Administrative approval includes the following types of development:

- Minor Site Plans (increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development, and/or any temporary changes to sites as part of activities eligible for and subject to the issuance of a Temporary Use Permit).

- Change of use applications not involving establishment of a new conditional use.

- Administrative Adjustments (see Section 4.14).

- Temporary Use Permits (see Section 4.11.5).

- Minor Subdivisions.

- Major Subdivision Final Plats.

The UDO Administrator has the authority to determine when projects meeting the above requirements shall require Major Site Plan review due to other project activities or unique circumstances; the UDO Administrator shall make such a determination in writing.

PART V. That **Section 4.9., Purpose and Intent, as contained in Article 4., Development Review Process, Part III., Development Permitting Requirements, of the UDO,** be amended by adding a thirteenth bullet to the bulleted list, as follows:

- Temporary uses or temporary modification of uses.

PART VI. That **Section 4.11., Permit Types, as contained in Article 4., Development Review Process, Part III., Development Permitting Requirements, of the UDO,** be amended by adding Section 4.11.5., as follows:

4.11.5. Temporary Use Permit.
In the event of an emergency declared by the Mayor pursuant to Chapter 14, Emergency Management , of the Nags Head Town Code and/or NCGS 166A-19.22, or owing to impacts associated with a declared emergency, the Mayor may authorize the Town Manager and UDO Administrator, jointly, or their designees, to allow for reasonable temporary accommodations in zoning regulations consistent with and furthering the purposes of the emergency declaration and in the interests of public health, safety, and welfare. Such

accommodations shall be in the form of the issuance of a Temporary Use Permit.

4.11.5.1. Applicability. Temporary accommodations eligible for the issuance of a Temporary Use Permit include:

- The allowance of uses on a temporary basis, pursuant to Section 6.4., and specifically Section 6.4.6.1.;
- The modification of uses on a temporary basis, pursuant to Section 6.4., and specifically Section 6.4.6.2.; and/or
- The waiving or varying of any applicable provision contained in Article 8, Article 9, or Article 10 of the UDO, except as limited by Section 4.11.5.2.

4.11.5.2. Prohibited Activities. The following activities or accommodations are ineligible for the issuance of a Temporary Use Permit:

- The increase of floor area and/or the construction or installation of permanent structures or buildings;
- The reduction of required parking by greater than twenty (20%);
- The elimination of required landscaping or trees;
- The installation of more than one (1) additional temporary sign, limited in size and location pursuant to Part III., Sign Regulations, of Article 10, or signage beyond that which is necessary to provide for traffic control or public notices;
- The elimination, modification, or installation of driveways, except as necessary in the opinion of the Town Manager and UDO Administrator to accommodate the safe and efficient circulation of vehicles;
- The commencement of any water-dependent uses or activities;
- 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; and/or
- Any activity or accommodation that would not comply with applicable local, State, or Federal laws and regulations.

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 the declaration causing the need for the accommodations , or upon the timeframe set by the Mayor, whichever is sooner. 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.

PART VII. That **Section 5.1., Intent, as contained in Article 5., Nonconformities, of the UDO,** be amended by adding Section 5.1.5., as follows:

5.1.5. Temporary uses or uses modified on a temporary basis subject to a Temporary Use Permit as authorized and limited by Section 4.11.5. shall have no effect on nonconforming status as established by the sections of this Article.

PART VIII. That **Section 6.4., Permitted Types, as contained in Article 6., Zoning Districts, of the UDO,** be amended as follows:

SECTION 6.4 PERMITTED TYPES.

Zoning districts have uses specified as permitted by right, conditional uses, and uses permitted with supplemental regulations. Detailed use tables are provided in Section 6.6, Table of Uses and Activities, showing the uses allowed in each district. Additionally, as authorized under Section 4.11.5., and Section 6.4.6. herein, uses may be temporarily permitted or modified on a temporary basis subject to a Temporary Use Permit. The following describes the processes of each of the categories that the uses are subject to:

PART IX. That **Section 6.4., Permitted Types, as contained in Article 6., Zoning Districts, of the UDO,** be amended by adding Section 6.4.6., as follows:

6.4.6. Uses or Modification of Uses with Temporary Use Permit. As authorized under and limited by Section ##, uses may be temporarily permitted or modified on a temporary basis, subject to a Temporary Use Permit, as follows:

6.4.6.1. Temporary Use. Any use identified in Section 6.6, Table of Uses and Activities, may be temporarily permitted pursuant to Sec. in any zoning district, except that uses not identified as Residential or Residential - Group in Section 6.6. may not be permitted in the Residential Districts or Special Districts identified in Table 6-1, Zoning Districts Established, unless otherwise permitted or allowed with a conditional use permit within such districts.

6.4.6.2. Temporary Modification of Use. Any use identified in Section 6.6., Table of Uses and Activities, as requiring a conditional use permit or being subject to supplemental regulations outlined in Article 7, Supplemental Regulations, may be temporarily modified pursuant to Sec ## in manner that would not be in compliance with any issued conditional use permit and/or supplemental standards, as applicable.

PART X. That **Part I., Introduction, as contained in Article 7., Supplemental Regulations, of the UDO,** be amended as follows:

PART I. INTRODUCTION

The following supplemental regulations shall pertain to the uses listed in the Table of Uses and Activities located in Article 6, Zoning Districts which are identified as a permitted use with supplemental regulations (PS) or a conditional use with supplemental regulations (CS).

For any use which requires the issuance of a conditional use permit, the supplemental use regulations listed herein may be in addition to any other conditions placed on the use by the Board of Commissioners in accordance with the standards in Section 3.8, Conditional Use Permits. The conditions may impose greater restrictions on a particular use than those which are listed herein.

Notwithstanding the foregoing, any use identified in Section 6.6., Table of Uses and Activities, as being subject to supplemental regulations listed herein, may be temporarily modified pursuant to and limited by Sec ## in a manner that would not be in compliance these supplemental standards, as applicable.

All uses include in these supplemental regulations must also comply with all other requirements of this UDO. Where the requirements of these supplemental regulations may conflict with other provisions of the UDO, the requirements contained within the supplemental regulations shall prevail.

PART XI. That the **Table of Contents to Article 4 and Article 6 be updated to reflect Parts VI and IX of the Ordinance, respectively**.

ARTICLE IV. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST: _____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____ AYES ____ NAYS

Michael Zehner

From: Michael Zehner
Sent: Friday, May 15, 2020 1:17 PM
To: Michael Zehner
Subject: RE: Control Group

From: dlewis coastalprovisionsmarket.com <dlewis@coastalprovisionsmarket.com>
Date: May 3, 2020 at 12:25:13 PM EDT
To: Don Kingston <don.kingston@townofduck.com>, Tom Bennett <tbennett@southernshores-nc.gov>, Ben Cahoon <ben.cahoon@nagsheadnc.gov>, Benjamin Sproul <ben.sproul@kdhnc.com>, Gary Perry <gperry@kittyhawktown.net>, Bobby Owens <owens@townofmanteo.com>
Cc: Sheila Davies <sheila.davies@darenc.com>, "dcboc@darenc.com" <dcboc@darenc.com>
Subject: COVID Recovery Ordinance Compatibility

First, I would like to thank you all for you efforts on the Control Board in seeing our community through this current crisis. I'm sure it has been difficult balancing a variety of concerns and not being able to please everyone with these tough decisions.

I am reaching out to you all as head of the Outer Banks Restaurant Association (OBRA), a member of the NC Restaurant & Lodging Association's (NCRLA) Government Affairs Committee, and a member of the recently formed NCRLA COVID-19 Recovery Task Force. NCRLA has been in daily contact with Governor Cooper's office since the crisis began, and is now working with them on a reopening timeline and procedures, including the NC Restaurant Promise and COVID-19 training programs for restaurant personnel in conjunction with DHHS and NCSU Extension. Based on the task force's recent recommendation to the governor's office, we are expecting NC phase two to occur in late May, and will include among other things, restaurants opening at 50% capacity seating inside and on patios, and/or maintaining separation of tabes/chairs to comply with social distancing expectations. This would be expected to last at least 4-6 weeks in a best case scenario. Regardless of the timeline, our industry expects that outdoor dining, takeout and curbside delivery options will continue to play a much larger role in our business model for a much longer time. And the fact of the matter is, without other support or stimulus options, many restaurants here and across the country with not make it through this crisis.

With that said, I ask that all our municipalities take a look at two areas in their zoning that may work against efforts to service our guests in options other than inside dining. First is the itinerant/mobile vending ordinances that prohibit the use of carts, kiosks, and food trucks in most towns. I fully understand and agree with the intent of these ordinances: to not allow just anyone set up shop anywhere. But, especially now, with the tremendous need to serve guests for takeout, I would ask that all towns create an exception for restaurants to be able to use their own carts/kiosks/trucks on their own operational premises.

The second area of concern is the outdoor dining ordinances, many of which set a limited amount of square footage based on things such as lot coverage, parking, etc...., but don't necessarily take into account the number of people. In our new era, I would ask that all towns consider modifications to those limits in order to allow restaurants to space their tables in compliance with social distancing standards while still maintaining a viable number of seats with those spacing expectations.

