



## AGENDA

**TOWN OF NAGS HEAD BOARD OF COMMISSIONERS  
NAGS HEAD MUNICIPAL COMPLEX - BOARD ROOM  
WEDNESDAY, JUNE 5, 2024, 9:00 A.M.**

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**A. CALL TO ORDER / MOMENT OF SILENCE / PLEDGE OF ALLEGIANCE**

**B. ADOPTION OF AGENDA**

**C. RECOGNITION**

1. Recognition

INTRODUCTION OF LIFEGUARDS

NEW EMPLOYEE - Public Services - Sanitation Equipment Operator Kevin Goudy -  
April 9, 2024

NEW EMPLOYEE - Planning and Development - Planner Greg Daisey - May 8, 2024

TWENTY YEARS - Permitting Coordinator Lily Nieberding - April 19, 2004

TWENTY YEARS - Police Systems Administrator Dee Johnson - May 10, 2004

PRESENTATION - NC Tax Collectors' Association - Outstanding Tax Collector of  
2024 Linda Bittner

PRESENTATION - 2024 Town Lightkeeper and Nags Header Awards

Documents:

[6 C RECOGNITION SUMMARY.PDF](#)

**D. PUBLIC COMMENT**

**E. CONSENT AGENDA**

1. Consideration Of Budget Amendment #12 To FY 23/24 Budget

Documents:

[6 E1 BUD AMEND TO FY 23-24 SUMMARY.PDF](#)

[6 E1 BUD AMEND TO FY 23-24 WORKSHEETS.PDF](#)

2. Consideration Of Tax Adjustment Report

Documents:

[6 E2 TAX ADJ REPORT SUMMARY.PDF](#)

6 E2 TAX ADJUST MSD REPORT.PDF  
6 E2 TAX ADJUST TOWN-WIDE REPORT.PDF

3. Approval Of Minutes

Documents:

6 E3 MINUTES SUMMARY.PDF  
6 E3 MAY 1 2024 BOC MINS.PDF  
6 E3 MAY 21 2024 BOC MINS.PDF  
6 E3 MAY 21 2024 BOC BUD WORKSHOP MINS.PDF

4. Annual Write-Off Of Uncollectible Water Accounts

Documents:

6 E4 WATER WRITE OFFS SUMMARY.PDF

5. Request Approval Of Moffat & Nichol And McKim & Creed Proposals  
to conduct annual beach monitoring survey & analysis

Documents:

6 E5 ANNUAL BEACH PROFILES-SUMMARY.PDF  
6 E5 ANNUAL BEACH PROFILES-MONITORING.PDF  
6 E5 ANNUAL BEACH PROFILES-SUMMER 2024.PDF

6. Consideration Of Personnel Policy Update

Documents:

6 E6 PER POL RELATIVES COVERAGE SUMMARY.PDF  
6 E6 PER POL RELATIVES REVISION.PDF

7. Consideration Of Change Order For Dune Grass Plantings  
as part of the Coastal Storm Damage Mitigation Grant

Documents:

6 E7 CHANGE ORDER DUNE GRASS PLANTINGS SUMMARY.PDF  
6 E7 CHANGE ORDER DUNE GRASS PLANTINGS.PDF

8. Request For Public Hearing To Consider  
NC Public Beach and Coastal Waterfront Access grant application

Documents:

6 E8 RPH NC BEACH ACCESS GRANT SUMMARY.PDF  
6 E8 RPH NC BEACH ACCESS GRANT PRE-APPLICATION.PDF

**F. PUBLIC HEARINGS**

1. Public Hearing To Consider Text Amendment To Prohibit  
driving or parking on residential septic systems.

Documents:

6 F2 PH PROHIBIT PARKING ON SEPTIC SUMMARY.PDF  
6 F2 PH PROHIBIT PARKING ON SEPTIC PN.PDF  
6 F2 PH PROHIBIT PARKING ON SEPTIC MEMO ORD.PDF  
6 F2 PH PROHIBIT PARKING ON SEPTIC APP A.PDF

2. Public Hearing To Consider Text Amendment Submitted  
by Jordan Harrell of Jernigan Oil Company, Inc. to allow LED, digital displays for  
Fueling Stations

Documents:

6 F3 PH DIGITAL DISPLAY FUEL STATION SUMMARY.PDF  
6 F3 PH DIGITAL DISPLAY FUEL STATION PN.PDF  
6 F3 PH DIGITAL DISPLAY FUEL STATION MEMO ORD.PDF  
6 F3 PH DIGITAL DISPLAY FUEL STATION APP A.PDF

#### **G. REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE PLANNING AND DEVELOPMENT DIRECTOR**

1. Update From Planning Director

Documents:

6 G1 PLANNING DIRECTOR SUMMARY.PDF  
6 G1 PLANNING DIRECTOR REPORT.PDF

#### **H. OLD BUSINESS TABLED FROM PREVIOUS MEETINGS**

1. From Mar 6th Board Meeting – Report From Multi-Family Ordinance Working Group

Documents:

6 H1 MULTI-FAMILY ORD WORKING GROUP SUMMARY.PDF  
6 H1 MULTI-FAMILY ORD WORKING GROUP ORD.PDF

#### **I. NEW BUSINESS**

1. PRESENTATION - Recess To Ribbon Cutting At New Public Services Complex  
**Time Specific 12:30 p.m.**

Documents:

6 I1 RECESS TO RC AT PS COMPLEX SUMMARY.PDF

2. Committee Reports

Documents:

6 I2 COMMITTEE REPORTS SUMMARY.PDF

3. Consideration Of Disaster Debris Removal And Monitoring Contract Renewals

Documents:

6 I3 DEBRIS REMOVAL AND MONITORING SUMMARY.PDF  
6 I3 DEBRIS REMOVAL RENEWAL-DRC.PDF

**J. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**

**K. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**

1. Update On Construction Of The Public Services Facility

Documents:

[6 K1 TM PUBLIC SVCS FACILITY UPDATE SUMMARY.PDF](#)

2. Discussion Of Process For Neighborhoods To Request Traffic Calming Devices

Documents:

[6 K2 TM NEIGHBORHOOD CALMING DEVICES SUMMARY.PDF](#)

[6 K2 TM NEIGHBORHOOD CALMING DEVICES FLOW CHART.PDF](#)

3. Update On 2024 Town Fireworks Display

Documents:

[6 K3 TM FIREWORKS UPDATE SUMMARY.PDF](#)

**L. BOARD OF COMMISSIONERS AGENDA**

1. Comr. Bob Sanders - Consideration Of Donation To  
Jockey's Ridge State Park 50th Anniversary Celebration  
Consideration of Budget Amendment

Documents:

[6 L1 COMR SANDERS JRSP 50TH ANNIV DONATION SUMMARY.PDF](#)

[6 L1 COMR SANDERS JRSP 50TH ANNIV BUD AMENDMENT.PDF](#)

2. Comr. Kevin Brinkley - Discussion Of Jockey's Ridge State Park Soundside Access

Documents:

[6 L2 COMR BRINKLEY DISC OF JRSP SS ACCESS SUMMARY.PDF](#)

**M. MAYOR'S AGENDA**

**N. CLOSED SESSIONS**

1. Request For Closed Session To Consider  
a personnel issue pursuant to GS 143-318.11(a)(6)

Documents:

[6 N1 RCS PERSONNEL SUMMARY.PDF](#)

2. Request For Closed Session To Discuss  
possible acquisition of real property in accordance with GS 143-318.11(a)(5)

Documents:

[6 N2 RCS PROPERTY SUMMARY.PDF](#)

**O. OTHER BUSINESS**

**P. ADJOURNMENT**

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**5401 S. Croatan Hwy, Nags Head, NC 27959  
252-441-5508**

# Agenda Item Summary Sheet



Item No: C  
Meeting Date: June 5, 2024

**Item Title:** Recognition

**Item Summary:**

Recognition at the June 5th Board of Commissioners meeting includes the following:

INTRODUCTION OF LIFEGUARDS – Video will be shown with an introduction of each lifeguard for the 2024 summer season.

NEW EMPLOYEE – Public Services - Sanitation Equipment Operator Kevin Goudy – April 9, 2024

NEW EMPLOYEE – Planning and Development - Planner I Greg Daisey – May 8, 2024

TWENTY YEARS – Planning and Development - Permitting Coordinator Lily Nieberding – April 19, 2004

TWENTY YEARS – Public Safety - Police Systems Administrator Dee Johnson – May 10, 2004

PRESENTATION – NC Tax Collector’s Association – Outstanding Tax Collector of 2024

- Nags Head Tax Collector Linda Bittner

Hosea E. Wilson, III, AAS, PPS, County Assessor for Dare County, provided in an email: “Neal Dixon, Tax Collector for Mecklenburg County, made a very nice presentation of the award at the banquet [May 9, 2024 in Asheville, NC] and there were eight other collector candidates. Like I said before, well deserved.”

PRESENTATION – 2024 Town Lightkeeper and Nags Header Awards

Number of Attachments: 0

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**Specific Action Requested:**

Provided for Board recognition.

Submitted By: Administration

Date: May 23, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 23, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 23, 2024

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**Town Manager Comment and/or Recommendation:**

Welcome and Congratulations!