I understand that most of these asks require either a text amendment, a zoning variance, and/or a conditional use application, along with a fee and a timeline that may take 2-3 months for any movement. But during these extremely trying times, I would ask if there is any way to expedite the

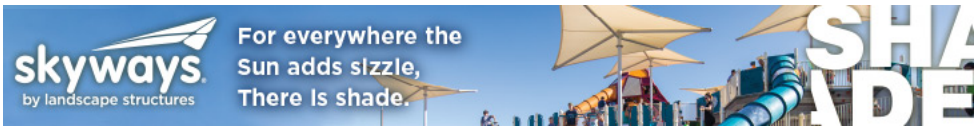
process, and the possibility of waving any fees that might be incurred. I would also be happy to have an OBRA member point person from each town work with all of you individually on these matters.

As many are having upcoming town council meetings shortly, I ask that the above be read in public comments, or added to the agenda, with exception of Town of Duck, as I have my own specific business interest there and will draft a separate version for their meeting on May 6.

Thank you again for your service to our community, and your consideration.

Dan Lewis

Daniel Lewis, CS, CSW
Chef/Owner, Coastal Provisions Restaurants
President, Outer Banks Restaurant Association
252-489-3171



(https://www5.smartadserver.com/click?imgid=25359227&insid=9447775&pgid=584791&ckid=6418560291611165197&uii=3848804601070671 13&acd=1589461419093&pubid=23&tmstp=7053118447&tgt=ways-to-respond-to-regulation-rollbacks%2f&go=https%3a%2f%2fwww.playlsi.com%2fen%2fcommercial-playground-equipment%2ffreestanding-playground-equipment%2fshade-sails%2f)

7 Ways to Respond to Regulation Rollbacks

Recently, a friend and colleague called me up and asked my advice. My ears perked up when he said that maybe I could help him before he lost his job. He was getting serious pressure from his elected officials to circumvent or roll back land use regulations to help local businesses impacted by the pandemic-induced economic downturn.

My colleague said that a quarter to a third of local businesses were projected to fold, and the local government was losing millions of dollars in revenue every month. Understandably, these were issues of the highest concern to local leaders.

> In his efforts to uphold the community's land-use requirements and the importance of public involvement, my colleague was at risk of being viewed as an obstacle to mitigating them.

How then can we offer strategies to be part of the solution, without exceeding our statutory and regulatory authority and while ensuring we do so in a manner consistent with our ethical principles?

Here are seven suggestions to consider:

1. PRIORITIZE MEASURES THAT ARE EASY FOR CUSTOMERS TO ACT ON

Planners can work with elected officials and community leaders in an expeditious manner to modify requirements, while still following procedural rules.

Simpler measures such as expanding the uses allowed in home occupations to enable businesses to work out of the home until social distancing requirements can be relaxed are often easier for businesses to act on and translate into meaningful economic activity that can help them stay afloat. Then, if these strategies yield positive benefits with limited side effects, communities can continue them after the crisis is over.

Planners should consider resisting efforts to waive design and development standards for projects that won't be completed for another 12 to 24 months. Such waivers may have limited value in helping businesses weather the short-term economic crisis. If inconsistent with community goals, such waivers could compromise the quality and functionality of the built environment for years to come.

2. IMPLEMENT IMPACTFUL ADMINISTRATIVE SOLUTIONS

Instead of changing their rules, some communities are taking action administratively wherever they can. For example, the City of Wilson, North Carolina, has stepped up its customer service (https://www.wilsonnc.org/home/showdocument?id=2761) with measures such as encouraging clients to schedule one-on-one phone calls with staff, opening a drive-through permitting window, and repurposing on-street parking spaces to facilitate pick-up of restaurant take-out orders.

In addition, planners should consider using appropriate administrative authority to prioritize projects and code revisions needed to protect the health, safety, and welfare of community members.

For example, we might prioritize the review of site plans needed to authorize drive-through testing sites and emergency housing. It may be prudent to work with the city or county manager's office to vet these in an expedited manner with governing boards and key stakeholders to confirm support.

Then, once the new administrative procedures are in place, planners should publicize them broadly to inform community stakeholders of the temporary change in operations. A good example of this is provided by the City of Portland's Planning and Sustainability Department (https://www.portlandoregon.gov/bds/article/756804).

3. FIND WAYS TO IMPLEMENT ONLINE PERMITTING

A potentially more complicated project is moving to online permitting. Yet, even if you have not had the time or money to implement such a system in the past (and have even less time or money in the present), there may be simple ways to begin shifting planning functions online.

For example, the City of Wilson, North Carolina, has made online forms "fillable" electronically so that customers don't have to print them out and instead can submit them digitally. In addition, software licenses for other functions such as online plan intake and electronic plan review can cost less than $1,000 a year and be installed relatively easily, while improving customer convenience and keeping development projects moving forward while social distancing measures are in place.

While lower in cost, such solutions often require good internal project management as well as strong collaboration with the Information Technology Department and may necessitate more trouble-shooting over time to configure and integrate future modules.

The City of Asheville has done a nice job building its own online permitting system (https://develop.plans.ashevillenc.gov/) one component at a time and creating a simple interface that guides users through the steps they need to take to make an electronic submittal. The city now handles about 90 percent of its plan reviews electronically.

> A full-service software vendor can provide an integrated solution for online permitting, including online plan intake and fee payment, internal workflow management, activity tracking by property, and ready integration with GIS.

While more comprehensive, such solutions can cost tens or hundreds of thousands of dollars and take six to 18 months, depending on whether or not your module is part of a larger organization-wide financial management system.

Even so, now may be the time when your organization is willing to make this investment. With the possibility of future waves of infection and more social distancing until a vaccine is developed, it may be worth the effort.

4. ADJUST PLANS TO RESPOND TO CHANGING NEEDS, BUT RESIST MEASURES THAT WILL UNDERMINE STILL-DESIRABLE LONG-TERM COMMUNITY GOALS

Flexibility is important to respond to changing community needs. Sometimes this can spark a long-needed reevaluation of long-term goals and strategies. However, rushed actions that undermine a still-desirable community vision can set back civic progress in significant ways.

5. MAKE SURE TO EVALUATE PROPOSED MEASURES FROM A DIVERSITY OF STAKEHOLDER PERSPECTIVES

Chances are, if a measure was unpopular before the pandemic, it will still be unpopular afterwards.

Efforts to overturn hard-earned community solutions may bring political consequences once the crisis is over, especially if they leave unpopular and lasting changes to the built environment. If pressure continues for such measures, we might work to implement a multi-channel public involvement strategy to give stakeholders as much opportunity as possible to provide input within the constraints of social distancing.

6. REMIND OTHERS THAT THE RULE OF LAW IS A FUNDAMENTAL ASPECT OF OUR DEMOCRACY

If the governing board is willing to tap emergency powers that it may possess to circumvent current development standards, then it is free to do so. Otherwise, we as planners need to stay within the limits of our authority, carry out our responsibilities, and work to maintain the integrity of local laws, despite the pressure we might experience to circumvent them.

7. ADVANCE EXPERIMENTAL MEASURES THAT COULD HELP DURING THE PANDEMIC AND BEYOND

The disruption to traditional operating procedures caused by the pandemic can also create a window of opportunity to advance new measures you have always wanted to try that are consistent with good planning principles. The best initiatives to advance may be those that help with short-term pandemic-related issues *and* bring lasting community benefits.

> Have you always wanted to expand administrative review of proposed development projects, especially for less-controversial decisions, to improve the efficiency of the development review process and free up public resources to handle other community planning needs?

Now might be the time for a pilot project, both to streamline review processes during the pandemic and to test this as a long-term procedural change.

Have you always wanted to allow a demonstration project for package delivery by aerial or terrestrial drones? Now might be a good time to try it, with social distancing measures heightening demand for home delivery, and fewer people on the roads.

Have you always wanted to create more safe places for pedestrians and bicyclists in your community? Now may be your chance. Seattle, for example, has just announced that it is making at least 20 miles of streets in its Stay Healthy Streets pilot initiative permanently car-free (https://sdotblog.seattle.gov/2020/05/07/2020-bike-investments-to-accelerate-including-20-miles-of-stay-healthy-streets-to-become-permanent-in-seattle/).

Pressure to roll back development standards in times of crisis can trap planners between professional ethics and political efficacy. With luck, these suggestions can help you focus the discussion on solutions that address the challenge at hand without creating lasting harmful impacts on the community or ethical dilemmas for public servants. And maybe the pandemic will even create an opportunity for you to try some thoughtful experiments that bring lasting improvements.

Top image: *Getty Images photo.*

ABOUT THE AUTHOR

Ben Hitchings, FAICP, CZO, is principal of Green Heron Planning based in Durham, North Carolina, and is a member of the APA Board of Directors.

MAY 12, 2020

By Benjamin Hitchings, FAICP

Tags: COVID-19, (/blog/?tags=1982) Health, (/blog/?tags=108) Plans, (/blog/?tags=1226) Zoning and Ordinances (/blog/?tags=101)

< Previous (/blog/9200053/reopening-retail-districts-safely/)

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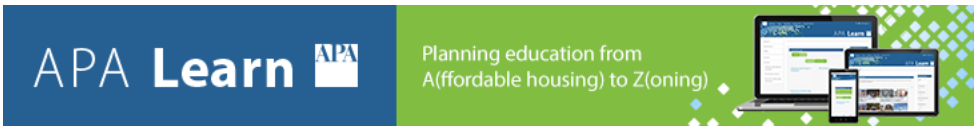

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ways-to-respond-to-regulation-rollbacks%2f&go=https%3a%2f%2flearn.planning.org%2fcatalog%2f)

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BOC ACTIONS
WEDNESDAY, MAY 6, 2020

1. Call to order – Mayor Cahoon called the meeting to order at 9 am.

2. Agenda – the May 6th agenda was approved as presented.

3. Public Comment – Dan Hudson, property owner since 2003 – he feels that too much attention has been paid to COVID-19 projections and models which have been inaccurate; people should shelter in place if they don't feel safe; it is time to get the economy on track and open everything up.

4. Public Comment – Clint Sorrell – he would like Dare County opened as soon as possible; those that utilize the beach know it is not difficult to maintain six foot distance from other people; with all of the additional measures in place at retail stores he does not know why Dare County is preventing visitors.

5. Public Comment – David Bragg, Village at Nags Head resident – he feels that unless the town's recycling program will result in a net zero cost or a net gain for the town then its contract with the recycling company should be terminated and the town should focus on providing essential services to residents/visitors during these financially difficult times; a final vote on this matter should be taken today.

6. Proclamation – The Board adopted the proclamation declaring May 10-16 as Police Week as presented; Comr. Brinkley asked everyone to keep the Murray family in their thoughts and prayers (Nags Head Sgt. Earl Murray died in the line of duty in 2009) as they usually attend the ceremony held in Washington DC but is cancelled this year due to the pandemic.

7. Consent agenda – The Board approved the Consent Agenda as presented which consisted of the following:

Consideration of Tax Adjustment Report
Approval of minutes
Request for Public Hearing - citizen comment on the Town Manager's proposed budget for FY 20/21
Request for Public Hearing - to allow "Tutoring Facility/Learning Center" as a permitted use in C-2 District

8. Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities - Applicant Kate Creef spoke on behalf of Outlets Nags Head.

The Board tabled the text amendment discussion concerning outdoor stands and referred the proposal, along with issues expressed by Board members [re: visual impact, signage, and parking] back to the Planning Board for review and recommendation.

9. Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors – The Board adopted the ordinance amending the Unified Development Ordinance to correct identified errors as presented.

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

The Board unanimously passed two motions – one to table the Flood Map and the Flood Damage Prevention ordinance discussions to the June 3rd Board of Commissioners meeting. The other motion was that the motion made at the June 3rd Board of Commissioners meeting concerning Flood Maps be a standalone motion and not tied to the Flood Damage Prevention ordinance.

11. Update from Planning Director - Planning Director Michael Zehner summarized his monthly Planning Dept update for the Board.

12. Continuance to the June 3rd Board meeting: Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann.

13. Continuance to the June 3rd Board meeting: Consideration of a Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements.

14. From Mar 4th Board meeting - Beach Nourishment Coastal Engineering and Design Services presentation from Moffatt & Nichol – the remote presentation by Johnny Martin and Brian Joyner of Moffatt & Nichol was well received.

15. From Apr 15th Board meeting – The Board passed a motion to notify the Town's fireworks vendor to cancel this year's Fourth of July fireworks display – with a return to fireworks in 2021. Mayor Cahoon cast the NO vote.

16. From Apr 15th Board meeting - The Board unanimously passed a motion to suspend the recycling program to be revisited at a future date. It was confirmed with the Board that this is a suspension of the program and not an elimination of the program. Trash schedule was also discussed and Town Manager Ogburn is to make sure everyone is aware of the two sites (Town Hall and Public Works) available for people to take their recycling; property managers are to be notified of these changes.

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

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

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

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

18. Board/Board/Committee appointments – The Board unanimously passed the following motions:
- To reappoint David Elder to another three-year term on the Planning Board.
- To reappoint Don Milbrath to another three-year term as an Alternate on the Board of Adjustment.
- To reappoint Jean Flanigan to another three-year term as an Alternate on the Personnel Grievance Panel.

- To reappoint Annette Ratzenberger and Rose Lay to additional terms on the Firemen's Relief Fund Board.

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

20. Town Manger Ogburn – He summarized plans for summer 2020 for tents on the beach, lifeguards, and the enforcement of social distancing on the beach which he has coordinated with appropriate staff – he also noted that lifeguards will have some responsibility to communicate social distancing; in addition, emphasis will be placed on making sure lifeguards stay healthy.

21. Town Manager Ogburn – He requested a Closed Session to discuss personnel matters.

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

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

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

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

26. Closed Session - The Board passed a motion to enter Closed Session to discuss personnel issues in accordance with GS 143-318.11(a)(6). The time was 12:43 p.m.

27. Open Session – The Board re-entered Open Session at 1:00 p.m.

28. Adjournment - The Board recessed to the May 20th mid-month meeting. The time was 1:03 p.m.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: February 14, 2020**; updated March 13, 2020**

Subject: Discussion of Legacy Establishments/Structures

Updated content in **bold underline, deleted material in ~~strikethrough~~**

OVERVIEW

As noted in my Director's Report memo to the Board of Commissioners and Planning Board, dated January 30, 2019, given recent expressed interest in the future of the Blue Heron Motel at 6811 S. Virginia Dare Trail and the limitations imposed by Town Code requirements on the evolution of the current hotel use of the property, Staff intends to begin considering Code amendments that advance Comprehensive Plan policies valuing the preservation of legacy business, establishments, and structures. ~~Staff anticipates that discussion at the Planning Board's February 18, 2020 meeting will be an initial discussion of options.~~

This item was initially discussed at the Planning Board's meeting on February 18, 2020, with the Planning Board wishing to consider and discuss options further. Staff has expanded on options for consideration by the Board under the Issues and Options section of this memo.

POLICY CONSIDERATIONS

- One of the Town's principal goals, as established in the Comprehensive Plan, is to "Plan for orderly and sustainable growth and redevelopment," and an identified objective to attain this goal is the "Preservation and maintenance of legacy commercial businesses.

- As used in the Comprehensive Plan, at least within the context of *Character Areas*, legacy establishments, structures, or locations are those which "contribute to the overall sense of place or tell the story of Nags Head's past. These establishments, structures, or locations often remind you of the past and are nostalgic."

- Legacy establishments are particularly noted as adding to the character of the Whalebone Junction Character Area, and specifically the Whalebone Junction Core, where it is noted that "flexibility should be given to legacy type establishments for renovations as a way to retain the character of area while allowing the establishment to remain viable in the market."

- Legacy businesses are also referenced with respect to the Corridors Character Area, and specifically for the NC 12 and SR 1243 corridors, where it is noted that one of the future desires is to "provide flexibility for existing legacy businesses to renovate to help keep the character of Beach Road."

- The Land Use Element of the Comprehensive Plan, and the discussion of Incentives/Design Flexibility with respect to Site Development Characteristics, provides an overview of the issue and general solution, as follows:

  > *The town has taken recent steps to preserve older legacy businesses and encourage the retention of these structures. There has been a regulatory shift with regards to nonconforming properties (properties which met zoning regulations at the time they were developed but are not consistent with regularity changes that have occurred). Essentially, non-conformity regulations have been modified to allow continued improvements to these older properties. The regulations are primarily designed to restrict additional development of unwanted land uses. The town's position is to allow continued use and improvement to nonconforming properties.*

- The section on Legacy Businesses under Local Business Development, as contained within the Economic Development and Tourism Element of the Comprehensive Plan, is attached. Specific policies and actions are as follows:

  > *EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.*
  >
  > > *EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.*
  > >
  > > *EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.*
  > >
  > > *EC-7c: Develop incentives to encourage the preservation of commercial floor space.*
  > >
  > > *EC-7d: Explore ways to aid in the development of cottage courts.*

ISSUES AND OPTIONS

Generally, as referenced above, many legacy establishments and structures have been rendered nonconforming, either with respect to the use no longer being allowed in the zoning district in which the property is located or because of standards or requirements changing, or due to both circumstances. Nonconforming status is, by its nature, limiting; Staff would recommend that the Board review Article 5, *Nonconformities*, of the UDO https://www.nagsheadnc.gov/DocumentCenter/View/2771/Article-5_Nonconformities, and specifically Sections 5.3, *Nonconforming Structure with Conforming Use*, 5.4, *Nonconforming Site and Parking Areas*, 5.5, *Nonconforming Use of Land*, and 5.6,

Nonconforming Use of Structure. It is helpful to consider that the general principle with respect to nonconformities is that, over time, the nonconforming uses or conditions cease, evolving to conforming uses or conditions. This effect would therefore seem to be inconsistent with the intent of the goals, objectives, policies, and actions contained in the Comprehensive Plan which support the retention of legacy establishments and structures and warrants consideration.