Signature: Andy Garman

Date: May 23, 2024



# Agenda Item Summary Sheet

Item No: **E-1**  
Meeting Date: **June 5, 2024**

**Item Title:** Consideration of Budget Amendment #12 to FY 23/24 Budget

**Item Summary:**

Attached please find Budget Amendment #12 to the FY 23/24 Budget which is provided for Board review and approval at the June 5<sup>th</sup> Board of Commissioners meeting. Budget Amendment #12 is in accordance with the FY 23/24 Budget Ordinance, adopted at the June 21, 2023 meeting.

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Number of Attachments: 1

**Specific Action Requested:**

Request Board approval of attached Budget Amendment #12.

Submitted By: Administrative Services

Date: May 31, 2024

**Finance Officer Comment:**

Request Board approval of attached Budget Amendment #12.

Signature: Amy Miller

Date: May 31, 2024

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 31, 2024

**Town Manager Comment and/or Recommendation:**

I concur with staff's request.

Signature: Andy Garman

Date: May 31, 2024



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12**  
**Amendment 12.1**  
USE OF FUNDS

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
580-543100	<b>General Fund Expenditures Sanitation</b> Fuel	25,007.00		900-590093	<b>General Fund Expenditures</b> Transfer-CIF	25,007.00
11-492000	<b>Capital Investment Fund Revenues</b> Transfer-General Fund	25,007.00		911-590081	<b>Capital Investment Fund Expenditures</b> Transfer to General Fund	25,007.00
10-492111	<b>General Fund Revenues</b> Transfer-CIF	25,007.00		580-577400	<b>General Fund Expenditures</b> Capital Outlay - Equipment	25,007.00
<b>TOTAL CHARGES</b>		\$ 25,007.00		<b>TOTAL CREDITS</b>		\$ 25,007.00

**JUSTIFICATION**

Five roll offs requested for brush yard.

ADMINISTRATIVE SERVICES 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12  
Amendment 12.2**  
USE OF FUNDS

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
961-599900	<b>Water Fund Expenditures</b> Manager's contingency	50,000.00		810-544800	<b>Water Fund Expenditures-Operations</b> Purchases for resale	120,000.00
61-499100	<b>Water Fund Revenues</b> Appropriated net position	70,000.00				
<b>TOTAL CHARGES</b>		\$ 120,000.00		<b>TOTAL CREDITS</b>		\$ 120,000.00

**JUSTIFICATION**

Due to an unanticipated increase in the wholesale water purchase price, funds are needed to cover the anticipated shortfall.

ADMINISTRATIVE SERVICES \_\_\_\_\_ 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

\_\_\_\_\_  
INITIALS



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12  
Amendment 12.3**  
USE OF FUNDS

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
580-510200	<b>General Fund Expenditures</b> <i>Sanitation</i> Salary	70,000.00		420-520700	<b>General Fund Expenditures</b> <i>Town Manager</i> Group Health Insurance	10,000.00
490-510200	<i>Planning</i> Salary	15,000.00		730-520700	<i>Fire</i> Group Health Insurance	25,000.00
				792-510300	<i>Ocean Rescue</i> Salary-part time	50,000.00
<b>TOTAL CHARGES</b>		\$ 85,000.00		<b>TOTAL CREDITS</b>		\$ 85,000.00

**JUSTIFICATION**

Personnel overages, mainly due to the Town's increased portion of health insurance beginning in January and lifeguard hourly increases. Use lapse salaries to cover shortfalls.

ADMINISTRATIVE SERVICES \_\_\_\_\_ 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12  
Amendment 12.4  
USE OF FUNDS**

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
470-544000	<b>General Fund Expenditures - Legal</b> Legal	30,000.00		440-555400	<b>General Fund Expenditures - Admin. Services</b> Insurance	30,000.00
<b>TOTAL CHARGES</b>		\$ 30,000.00		<b>TOTAL CREDITS</b>		\$ 30,000.00

**JUSTIFICATION**

Legal fees anticipated to be under budget-use to cover insurance shortfall due to increased rates and new buildings.

ADMINISTRATIVE SERVICES 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12  
Amendment 12.5  
USE OF FUNDS**

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
10-474000	<b>General Fund Revenues</b> Civil Penalties	90,000.00		441-543405	<b>General Fund Expenditures - IT</b> Other Supplies-Computers	90,000.00
<b>TOTAL CHARGES</b>		\$ 90,000.00		<b>TOTAL CREDITS</b>		\$ 90,000.00

**JUSTIFICATION**

Computer overage - did not lease computers, they were purchased.  
Use civil penalty overage.

ADMINISTRATIVE SERVICES 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12  
Amendment 12.6**  
USE OF FUNDS

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
10-430206	<b>General Fund Revenues</b> Homeland Security overtime grant	8,342.00		610-520700	<b>General Fund Expenditures-Police</b> Salary	8,342.00
<b>TOTAL CHARGES</b>		\$ 8,342.00		<b>TOTAL CREDITS</b>		\$ 8,342.00

**JUSTIFICATION**

Reimbursement for federal overtime.