The conditions discussed above were the basis for the adoption of provisions in 2015 contained in Section 7.2.14 (attached) pertaining to nonconforming cottage courts. A similar approach could be taken with respect to legacy businesses and structures. Alternatively, an overlay zoning district approach could be taken, perhaps applied in a limited geographic manner and/or to properties meeting defined characteristics. ~~Staff can expand on the pros and cons associated with these approaches at the Board's meeting.~~

~~Regardless of the approach, Staff does agree with the recommended actions of the Comprehensive Plan that~~ **As previously noted, regardless of the approach** it will be necessary to define and develop specific criteria as to what constitutes a legacy business or structure, and to then inventory and map properties that meet those definitions and criteria; however, Staff also believes that it is important to be proactive and take an iterative approach, developing a framework wherein applicable properties and uses can be added over time, as warranted.

At least as part of the development of the Comprehensive Plan, the Plan's Advisory Committee identified the following characteristics of legacy establishments and structures, acknowledging that further defining of characteristics would be warranted:

- **Small businesses which contribute to the sense of place, quality of life, and high-quality visitor experience within the town.**
- **Businesses which are nostalgic or a reminder of the past, conveying the sense that that life here was different, and helped to tell the story of Nags Head's past.**
- **The architecture is varied but the overall size and scale of the building is small and blends within the surrounding neighborhood.**
- **The building is low scale often with only one or 1 ½ stories.**
- **Multiple small buildings may be located on the same property with a mix of residential and business uses. However, the Structures appear residential.**
- **The buildings are set in close proximity to the road.**
- **Parking is directly adjacent to the building or wraps the building.**
- **Restaurants often have walk up windows with outdoor seating.**
- **The area is highly walkable, and businesses often have amenities such as outdoor seating and bike racks that cater to pedestrians and cyclists.**
- **Structures with legacy characteristics were typically constructed prior to 1980.**
- **Dining and retail establishments with legacy characteristics in Nags Head range on average between 3,000-5,000 square feet in size.**

Under either approach, the first qualifying condition should be that the use or structure would be considered nonconforming.

With regard to the use-based approach (i.e. similar to the treatment of nonconforming cottage courts), regulations could be developed for the treatment of specific nonconforming uses (i.e. retail, restaurants, hotels) and structures, or a use category for Legacy Establishments could be created, where the definition could limit application to only certain nonconforming uses and structures. However, it would likely be necessary to further define the standards by which a preexisting nonconforming use would qualify as a Legacy Establishment; for example, assumedly it would not be preferred for all nonconforming restaurants to be able to be considered as Legacy Establishments, but perhaps only those that did not exceed 5,000 square feet in size and exist in buildings that were constructed prior to 1980. Under this option, the Legacy Establishment use could require a Conditional Use Permit, where a use meeting the definition and standards could then seek a Conditional Use Permit and be afforded certain development and redevelopment flexibility not associated with the nonconforming status.

With regard to the overlay zoning district approach, there would not be a need to define a Legacy Establishment use, rather, in concept, a rezoning of property on which there is a legacy business or structure could be sought whereby applicable uses or dimensional conditions would be more flexible than the underlying zoning. Under this approach the qualifying standards could be less rigid, but included in the purpose and intent of the overlay district so that legislative discretion could be applied when a rezoning request were sought. Using the same restaurant example from above, perhaps the purpose of the district is to preserve businesses that are nostalgic or a reminder of the past, generally typified as having no more than 5,000 square feet in area and being located in buildings constructed before 1980; since these are not absolute standards, but guidance for legislative action, a restaurant that had 6,000 square feet in area and in a building constructed in 1985, but still determined to be nostalgic or a reminder of the past, could hypothetically be successfully rezoned. Of course, absolute standards could also be imposed defining the circumstances in which the zoning district could not be applied to a property. Under this option it may be necessary to consider whether Conditional Zoning were necessary, to allow greater flexibility for uses and dimensional circumstances, but to limit the use of the property as specifically proposed.

STAFF RECOMMENDATION

~~At least for this initial discussion,~~ Staff would **continue to** suggest that it would be helpful for the Board to discuss perspectives with regard to what does and does not constitute a legacy business or structure, what are the defining characteristics, and what businesses or structures typify the term. **However, Staff would also suggest that the Board discuss the merits of the two options. Generally, Staff is of the opinion that an overlay district approach provides the necessary flexibility, affords discretion, and limits unintended consequences.**

Attachments:

1. B. Legacy Businesses, of 3.4, *Economic Development and Tourism*, and 3.4.3, *Local Business Development*, of the Comprehensive Plan; and
2. Section 7.2.14, *Nonconforming Cottage Courts*

B. Legacy Businesses

Nags Head's vision statement places a great emphasis on the town's legacy. The vision emphasizes preserving and protecting the Nags Head character, tourism based economy, and sense of place; "We uphold our legacy by protecting and promoting our small town character that includes a sustainable local economy based on family vacation tourism, a high quality beach experience, and small, locally owned businesses."

During the community engagement portion of the plan, the Advisory Committee recognized that many of the small businesses contribute to the sense of place, quality of life, and high quality visitor experience within the town. The committee referenced these establishments as legacy businesses and described them as nostalgic or a reminder of the past. They conveyed the idea that life here was different, and helped to tell the story of Nags Head's past.

The Advisory Committee further identified that legacy businesses typically have the following characteristics:

- The architecture is varied but the overall size and scale of the building is small and blends within the surrounding neighborhood.
- The building is low scale often with only one or 1 ½ stories.
- Multiple small buildings may be located on the same property with a mix of residential and business uses. However, the Structures appear residential.
- The buildings are set in close proximity to the road.
- Parking is directly adjacent to the building or wraps the building.
- Restaurants often have walk up windows with outdoor seating.
- The area is highly walkable and businesses often have amenities such as outdoor seating and bike racks that cater to pedestrians and cyclists.
- Structures with legacy characteristics were typically constructed prior to 1980.
- Dining and retail establishments with legacy characteristics in Nags Head range on average between 3,000-5,000 square feet in size.

Further analysis and study should be completed to further define and preserve legacy businesses in the town. Additionally, this information can be used to encourage future development to construct similar to legacy type structures.

Since 2002, the town has seen a number of small, local businesses close, many along NC 12. These are being converted into residential development. The 2010 Land Use Plan recognizes this same concern but also points to businesses relocating to US 158 or going out of business due to large chain or "big box" stores. This is concerning since the Visitor's

Survey 2014-2015 indicates that 52.3% of respondents rank dining at restaurants unique to the area at 4th (out of 32) in the activities they participated in during their stay.

The town has made great strides and forward progress in the last two years working with local business owners to identify opportunities and constraints to their success and how the town can be a part of that. However, there are still policy questions related to retaining and maintaining legacy businesses in the long term that should be vetted. Preservation and upkeep of these legacy establishments is crucial in preserving the small town character that is central to the town's vision.

POLICIES & ACTIONS

EC-5 Direct new commercial growth into neighborhood commercial nodes, activity centers, or areas currently zoned for commercial development with emphasis on reuse of existing structures.

EC-6 Support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

- EC-6a: Continue to work with the Local Business Committee to further identify and remedy regulatory barriers for opening and operating businesses.
- EC-6b: Develop and map an inventory of local businesses representing each sector of the town's economy.
- EC-6c: Develop regulatory flexibility that allows existing small, local businesses to upgrade and maintain their facilities in order to remain relevant and competitive in the market.
- EC-6d: Evaluate the impact of town processes, related to zoning and permitting, on businesses and streamline to meet the town's needs while supporting business investment.
- EC-6e: Expand the availability of town services available on-line to better meet the needs of the businesses community.
- EC-6f: Provide technical assistance through workshops, educational materials, or web based media to educate business owners on town processes and regulations related to owning and maintaining a business.
- EC-6g: Develop a branded wayfinding, safety, and information signage plan to identify types and locations of signage for pedestrians, cyclists, and vehicles. Install appropriate signage. Signage should enable visitors to locate existing town parks, sound and beach access points and trailheads.

POLICIES & ACTIONS

EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.

- EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.
- EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.
- EC-7c: Develop incentives to encourage the preservation of commercial floor space.
- EC-7d: Explore ways to aid in the development of cottage courts.

EC-8 Enhance economic health and increase employment opportunities through business retention and expansion.

- EC-8a: Partner with the Outer Banks Chamber of Commerce to research and conduct discussions with local, small business owners in order to better understand factors contributing to the sale or loss of businesses.
- EC-8b: Coordinate with the Outer Banks Chamber of Commerce to offer education and training for local, small business owners on succession planning.

7.2.9. Off-Street Parking and Loading Facilities.

Individual units shall have a minimum of two (2) parking spaces. Parking spaces for each dwelling unit shall be provided so as not to interfere with the shared accessway or with the access of emergency or service vehicles to the entire property. Shared parking areas may be utilized to accommodate the total parking requirements for the development. Parking spaces and drive aisles shall not be located closer than five (5) feet to side or rear property lines. Parking spaces shall not be located with direct access from the right-of-way.

7.2.10. Refuse and Recycling.

Cottage courts shall provide a suitable location for a dumpster as determined by the UDO Administrator. Dumpster areas shall be appropriately screened and shall not be located in the required front yard of the property.

7.2.11. Pools.

Cottage courts may have one community pool serving all of the units on the property. Individual units may not have pools.

7.2.12. Utility Meters.

Utility meters of any type for individual units are prohibited.

7.2.13. Management.

Cottage courts shall operate under a single, unified management operation which arranges for reservations and attends to guest needs. There shall be a uniform key entry system operated by management staff.

7.2.14. Nonconforming Cottage Courts.

Cottage courts which do not conform to the definition of "cottage court", contained in Appendix A Definitions, and also to the provisions of this section may continue, subject to the following provisions:

> ***7.2.14.1.*** Existing individual dwelling units in a nonconforming cottage court may be replaced provided that replacement structures conform to the provisions of this section or do not increase the degree of structure or site nonconformity.
>
> ***7.2.14.2.*** All replacement, substantially improved, and substantially damaged cottage court units shall conform with the provisions of Article 11, Part III, Flood Damage Prevention.
>
> ***7.2.14.3.*** For the purpose of this section, structures will be considered individually when determining thresholds for repair, maintenance and destruction.
>
> ***7.2.14.4.*** No existing individual dwelling unit in a nonconforming cottage court shall be enlarged, extended, moved or structurally altered, except as provided below:
>
> > ***7.2.14.4.1.*** For lots abutting the Atlantic Ocean or Roanoke Sound, individual dwelling units in a cottage court may be moved in cases where such structures are determined to be in imminent danger of collapse, as defined by CAMA, as a result of erosion by wind or water, provided that such movement does not increase the degree of nonconformity of

the structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All structures when moved shall adhere to the minimum setback requirements prescribed in this section.

7.2.14.4.2. Minor modifications to a nonconforming cottage court dwelling unit or cottage court site may be approved administratively by the UDO Administrator or his/her designee. Minor modifications may include the addition of detached storage sheds, not to exceed 150 square feet in area, on-grade patios, decks, porches, driveway or parking modifications, or other additions not involving an increase or expansion of the habitable area of existing cottage court dwelling units.

7.2.14.4.3. Major modifications to a nonconforming cottage court dwelling unit or cottage court site, may be approved by the Nags Head Board of Commissioners through the conditional use process as set forth in Section 3.8, Conditional Use Permits. Major modifications include any proposal which will result in a net increase in habitable area of nonconforming cottage court units.

7.2.14.4.4. All improvements must meet the dimensional requirements of the district in which they are located. When a lot coverage nonconformity exists on a cottage court site, improvements may be allowed as long as there is no net increase in overall lot coverage. All other nonconformities shall be regulated in accordance with Article 5, Nonconformities.

7.2.14.5. On any individual dwelling unit in a nonconforming cottage court, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing.

7.2.14.6. If an individual dwelling unit in a nonconforming cottage court becomes dangerous to life, destroyed or unlawful due to lack of repairs or maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired, rebuilt or replaced in conformity with the regulations of this UDO and any other applicable federal or state regulations.

7.2.14.7. Nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any individual dwelling unit in a nonconforming cottage court or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development
Kelly Wyatt, Deputy Director of Planning & Development
Kate Jones, Engineering Technician

Date: February 14, 2020**; updated March 13, 2020**

Subject: Discussion of Residential Stormwater Regulations

Updated content in **bold underline, deleted material in ~~strikethrough~~**

OVERVIEW

Given the continued importance and focus on stormwater, the Board of Commissioners asked the Director of Planning & Development to attend their retreat on January 23, 2020 to discuss the Town's residential stormwater regulations; these regulations can be found in Article 11, *Environmental Regulations* (https://www.nagsheadnc.gov/DocumentCenter/View/2777/Article-11_Environmental-Regulations) of the UDO, within Part I, *Stormwater, Fill, and Runoff Management*, Section 11.5, *General Standards for Residential or Duplex Development on Individual Lots*. A copy of the PowerPoint presentation (without referenced attachments) is attached. Following the Board of Commissioners' discussion, the Board directed Staff to present the Board's perspectives and the options identified by Staff (provided under CONSIDERATIONS) to the Planning Board for review and consideration of any recommended actions,

Essentially, the regulations and ordinance requirements are triggered by the following development activities:

- The construction of new detached single-family and duplex residential properties;
- The construction of more than 500 sq. ft. of new built-upon area on properties with existing single-family and duplex residential dwellings; and
- The removal and replacement of driveways; in instances where an existing driveway and parking area not meeting the standards of this section is being removed and replaced, the new driveway and/or parking area shall be designed so as to limit the discharge of stormwater into the right-of-way or onto adjacent properties.

When triggered, a stormwater management plan meeting the standards required by the ordinance must be submitted. In general, the standards of the ordinance require stormwater control measures (SCMs) to be provided, with storage volume equal to 15 cubic feet for every 100 square feet of built-upon area. For example, 1,000 square feet of built-upon area would require SCMs with 150 cubic feet of storage volume. The

regulations do provide options to reduce the calculated built-upon area, incentivizing preferred outcomes, and thereby reducing the necessary sizing (storage volume) of SCMs.

The Board discussed this item at their meeting on February 18, 2020, however, only brief questions and perspectives were considered, with the Board committing to discussing further at their March meeting.

CONSIDERATIONS

During their discussion at the retreat, the Board of Commissions noted the following guiding principles for further review and consideration of the residential stormwater regulations:

- Can our rules acknowledge that there are different conditions – a system with flexibility?
- Retain form of landscape/minimize impact to landscape.
- Look for common sense solutions.
- Don't place unjust burden on property owner.
- Can we offer a "carrot" to go with a stick?
- Do we as a Board need to define flooding – separate between "Nuisance" and "Problem Stormwater" issues.
- Should not create additional problems.
- Should define problem we are trying to solve.

In their consideration and any recommendation to the Board of Commissioners, Staff would suggest that the Planning Board focus on whether the regulations and any potential changes address these perspectives and principles.

In their review, the Board of Commissioners also asked that the Planning Board consider the following options identified by Staff, to determine whether related actions may be necessary so that the regulations are more consistent with the aforementioned principles. The options presented by Staff to the Commissioners are in bold, Staff has expanded on each of these items for consideration and discussion by the Planning Board.

- **Improve education and availability of resources**
    - Education:
        - In the near term, publish social media and website news flashes related to the benefits of stormwater management at the lot level.
        - Publish a brochure, similar to materials for the Septic Health Initiative, can be mailed out to homeowners focusing on the benefits of stormwater management.
        - Engage with stakeholders and focused groups (Green Drinks, contractors, homeowners) on Town stormwater efforts, stormwater management, and Low-Impact Development (LID) techniques.

        - Coordinate with CSI, North Carolina Coastal Federation, and others to share resources and increase capacity.

    - LID Pilot Project: Look for opportunities on Town property to install pilot projects highlighting LID stormwater control measures; incorporate signage and coordinate public education opportunities.

    - Availability of Resources:

        - Is there a way to cost share or subsidize costs of required improvements? This would require a budget allocation or grants.
        - There are existing grants that could be used, such as the Dare Soil and Water grant, which can provide $5,000 per homeowner, but there is a cap on total funding.
        - Could the stormwater ad valorem tax be expanded to include residential stormwater management funding?
        - Consider a water bill credit for installing LID stormwater measures such as cisterns and rain barrels.

- **Enhance ordinance incentives for preferred outcomes**

    - Expand available credits to reduce built upon area.
    - Do not cap tree and open space preservation credits to a maximum of 30% reduction of built upon area; provide the option to eliminate the need for stormwater management if you have enough open space and sizable trees to retain.
    - Provide a credit for reducing site disturbance, lot clearing, or filling.
    - Offer additional credit for not filling Army Corp of Engineers wetland areas.
    - Offer an incentive for the use of native plants in the SCMs.
    - Reduce the number of required SCMs (from 3 to 2) for a built upon area credit.

- **Provide an administrative option for engineering analysis to exempt or reduce requirements**

    - This may be an option, but conditions or standards allowing for exemption would need to be identified.

    - Consideration for water quality impacts, need to be considered, not just water quantity.

- **Provide more alternatives**

    - The regulations provide a variety of options and currently allow for the approval of alternative SCMs; we should continue to defer to the State for accepted SCMs, but continue to explore new technologies.

- **Provide for administrative waiver/variance**

  - Will require conditions and circumstances that warrant waiver to be identified. Would these be soil conditions, topography, lot size, amount of disturbance?
  - Who would make this decision and what information is required to be submitted?

- **Standardize dimensions and volume of BMP's**

  - Perhaps a standard set would relate to lot size, and the lot coverage allowed by zoning.

  - May result in more predictability, but less relation to actual impacts and existing conditions.

- **Create a points-type program for BMP's and/or preferred outcomes, similar to design guidelines**

  - Needs further thought, but could be designed such that points are received for various LID components. This would open up predevelopment LID concepts for points such as siting development in lower impact portions of the site, choosing greater setbacks and smaller building footprint, retaining natural hydrological features (i.e. wetlands).

  - SCMs with greater impacts would receive more points. The BUA would determine the amount of points needed; for example, SCMs with native plants would receive more points than infiltration trenches and French drains, large cisterns would receive more points than standard rain barrels, etc.