ADMINISTRATIVE SERVICES 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12  
Amendment 12.7  
USE OF FUNDS**

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
10-472000	<b>General Fund Revenues</b> Insurance Damage Reimbursement	15,532.00		580-543700	<b>General Fund Expenditures-Sanitation</b> Maint./Repair Vehicles	15,532.00
<b>TOTAL CHARGES</b>		\$ 15,532.00		<b>TOTAL CREDITS</b>		\$ 15,532.00

**JUSTIFICATION**

Reimbursement for vehicle damage.

ADMINISTRATIVE SERVICES 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12**  
**Amendment 12.8**  
USE OF FUNDS

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
490-577350	<b>General Fund</b> <b>Expenditures-Planning</b> Capital Outlay Improvements	112,000.00		10-430400	<b>General Fund</b> <b>Revenues</b> Visitors Bureau Grant	112,000.00
625-577407	<b>General Fund</b> <b>Expenditures-Stormwater</b> Capital Outlay Infrastructure	1,109,337.00		10-432100	<b>General Fund</b> <b>Revenues</b> NCDEQ Grant	1,509,337.00
625-544500	Contracted Services	400,000.00				
818-577407	<b>Water Fund</b> <b>Expenditures-Distribution</b> Capital Outlay Infrastructure	182,555.00		61-499100	<b>Water Fund</b> <b>Revenues</b> Appropriated Net Position	182,555.00
<b>TOTAL CHARGES</b>		\$ 1,803,892.00		<b>TOTAL CREDITS</b>		\$ 1,803,892.00

**JUSTIFICATION**

Rebudget grants and capital projects in FY 24/25.  
Whalebone Park restroom, waterline project, PA# 12-13, stormwater master plan.

ADMINISTRATIVE SERVICES 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



## Agenda Item Summary Sheet

Item No: **E-2**  
Meeting Date: **June 5, 2024**

**Item Title:** Consideration of Tax Adjustment Reports

**Item Summary:**

Attached please find the list of adjustments to the 2023 Tax Levy (per information received from Dare County) for the monthly Property and MSD valuations.

These reports are submitted for your approval at the June 5<sup>th</sup> Board of Commissioners meeting.

Number of Attachments: 2

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**Specific Action Requested:**

Tax reports provided for Board review and approval.

Submitted By: Linda Bittner, Tax Collector

Date: May 29, 2024

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**Finance Officer Comment:**

No unbudgeted fiscal impact.

Signature: Amy Miller

Date: May 29, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 29, 2024

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**Town Manager Comment and/or Recommendation:**

I concur with staff.

Signature: Andy Garman

Date: May 29, 2024

**Town of Nags Head, North Carolina**  
**Schedule of Ad Valorem 2023-2024 Taxes Receivable**  
**2023 Tax Levy As of May 29, 2024 for the June 5, 2024 BOC Mtg**

	<b>BEACH NOURISHMENT DISTRICT</b>			MSD Excluding Registered Motor Vehicles	Registered Motor Vehicles
	MSD Valuation	Rate	Total Levy		
<b>Original MSD Levy:</b>					
MSD Beach Nourishment at Current 2023 Dist 1 Rate	578,093,598	0.00143	826,674.06	826,674.06	
MSD Beach Nourishment at current 2023 Dist 2 Rate	473,945,007	0.00143	677,741.67	677,741.67	
MSD Beach Nourishment at Current 2023 Dist 3 Rate	1,053,729,707	0.00005	52,687.93	52,687.93	
MSD Beach Nourishment at Current 2023 Dist 4 Rate	665,352,580	0.00010	66,535.07	66,535.07	
MSD Beach Nourishment at Current 2023 Dist 6 Rate	374,308,126	0.00005	18,716.25	18,716.25	
Registered Motor Vehicles at Current 2023 Dist 1 Rate	1,415,011	0.00143	2,023.50		2,023.50
Registered Motor Vehicles at Current 2023 Dist 2 Rate	1,675,635	0.00143	2,396.18		2,396.18
Registered Motor Vehicles at Current 2023 Dist 3 Rate	4,813,494	0.00005	240.69		240.69
Registered Motor Vehicles at Current 2023 Dist 4 Rate	3,880,691	0.00010	388.11		388.11
Registered Motor Vehicles at Current 2023 Dist 5 Rate	417,625	0.00000	0.00		0.00
Registered Motor Vehicles at Current 2023 Dist 6 Rate	3,070,289	0.00005	150.44		150.44
Registered Motor Vehicles at 2022 Dist 1 Rate	272,667	0.00143	389.90		389.90
Registered Motor Vehicles at 2022 Dist 2 Rate	354,796	0.00143	507.37		507.37
Registered Motor Vehicles at 2022 Dist 3 Rate	1,312,015	0.00005	65.65		65.65
Registered Motor Vehicles at 2022 Dist 4 Rate	899,152	0.00010	89.99		89.99
Registered Motor Vehicles at 2022 Dist 5 Rate	59,870	0.00000	0.00		0.00
Registered Motor Vehicles at 2022 Dist 6 Rate	1,159,114	0.00005	58.00		58.00
Registered Motor Vehicles at 2021 rate	22,000	0.00143	5.28		5.28
Penalties			0.00		
<b>Total</b>	<b>3,164,781,377</b>		<b>1,648,670.09</b>	<b>1,642,354.98</b>	<b>6,315.11</b>
<b>Discoveries &amp; Adjustments:</b>					
Current year discoveries & adjustments	8,221		7.64	7.64	
<b>Total</b>	<b>8,221</b>		<b>7.64</b>	<b>7.64</b>	
<b>Releases &amp; Adjustments:</b>					
DMV Current year valuation adjustments	0		0.00	0.00	0.00
DMV Current year tax releases	0		(0.12)	0.00	(0.12)
Real/Personal Current year releases & adjustments and circuit breakers	127,576		(6.73)	(6.73)	
<b>Total</b>	<b>127,576</b>		<b>(6.85)</b>	<b>(6.73)</b>	<b>(0.12)</b>
<b>Write-offs (under \$1.00) or Adjustments:</b>			0.00	0.00	
<b>Total MSD Valuation</b>	<b>3,164,917,174</b>				
<b>Net levy</b>		<b>1,648,670.88</b>		<b>1,642,355.89</b>	<b>6,314.99</b>
<b>TOTAL UNCOLLECTED MSD AS OF 05/29/24:</b>		<b>(10.00)</b>		<b>(10.00)</b>	<b>0.00</b>
<b>CURRENT YEAR MSD COLLECTED:</b>		<b>1,648,660.88</b>		<b>1,642,345.89</b>	<b>6,314.99</b>
<b>CURRENT MSD COLLECTION PERCENTAGE:</b>		<b>99.999%</b>		<b>99.999%</b>	<b>100.000%</b>

Dist.3&6

**Town of Nags Head, North Carolina**  
**Schedule of Ad Valorem 2023-2024 Taxes Receivable**  
**2023 Tax Levy As of May 29, 2024 for the June 5, 2024 BOC Mtg**

	Town-Wide Tax			Total Levy	
	Property Valuation	Rate	Total Levy	Property Excluding Registered Motor Vehicles	Registered Motor Vehicles
<b>Original levy:</b>					
Property taxed at current 2023 rate	3,057,530,927	0.003300	10,089,869.38	10,089,869.38	
Registered Motor Vehicles at current 2023 rate	39,484,607	0.003300	130,282.32		130,282.32
Registered Motor Vehicles at 2022 year's rate	12,962,566	0.002875	37,267.38		37,267.38
Registered Motor Vehicles at 2021 year's rate	102,612	0.002875	295.01		295.01
Penalties	0		7,355.82	7,355.82	
<b>Total</b>	<b><u>3,110,080,712</u></b>		<b><u>10,265,069.91</u></b>	<b><u>10,097,225.20</u></b>	<b><u>167,844.71</u></b>
<b>Discoveries &amp; Adjustments:</b>					
Current year discoveries & adjustments tax	1,837,704		5,032.44	5,032.44	
Town wide beach nourishment tax			463.16	463.16	
Corporate Utilities discoveries & tax	22,654,828		69,097.22	69,097.22	
Corporate Utilities town wide beach nourishment			5,663.71	5,663.71	
Penalty Discoveries			1,746.31	1,746.31	
<b>Total</b>	<b><u>24,492,532.00</u></b>		<b><u>82,002.84</u></b>	<b><u>82,002.84</u></b>	
<b>Releases &amp; Adjustments:</b>					
Current year releases/adjustments/circuit breaker	(2,053,128)		(7,347.48)	(6,754.59)	(592.89)
Town wide beach nourishment/circuit breaker			(472.60)	(472.60)	
Penalty Releases			(1,453.65)	(1,453.65)	
<b>Total</b>	<b><u>(2,053,128)</u></b>		<b><u>(9,273.73)</u></b>	<b><u>(8,680.84)</u></b>	<b><u>(592.89)</u></b>
<b>Write-offs (under \$1.00) or Adjustments:</b>			(4.13)	(4.13)	
<b>Total Property Valuation</b>	<b><u><u>3,132,520,116</u></u></b>				
<b>Net levy</b>		<b>10,337,794.89</b>		<b>10,170,543.07</b>	<b>167,251.82</b>
Uncollected Taxes & Penalties		(2,197.43)		(2,197.43)	0.00
Uncollected Town Wide Beach Nourishment		(172.39)		(172.39)	0.00
<b>TOTAL UNCOLLECTED TAXES AS OF 05/29/24:</b>		<b><u>(2,369.82)</u></b>		<b><u>(2,369.82)</u></b>	<b><u>0.00</u></b>
<b>CURRENT YEAR TAXES COLLECTED:</b>		<b>10,335,425.07</b>		<b>10,168,173.25</b>	<b>167,251.82</b>
<b>CURRENT LEVY COLLECTION PERCENTAGE:</b>		<b><u>99.977%</u></b>		<b><u>99.977%</u></b>	<b><u>100.000%</u></b>