  - Signing a maintenance agreement could also generate points.

  - May be an *overcorrection*, significantly revising a regulatory program that has been in place for only 14 months.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the residential stormwater regulations, identifying their own perspectives regarding the intent of the regulations and whether the regulations achieve their intended purpose, align with the Commissioners' principles, and/or require adjustment. **Generally, Staff believes that positive results would be generated by pursuing options identified above to *improve education and availability of resources* and to *enhance ordinance incentives for preferred outcomes*.**

Attachments:

1. PowerPoint - Town of Nags Head Residential Stormwater Ordinance Discussion, Board of Commissioners Retreat, January 23, 2020

Town of Nags Head Residential Stormwater Ordinance Discussion

Board of Commissioners Retreat

January 23, 2020

Residential Stormwater Ordinance - Background

- The regulation of stormwater on residential lots became a consideration in the Fall of 2012, the result of excessive rainfall and flooding that occurred over the preceding late-Spring and Summer months.
- On January 8, 2014, the BoC adopted an update to Chapter 34, *Stormwater, Fill and Runoff Management*, of the Town Code (*Attachment A*) which codified a stormwater plan requirement for single-family and duplex development triggered by fill and/or grading activities; adoption of this ordinance was preceded by the work of a stormwater subcommittee and coordination with the Planning Board and BoC (*Attachment B and Attachment C*)
- Between 2014 and the end of 2018, there was continued discussion and consideration of stormwater and the Residential Stormwater Ordinance; on December 5, 2018, the BoC adopted amendments to Chapter 34 (*Attachment D*) intended to simplify the requirements and plan approval process (*Attachment E*).
- Within 2019, Staff continued to work with representative of the Outer Banks Home Builders on fill requirements (*Attachment F*); Staff committed to proposing amendments to fill requirements in conjunction with adoption of an updated Flood Prevention Ordinance. Chapter 34 was codified as Part I of Article 11, Environmental Regulations, of the UDO (*Attachment G*); the complimentary Recommended Standard Details Manual may be accessed here: https://www.nagsheadnc.gov/938/Recommended-Standard-Details-Manual--Sto

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- As provided in the UDO, the purpose and intent of the overall *Stormwater, Fill and Runoff Management* Ordinance is to proactively protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to control the adverse effects of fill, land disturbance and increased post-development stormwater runoff for the purposes of both water quantity management for flood prevention and water quality protection with the goals to:
  - Control and minimize impacts associated with stormwater runoff from all development and redevelopment.
  - Mitigate current stormwater problems and prevent future problems associated with stormwater runoff.
  - Preserve water quality through proactive management practices.
  - Facilitate public understanding of stormwater management.
  - Encourage the use of pilings and open foundations and minimize the use of fill, consistent with FEMA's coastal construction recommendations.
  - Improve stormwater management through use of low impact development techniques.
  - Establish requirements for on-going management and maintenance of stormwater management practices.
  - Establish application and enforcement procedures that address land disturbance, sedimentation and erosion control, the use of fill, and stormwater management practices consistent with associated Town ordinances and state and federal laws and regulations, to include:
    - Soil erosion and sedimentation control provisions (Article 11, Part II);
    - Excavations (Chapter 18 of the Town Code of Ordinances);
    - Flood damage prevention provisions (Article 11, Part III);
    - NCDEQ stormwater management (NCAC T15: 02H .1000);
    - NCDEQ soil erosion and sedimentation control (G.S. 113A-50 - 113A-71);
    - NCDEQ and Dare County Health Department subsurface, ground-absorption wastewater effluent disposal (NCAC T15A: 18A. 1900).
  - Establish public awareness of potential surface and subsurface water drainage problems recognizing that development potential of some land may be limited.
  - Regulate development and redevelopment which may create additional stormwater related burdens to the Town or adjacent properties.
  - Cause every development and redevelopment employing stormwater management practices to develop a maintenance plan, and place responsibility for maintenance with the property owners.

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- As established in the adoption ordinance for the 2018 Ordinance amendments, the basis for the adoption of the amendments were that:
  - the Town acknowledges that stormwater poses a threat to the public health, safety, and welfare;
  - the Town has experienced significant localized flooding during heavy and/or frequent rain events that in many cases can be attributed to stormwater and;
  - it is the Town's intent to preserve residential neighborhoods and to support local businesses;
  - the Town finds that the improper use of fill and lack of maintenance of stormwater management practices contributes to stormwater run-off;
  - the 2017 Comprehensive Plan states that the Town will "Ensure that stormwater runoff is properly managed to reduce nuisance flooding and pollution of sensitive environmental areas (p. 205)";
  - the Town finds that to protect coastal waters we should limit non-point source pollution attributed to run-off from impervious surfaces such as parking lots and roof tops;
  - the Town finds that as more lots are developed and the built upon area is increased throughout Nags Head, stormwater collection and conveyance systems within the public rights-of-way are being overburdened and must be supplemented with additional management practices on private property;
  - the Town manages resources to protect the public infrastructure, quality of life, environment, and property of the citizens of Nags Head through fair and equitable, cost effective means, and the Stormwater Ordinance seeks to improve, enhance, and protect the quality of life for the citizens of Nags Head;

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- The Town's Comprehensive Plan includes the following policies and actions related to stormwater:
  - LU-14b: [Review] Existing lot coverage incentives for providing engineered stormwater management.
  - MS-15: Ensure that stormwater runoff is properly managed to reduce nuisance flooding and pollution of sensitive environmental areas.
  - MS-17b: Seek additional funding opportunities from local, state and federal agencies to assist with future stormwater planning and construction efforts.
  - MS-18: Educate and involve the public in stormwater management.

Residential Stormwater Ordinance - Continued and Additional Considerations

- As noted on Slide 2, since adoption of the amendments in Dec. 2018, Staff continued to work with representative of the Outer Banks Home Builders on fill requirements; Staff committed to proposing amendments to fill requirements in conjunction with adoption of an updated Flood Prevention Ordinance. As noted in *Attachment G*, there was not consensus on all issues between Staff and the Home Builders; Staff did receive feedback from the BoC at their September 2019 Retreat that will inform the forthcoming draft amendments associated with fill and the Flood Prevention Ordinance.
- Since January 2019, there have been 25 stormwater plans submitted for residential projects (6 for pool projects); of those, 3 were prepared by a licensed engineer, compared with 8 of 8 projects active at that time under the previous iteration of the ordinance having been prepared by a licensed engineer (3 of those 8 were subsequently redesigned under the new ordinance).

Residential Stormwater Ordinance - Continued and Additional Considerations

- Options to consider:
  - Repeal the residential stormwater requirements;
  - Improve education and availability of resources;
  - Enhance ordinance incentives for preferred outcomes;
  - Provide an administrative option for engineering analysis to exempt or reduce requirements;
  - Provide more alternatives;
  - Provide for administrative waiver/variance;
  - Standardize dimensions and volume of BMP's;
  - Create a points-type program for BMP's and/or preferred outcomes, similar to design guidelines;
  - Other options?

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Date: April 17, 2020**; updated May 15, 2020**

Subject: Discussion of FY20-21 Planning & Land Use Work Plan

Updated content in **bold underline, deleted material in ~~strikethrough~~**

In discussions with members of the Planning Board at their retreat in January 2020, the Board of Commissioners encouraged the Planning Board and Staff to work jointly on the development of a Work Plan for the next fiscal year in conjunction with the development of the budget, to establish priorities relating to planning and land use; in short, this Work Plan would be a collection of prioritized actions and activities serving as a strategic plan to implement various initiatives and plans.

Staff presented the concept of this Work Plan at the Planning Board's February 18, 2020 meeting; the Board indicated their support for the effort. Following the meeting, Staff developed an initial *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, **and then subsequent revisions,** ~~which is~~ **the most recent** attached for the Board's review and input. This ~~initial draft~~ ***Strategic Work Plan*** was developed based upon the considerations discussed below, and identified activity categories intended to highlight as well as focus the implementation of specific plans, the Vision, Goals, Key Concerns, and Guiding Themes. **In addition to the *Strategic Work Plan*, a *Budget Overview* was also developed for the Department as part of the development of the FY20-21 Budget; this *Budget Overview* is also attached, and has been prepared to align with the *Strategic Work Plan*.**

For the Board's consideration:

- **Plan Implementation:** Staff would suggest that activities included in the Work Plan focus on implementing the following four (4) plans; implementation matrixes from each are attached:

  - *Town of Nags Head Comprehensive Plan*, July 5, 2017 LINK
  - *Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report*, August 2017 LINK
  - *Town of Nags Head Parks and Recreation Plan*, January 25, 2012 LINK
  - *Nags Head Pedestrian Plan*, July 16, 2014 LINK

  Additional consideration should be given to activities contained in the Town's *Decentralized Wastewater Management Plan* (2005) and *Hazard Mitigation Plan* (2015); however, an updated Hazard Mitigation Plan is expected to be presented for adoption in June/July 2020 and the update of the *Decentralized Wastewater*

Management Plan is an active project, expected to be initiated in the current fiscal year.