## Agenda Item Summary Sheet

Item No: **E-3**  
Meeting Date: **June 5, 2024**

**Item Title:** Approval of minutes from Board of Commissioners meetings/workshops

**Item Summary:**

Attached for Board review and approval are the following DRAFT Board of Commissioners meeting/workshop minutes:

May 1, 2024 Regular Board of Commissioners meeting  
May 21, 2024 Recessed Board of Commissioners meeting  
May 21, 2024 Budget Workshop

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Number of Attachments: 3

**Specific Action Requested:**

Provided for Board review and approval.

Submitted By: Carolyn F. Morris, Town Clerk

Date: May 31, 2024

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**Finance Officer Comment:**

No unbudgeted costs associated with this agenda item.

Signature: Amy Miller

Date: May 31, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 31, 2024

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**Town Manager Comment and/or Recommendation:**

N/A

Signature: Andy Garman

Date: May 31, 2024



***DRAFT* MINUTES**  
**TOWN OF NAGS HEAD**  
**BOARD OF COMMISSIONERS**  
**REGULAR MEETING**  
**WEDNESDAY, MAY 1, 2024**

The Nags Head Board of Commissioners met at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, May 1, 2024 at 9:00 a.m. for a Regular Meeting.

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

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney Lauren Womble; Amy Miller; Kelly Wyatt; David Ryan; Perry Hale; Randy Wells; Nancy Carawan; Joe Costello; Brittany Phillips; Roberta Thuman; Shannon Krzyzanowski; Pete Woickelman; Janis Farmer; Debbie Swick; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 a.m. Mayor Cahoon welcomed Attorney Womble substituting for Town Attorney John Leidy. Mayor Cahoon asked that everyone consider during a moment of silence the following police officers who were killed while attempting to serve warrants earlier this week in Charlotte-Mecklenberg: Thomas Weeks, Joshua Eyer, Alden Elliott, and Sam Poloche. The moment of silence was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

MOTION: Comr. Brinkley made a motion to approve the May 1<sup>st</sup> agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

**RECOGNITION**

Finance Officer/Dep Town Manager Amy Miller introduced Customer Service Rep Shannon Krzyzanowski who was recognized by the Board for five years of service.

Public Services Director Nancy Carawan introduced Senior Fleet Mechanic Peter "Pete" Woickelman who was recognized by the Board for ten years of service.

Public Services Director Nancy Carawan introduced Facilities Maintenance Crew Leader Janis Farmer who was recognized and congratulated for 25 years of service.

PROCLAMATION – National Police Officer’s Week

Mayor Cahoon read the proclamation declaring May 12 – 18, 2024 as National Police Officer’s week as follows:

‘WHEREAS, The Congress and President of the United States have designated May 15<sup>th</sup> as Peace Officers’ Memorial Day, and the week in which May 15<sup>th</sup> falls as National Police Week; AND

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

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

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

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

‘NOW, THEREFORE, the Nags Head Board of Commissioners calls upon all citizens of the Town of Nags Head and upon all patriotic, civic, and educational organizations to observe the week of May 12 - 18, 2024 as Police Week with appropriate ceremonies and observances in which all our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

‘THEREFORE, we do hereby proclaim the week of May 12 - 18, 2024, as Police Week and call upon all citizens of Nags Head to observe the 15<sup>th</sup> day of May 2024, as Peace Officers’ Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.”

MOTION: Comr. Brinkley made a motion to adopt the proclamation recognizing National Police Officer’s Week as May 12 – 18, 2024 as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Police Chief Hale spoke of Sgt. Earl Murray’s death in the line of duty May 15, 2009; the 15-year anniversary of Sgt. Murray’s passing makes this recognition this week even more important. Mayor Cahoon agreed and he and Board members spoke of the job done by our officers every day.

**PUBLIC COMMENT**

Attorney Lauren Womble opened Public Comment.

PUBLIC COMMENT – DEBBIE SWICK

Debbie Swick, Southern Shores resident, president of Ban Balloon Releases organization; she spoke in favor of the ordinance and resolution for the Board's consideration on today's agenda banning the release of balloons on Town property; she speaks at Town and County councils as balloons need to be relearned and people need to be re-educated; restrictions need to be in place that balloons on storefronts, etc. need to be tied as they do break free; she also would like the requirement added that balloons sold in stores need to have a weight on them; wildlife to include whales continue to be lost due to balloons; she expressed her appreciation to the Board for both the resolution and especially for the ordinance on their agenda today.

**CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Consideration of Budget Amendment #11 to FY 23/24 Budget  
Consideration of Tax Adjustment Report  
Approval of minutes  
Consideration of modification to Consolidated Fee Schedule

Request for Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2024 – June 30, 2025, proposed CIP requests for FY 24/25 through FY 28/29, and updated Consolidated Fee Schedule

Request for Public Hearing to consider text amendment to prohibit driving or parking on residential septic systems

Request for Public Hearing to consider text amendment submitted by Jordan Harrell of Jernigan Oil Company, Inc. to allow LED, digital displays for Fueling Stations

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

Budget amendment #11 to the FY 23/24 Budget, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

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

The modification to the Consolidated Fee Schedule, as approved, was presented in the agenda summary sheet as follows:

"At the May 1<sup>st</sup> Board of Commissioners meeting, request Board consideration of the following changes to the Consolidated Fee Schedule:

'Police Department

Chief Perry Hale is requesting consideration of modification to the *Towing of Automobiles, vans, pick-ups trucks, motorcycles* portion of the Consolidated Fee Schedule. Due to the increased cost of insurance and operational supplies in the industry, it is realized an increase in the fee is necessary. This increase will bring the Town of

Nags Head in line with other agencies in the Troop A-1 area who have already approved the increase. Police Chief Hale's memo with additional details is attached.

'Town Manager

Manager Garman is requesting consideration of modification to the *Public Services: Miscellaneous* portion of the Consolidated Fee Schedule. He would like to add "Keep Off the Dunes" signs for purchase; residents/property owners have requested the signage to assist with trespassers.

'Attached please find the applicable pages from the Consolidated Fee Schedule."

The first Request for Public Hearing, as approved, read in part as follows:

"Request that a Public Hearing be scheduled for the June 5, 2024 Board of Commissioner's meeting to consider citizen comment on the following:

- Town Manager's proposed operating budget for fiscal year July 1, 2024 – June 30, 2025,
- Proposed Capital Improvement Program (CIP) requests for FY 24/25 through FY 28/29, and
- Updated Consolidated Fee Schedule"

The second Request for Public Hearing, as approved, read in part as follows:

"At their February 20, 2024, meeting, the Planning Board reviewed and recommended adoption of a proposed amendment to the Unified Development Ordinance that would stipulate when a physical barrier must be installed to prohibit driving and parking on residential septic system areas. However, both staff and the Planning Board recognized that the original proposal would likely impose an unnecessary burden on many property owners who would not/do not have issues with parking on their septic areas. In light of this, staff developed a revised amendment that aligns with septic protection goals discussed by the Septic Health Advisory Committee (SHAC), while only mandating physical barriers for properties if found to be in violation of the ordinance.

'The revised amendment expressly prohibits parking on designated septic system areas. Should staff become aware of any violations, either through complaints or proactive monitoring by town staff, a Notice of Violation will be issued to the property owner, and if applicable, provided to the rental agency managing the property. This notice will require the installation of a physical barrier to prevent future infractions. Additionally, when evaluating and issuing permits for residential development where this is a potential for excessive or overflow parking, staff will recommend installation of a physical barrier at the outset.

'Planning Staff and Planning Board Recommendation

At their April 16, 2024, meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendment as presented."

The third Request for Public Hearing, as approved, read in part as follows:

"At their meeting on March 19, 2024, the Planning Board reviewed and recommended the adoption of proposed text amendments that would permit the use of LED digital signage exclusively for displaying fuel prices, provided certain supplemental regulations are met. Following the meeting, the Town's attorney expressed concerns after reviewing the amendments, particularly in light of the Supreme Court decision in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). This ruling has significantly influenced how local governments regulate signage, emphasizing the need for content-neutral sign codes that do not favor one type of speech over another.

'Attorney Leidy noted that the Town's current prohibition on LED and digital signs is a valid content-neutral regulation of speech, as it does not differentiate based on the content of the speech. However, creating an exemption specifically for fuel price displays would likely introduce content-based discrimination, as it would allow certain messages while continuing to restrict others conveyed through LED and digital signs. Considering these concerns, staff, in consultation with the attorney and the applicant, proposed an alternative approach. The revised ordinance language would incorporate the LED digital display standards into the use regulations for fueling stations within Section 7.20 of the UDO. These standards would govern the maximum dimensions of the display, the number of character panels allowed, and the frequency of rotation.

#### 'Planning Staff and Planning Board Recommendation

The town has valid concerns about signs with rotating, flashing, moving, or alternating lights. However, it may be worth revisiting the possibility of allowing digital signs exclusively for fuel price displays. Although we cannot specify that the display area is solely for gas price digits, we have proposed a set of narrow restrictions, expecting that they will primarily be used for fuel pricing. With the recommended supplemental standards, staff believes the proposal is generally consistent with the Town's adopted Comprehensive Plan, however Policy LU-19 does state that the Town will not permit signs that are digital.