- **Vision & Goals:** As noted, the Work Plan should serve as a strategic plan to implement various initiatives and plans, but activities in the Work Plan should also work towards achieving the accepted vision and goals for the Town. The following are the vision and goals established within the Comprehensive Plan:

  VISION

  The Town of Nags Head is a unique coastal community built upon a legacy rooted in shared values, including our most recognized common bond – a love for the Outer Banks. We recognize that the town must be a good place to live before it can be a good place to visit. We strive to preserve and protect the Nags Head character, environment, tourism based economy, and sense of place in order to ensure a high quality of life for residents and a memorable family vacation experience for present and future generations.

  We uphold our legacy by protecting and promoting our small town character that includes a sustainable local economy based on family vacation tourism, a high quality beach experience, and small, locally owned businesses. Fundamental to our legacy and quality of life are preserving the historic architecture and culture that distinguishes our town; providing residents and visitors with excellent public services and well-maintained recreational amenities; and ensuring access to a well-protected natural coastal environment.

  Our legacy will be strengthened and preserved by a focused, transparent decision making process that is comprehensive and consistent with the community's vision. In order to maintain that focus, our decisions are directed by the five goals described below.

  GOALS

  1. *Preserve our community's distinctive heritage and unique lifestyle*

     a. *A relaxed-paced, family beach community comprised primarily of low-density development and open spaces.*
     b. *A healthy, well-maintained oceanfront beach that is visually and physically accessible and usable; not blocked by large structures.*
     c. *An environment that reflects the heritage of "Old Nags Head" with unique and eclectic architectural styles, scenic views, and coastal landscapes.*

  2. *Protect our critical natural resources and coastal ecosystem*

     a. *Build and promote a sustainable economy that supports residents and visitors.*

b. *A natural environment typified by clean water and a coastal barrier landscape with noninvasive, salt tolerant vegetation.*
c. *Ocean and estuarine shorelines that are carefully managed to preserve the natural and beneficial functions of the environment while balancing the need to respect private property rights and public access.*
d. *Plan for the future impacts of sea level rise; ensuring proper policies, plans, and practices for stormwater and wastewater management are in place to sustain the natural environment and maintain a viable family, tourism-based economy.*

3. *Build and promote a sustainable economy that supports residents and Visitors*

   a. *A diverse supply of housing, including single-family homes and multi-family dwelling units, that meet the needs of residents in all phases of life and for varying income levels.*
   b. *A diverse supply of visitor accommodations, including single-family homes, hotels, cottage courts, and multi-family dwelling units for visitors who desire both short-term and long-term stays.*
   c. *A thriving local business community that offers a wide range of goods and services available to residents and visitors.*
   d. *A premier family beach destination on the Outer Banks, providing an enjoyable and memorable experience.*

4. *Plan for orderly and sustainable growth and redevelopment*

   a. *A well-organized and compatible pattern of land development and redevelopment through proactive land use and transportation policies.*
   b. *Development that is designed to reduce private property damage and loss of life from major storm events and natural hazards.*
   c. *Safe connectivity and accessibility between neighborhoods, businesses, and recreational opportunities for a variety of travel modes, lessening traffic congestion, and enabling an active and healthy lifestyle for residents and visitors.*
   d. *A place with active and passive recreational opportunities that serve all ages and abilities, creating opportunities for community interaction and healthy living.*
   e. *Preservation and maintenance of legacy commercial businesses.*

5. *Maintain a well-run and efficient government that provides high quality and cost effective services*

   a. *Develop, fund, and prioritize the Capital Improvement Plan annually to provide for the infrastructure, equipment, and facility needs of the community.*
   b. *Provide the highest quality public safety services possible, and routinely review the public safety needs of the community to ensure that resources are available to meet these needs.*
   c. *Provide friendly and accommodating customer service.*

d. *Communicate town information to residents and visitors through a variety of media that demonstrates the results of measurable goals and objectives.*
e. *Advocate for the provision of high quality, responsive services, legislation, resources, and policies from government partners and other organizations that further the vision of the Town of Nags Head.*

- **Key Concerns & Guiding Themes**: In the process to develop the Comprehensive Plan, both *Key Concerns* and *Guiding Themes* were identified. These are referenced below, and further expanded upon the Comprehensive Plan.

Key Concerns			
Embracing the Town's Vision	Sustaining the Beach Road's Commercial Character	Diversifying Housing Options	Educating Residents on Regulatory Realities
Preserving Commercial Character	Connecting Key Town Destinations	Adapting to Sea Level Rise	

Guiding Themes		
Architectural Integrity	Beach Road vs Bypass	Protecting Conversion of Commercial Property to Residential
Shopping Centers and Large Format Development	Character Areas	Oceanfront
Preservation of Existing Business	Greater Diversity in Housing and Accommodations	Connectivity
Healthy Small, Local Business Economy	Arts and Cultural Resources	Environmental Quality

- **Work Plan Categories:** For the purpose of the Work Plan, and intended to highlight as well as focus the implementation of specific plans, the Vision, Goals, Key Concerns, and Guiding Themes, Staff is suggesting that Work Plan activities be categorized in at least one of five categories, as follows:

  - Community Character
  - Sustainability & Resiliency
  - Economic & Cultural Development
  - Hazard & Emergency Planning
  - Responsive & Transparent Government

It is likely that many activities will qualify for more than one category. ~~Staff will expand on the criteria for each category within the Work Plan~~ **These categories have been incorporated into the *Budget Overview* for the Department and serve as the basis for the Department's objectives for the next Fiscal Year.**

Despite the above and previous work to establish this Work Plan, Staff is cognizant that this Plan will be affected by the Coronavirus Pandemic and impacts to the Town's budget. Operating or CIP funds were anticipated to be used or sought for several projects, but there is obvious uncertainly with respect to the availability of these funds. Projects impacted most are the Workforce Housing, Estuarine Shoreline Master Plan, and Skate Park Renovation projects. Some aspects of these projects may be able to move forward with the use of internal resources, but there will likely be extended timelines. Staff is actively exploring and applying for grants to offset budget shortfalls.

Staff would recommend that the Planning Board review the information outlined above, and specifically the implementation matrixes from the four (4) plans, as well as the initial *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, and provide feedback as to whether the Plan sufficiently implements and advances specific plans, the Vision, Goals, Key Concerns, and Guiding Themes in a strategic manner. At the Board's meeting Staff will be prepared to discuss ongoing projects, tentatively identified priorities, and timeline and resource limitations.

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

Activity Categories

- Community Character
- Sustainability & Resiliency
- Economic & Cultural Development
- Hazard & Emergency Planning
- Responsive & Transparent Government

Current FY Projects

- Skate Park Renovation; Phase 1, Assessment of Preferences (Pre-Planning)
- Updated Flood Maps & Ordinance
- UDO Cleanup
- Online Permitting
- Hazard Mitigation Plan Update*
- Workforce Housing*
- CAMA Land Use Plan Update*
- UDO Reference Manual & Permitting Workflow Development*
- Art Mast Project*
- Decentralized Wastewater Master Plan Update*
- Islington Street Beach Access*
- Legacy Establishments/Structures*
- Review of Residential Stormwater Regulations*

FY20-21 Projects

- Estuarine Shoreline Master Plan
- Emergency Operations Plan Update
- Skate Park Renovation; Phase 2, Design & Construction
- Records Management/Digitization, Phase 1
- Whalebone Park; Phase 1
- UDO Update for N.C.G.S. 160D
- Biba Interactive Playground
- Development of Complete Streets Policy
- GIS Platform Update, Phase 1
- CAMA Access Grant - Huron Street
- Workforce Shuttle Coordination; Project CASSI Pilot
- Water Quality Testing
- Develop Business Retention & Succession Resources
- LID Stormwater Demonstration Project
- Update Sign Ordinance

Future Projects

- Implementation of Estuarine Shoreline Master Plan
- Records Management/Digitization, Phase 2
- GIS Platform Update, Phase 2
- CAMA Access Grant
- Skate Park Renovation; Phase 3, Design & Construction
- Whalebone Park; Phase 1
- Weather Station Installation
- Soundside Tidal/Flood Gauges
- Wayfinding Signage Plan

PLANNING AND DEVELOPMENT

OVERVIEW

The Planning and Development Department implements Town goals related to the growth, development, environment, and quality of life in Nags Head. The Department is responsible for zoning and subdivision administration, code compliance, floodplain management, erosion and sedimentation control, long-range planning activities, and Planning Board, Board of Adjustment and Arts & Culture Committee staffing. Additionally, the Department provides building permitting and inspection services to enforce state and local regulations relating to the construction, renovation, or alteration of structures to ensure a safe, sanitary, and healthy community. As part of the building inspections function, the Department is responsible for storm damage assessment and repair permits.

The Department is authorized by the State to provide local permitting services under the Coastal Area Management Act ("CAMA") in areas of environmental concern ("AEC"). The Department, therefore, has trained personnel that serve as local permitting officers for CAMA. As a CAMA community, the Town must adopt a local land use plan that complies with CAMA requirements. While the Town's 2017 Comprehensive Plan is the community's guidance document for long-range planning and decision-making, the 2010 Comprehensive Plan serves as the local land use plan complying with CAMA requirements until the State's final acceptance of the 2017 Plan (*review pending*).

The Department strives to provide high quality service for the citizens and visitors of Nags Head, as well as for the other Town departments in support of Board goals, including fair application of ordinances, thorough research and preparation in planning tasks, involving the public in local decision-making, and grant preparation and administration.

In Fiscal Year 2020-2021, the Department will continue the implementation of the following principle plans: *Town of Nags Head Comprehensive Plan*, July 5, 2017; *Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report*, August 2017; *Town of Nags Head Parks and Recreation Plan*, January 25, 2012; *Nags Head Pedestrian Plan*, July 16, 2014; *Decentralized Wastewater Management Plan*, 2005; and *Hazard Mitigation Plan*, 2015. (*An updated Hazard Mitigation Plan is expected to be presented for adoption in June/July 2020 and the update of the Decentralized Wastewater Management Plan is an active project, expected to be undergoing updating during the fiscal year*)

GOALS AND FOCUS

As established with the *Town of Nags Head Comprehensive Plan* and included in the Town's *Vision Statement*, the principle goals of the Department are as follows:

- Preserve our community's distinctive heritage and unique lifestyle

  - A relaxed-paced, family beach community comprised primarily of low-density development and open spaces.
  - A healthy, well-maintained oceanfront beach that is visually and physically accessible and usable; not blocked by large structures.
  - An environment that reflects the heritage of "Old Nags Head" with unique and eclectic architectural styles, scenic views, and coastal landscapes.

- Protect our critical natural resources and coastal ecosystem
  - Build and promote a sustainable economy that supports residents and visitors.
  - A natural environment typified by clean water and a coastal barrier landscape with noninvasive, salt tolerant vegetation.
  - Ocean and estuarine shorelines that are carefully managed to preserve the natural and beneficial functions of the environment while balancing the need to respect private property rights and public access.
  - Plan for the future impacts of sea level rise; ensuring proper policies, plans, and practices for stormwater and wastewater management are in place to sustain the natural environment and maintain a viable family, tourism-based economy.

- Build and promote a sustainable economy that supports residents and Visitors
  - A diverse supply of housing, including single-family homes and multi-family dwelling units, that meet the needs of residents in all phases of life and for varying income levels.
  - A diverse supply of visitor accommodations, including single-family homes, hotels, cottage courts, and multi-family dwelling units for visitors who desire both short-term and long-term stays.
  - A thriving local business community that offers a wide range of goods and services available to residents and visitors.
  - A premier family beach destination on the Outer Banks, providing an enjoyable and memorable experience.

- Plan for orderly and sustainable growth and redevelopment
  - A well-organized and compatible pattern of land development and redevelopment through proactive land use and transportation policies.
  - Development that is designed to reduce private property damage and loss of life from major storm events and natural hazards.
  - Safe connectivity and accessibility between neighborhoods, businesses, and recreational opportunities for a variety of travel modes, lessening traffic congestion, and enabling an active and healthy lifestyle for residents and visitors.
  - A place with active and passive recreational opportunities that serve all ages and abilities, creating opportunities for community interaction and healthy living.
  - Preservation and maintenance of legacy commercial businesses.

PLANNING AND DEVELOPMENT

- Maintain a well-run and efficient government that provides high quality and cost effective services
    - Develop, fund, and prioritize the Capital Improvement Plan annually to provide for the infrastructure, equipment, and facility needs of the community.
    - Provide the highest quality public safety services possible, and routinely review the public safety needs of the community to ensure that resources are available to meet these needs.
    - Provide friendly and accommodating customer service.
    - Communicate town information to residents and visitors through a variety of media that demonstrates the results of measurable goals and objectives.
    - Advocate for the provision of high quality, responsive services, legislation, resources, and policies from government partners and other organizations that further the vision of the Town of Nags Head.

These goals will serve to direct the focus and priorities of the Department, and based upon these, the following *Activity Categories* have been identified to align Department focus and priorities with specifically identified objectives and performance indicators, related to one or more of these *Categories*:

- Community Character
- Sustainability & Resiliency
- Economic & Cultural Development
- Hazard & Emergency Planning
- Responsive & Transparent Government

OBJECTIVES AND PERFORMANCE INDICATORS

Objective - Community Character: Preserve and enhance community character and the Town's distinctive heritage

Performance Indicators and Specific Projects

- Complete FY19-20 project to address legacy establishments and structures with respect to land use regulation.
- Complete FY19-20 project to make improvements to the Islington Street Beach Access.
- Continue community outreach, monitoring, and compliance enforcement of Short-Term Rental regulations; provide periodic reporting to the Board of Commissioners on progress and strategies to improve compliance.
- Pursue DCM/CAMA Access Grant funds for improvements to the Huron Street Beach Access.

- Explore opportunities to initiate neighborhood-based planning focused on identified Town districts.
- Continue to focus Department operations on efforts to achieve the identified objective.

Objective - Sustainability & Resiliency: Support long-term sustainability and resiliency by protecting natural resources and pursuing environmentally conscious actions

Performance Indicators and Specific Projects

- Complete FY19-20 project to update the Town's CAMA Land Use Plan (*review pending*).
- Complete FY19-20 project to review Residential Stormwater Regulations, implement recommendations (as applicable), and develop training and community education opportunities.
- Complete FY19-20 project to update the Town's Decentralized Wastewater Master Plan.
- Initiate and execute the development of an Estuarine Shoreline Management/Master Plan, including the securing of funding for the project.
- Take on water quality sampling/testing "in-house" in support of the Todd D. Krafft Septic Health Initiative Program; align with water quality sampling/testing in support of stormwater initiatives and consider program improvements as part of the update of the Decentralized Wastewater Master Plan.
- Develop a LID Stormwater Demonstration Project as a community education tool.
- Develop a Complete Streets Policy to enhance opportunities and conditions for non-motorized mobility.
- Look for opportunities to reduce the carbon footprint resulting from the Department's operations and regulations.
- Continue to focus Department operations on efforts to achieve the identified objective.

Objective - Economic & Cultural Development: Pursue opportunities to enhance the viability and vibrancy of the Town's business and cultural environment

Performance Indicators and Specific Projects

- Complete FY19-20 project to install Art Masts in locations within Town.
- Complete or determine status of FY19-20 project to study and develop a plan addressing housing needs for the Town's workforce.
- Complete FY19-20 project to determine preferences for the renovation of the Town's Skate Park.
- Initiate Phase 1 of a study to determine opportunities for the improvement of Whalebone Park.
- Coordinate with stakeholders working on a workforce shuttle and consider opportunities for pilot programs to test shuttle viability.

- Complete an update of the Town's Sign Ordinance.
- Develop plans and implement further fitness-focused enhancements at Dowdy Park, including the Biba Interactive Playground platform (or similar) and multi-generational opportunities.
- Work with the business community to develop resources for business retention and succession.
- Continue to support and work with the Arts and Culture Committee to pursue funding and organize activities that promote arts and cultural activities throughout Town.
- Continue to focus Department operations on efforts to achieve the identified objective.

Objective - Hazard & Emergency Planning: Proactively work to mitigate hazard impacts and establish plans and procedures for hazard and emergency response and recovery

Performance Indicators and Special Projects

- Complete FY19-20 project to update the Town's Hazard Mitigation Plan.
- Complete FY19-20 project to update the Town's Emergency Operations Plan; pursue funding needs or otherwise determine method to update.
- Complete FY19-20 project to update the Town's Flood Damage Prevention Ordinance in coordination with the update of the FEMA F.I.R.M. for Dare County.
- Identify and participate in activities to continue sea level rise and climate adaptation planning with North Carolina Sea Grant and other partners.
- Continue to focus Department operations on efforts to achieve the identified objective.

Objective - Responsive & Transparent Government: Advance and establish a Department culture and systems that provide responsiveness and transparency to the public

Performance Indicators and Special Projects

- Complete FY19-20 project to correct identified errors within the Unified Development Ordinance; establish a plan and schedule for the periodic correction of errors identified in the future.
- Complete FY19-20 project to institute online permitting and establish support for the submittal of digital applications and plans; institute a schedule for regular communications with the building community and the general public on the use of online tools and updates on general Department business.

PLANNING AND DEVELOPMENT

- Complete FY19-20 project to develop a Reference Manual for the Unified Development Ordinance and document and refine Department workflows; project focus should address streamlining of processes, clarity and consistency of forms, materials, and customer guidance and education.
- Initiate Phase 1 of the Records Management/Digitization project by assessing needs, exploring resources, identifying funding requirements, and soliciting information and proposals.
- Update the Unified Development Ordinance consistent with the requirements of N.C.G.S. 160D.
- Initiate Phase 1 of the GIS Platform Update project by assessing needs, exploring resources, identifying funding requirements, and soliciting information and proposals.
- Annually (FY), working with Staff, the Planning Board, and the Board of Commissioners, prepare a Department Strategic Work Plan identifying and prioritizing special projects and initiatives; provide periodic reports on status and performance.
- Continue to identify and seek grant and funding opportunities to offset Department and Town costs related to operating and capital budgets.
- Continue to focus Department operations on efforts to achieve the identified objective, including, but not limited to, pursuing opportunities to cross train staff and tracking permit review and issuance times.