'At their April 16, 2024, meeting the Planning Board voted 5-1 (1 member absent) to recommend adoption of the text amendment as proposed and requested that staff provide additional restriction on lighting levels for the digital characters. One member cast a Nay vote and stated a concern that if gas stations are allowed to have digital signs other businesses will likely follow."

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

### Update from Planning Director

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

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on May 1<sup>st</sup>, 2024.

#### 'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for March 2024*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

'Tuesday, April 2<sup>nd</sup> - Technical Review Committee Meeting

Wednesday, April 3<sup>rd</sup> - Board of Commissioners Meeting

Wednesday, April 10<sup>th</sup> – Committee for Art and Culture Meeting

Thursday, April 11<sup>th</sup> – Board of Adjustment Meeting (no hearings)

Saturday, April 13<sup>th</sup> – Winter Market at Dowdy Park from 9am – noon

Monday, April 15<sup>th</sup> – June Street CAMA Grant Pre-Application Due

Monday, April 15<sup>th</sup> – Multi-Family Working Group Meeting

Tuesday, April 16<sup>th</sup> – Planning Board Meeting

Wednesday, April 17<sup>th</sup> – Board of Commissioners mid-month meeting (if needed)

April 22 – 24 – Planner Chris Trembly attending E&S Local Programs Workshop  
April 22 – 25 – Enviro Planner Conner Twiddy attending Onsite Wastewater Operator Training  
Wednesday, April 24<sup>th</sup> – CRS 2024 Cycle Verification Meeting (in-person) *Postponed*  
Monday, April 29<sup>th</sup> – Multi-Family Working Group Meeting

#### 'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, April 16, 2024, and included the following:

- Consideration of text amendments submitted by Jordan Harrell of Jernigan Oil Company, Inc. to allow the use of LED, digital displays for Fueling Stations. Staff revised the ordinance in light of concerns raised by the Town Attorney related to content neutrality. The Planning Board voted 5-1 to recommend adoption of the proposed amendments as presented and requested additional feedback on light measurements for LED, digital characters.
- Consideration of text amendments prohibiting driving or parking on residential septic system areas. The Planning Board voted unanimously to recommend adoption of the proposed amendments as presented.
- Staff provided the Planning Board with an update on previous discussions related to a request to install netting along a residential property boundary as a barrier to prevent golf balls from leaving the boundaries of the golf course and causing damage to private property. Staff spoke with Mr. John Hammond, Fish and Wildlife Biologist with US Fish and Wildlife who generally expressed concern with impacts netting may have on bird flight patterns but noted that a thick netting with a tight weave should make the net visible and conspicuous to birds and would have limited impact with proper precautions. Staff will work with the property to obtain a resolution within our existing code allowances. The Planning Board's next meeting is scheduled for Tuesday, May 21st, 2024. Currently, the agenda is expected to include a Site Plan Amendment (3rd Submittal) for Inn at Whalebone, 87-unit Hotel on Lakeside Street for major deviations to the site plan as well as a request to consider amending or eliminating a condition imposed on the previous Site Plan Approval as it pertains to the expansion of W. Lakeside Street.

#### 'Board of Adjustment – Recent and Pending Applications

There were no items for the Board of Adjustments consideration in April 2024.

#### 'Additional Updates

- DWMP/Septic Health Advisory Committee – The Septic Health Advisory Committee met on April 17<sup>th</sup>, 2024 and discussed several items including the revised proposed ordinance amendment prohibiting parking on septic system areas and staff efforts in the coming year to carry out the recommendations of the Updated DWMP such as using GPS to map the location of septic systems within the Town and creating tool to analyze all of the water quality sampling and ground water level information to help aid in outreach and education. Staff also updated committee members on the Septic Health Initiatives' performance so far this fiscal year with 6 loans being issued, 90 septic tank inspections completed and 98 water credits awarded.
- Estuarine Shoreline Management Plan – Town staff continues to focus on applying for the necessary grants to continue the implementation of the Estuarine Shoreline Management Plan. Currently, staff are preparing a pre-proposal for a grant from the National Fish and Wildlife Foundation's National Coastal Resilience Fund. This grant is for the design phase of the Villa Dunes and Soundside Road pilot sites. Should we be invited to submit a full proposal, the deadline for submission will be July 2, 2024.
- Electric Vehicle Action Plan – Public Services staff were able to locate and mark the outer periphery of the geothermal lines and wells along the southern portion of the parking area at Town Hall. Staff are now exploring other feasible locations for the two Level 2 EV Chargers.

- Sand Relocation and Dune Management Cost Share Program – As of April 26, 2024, a total of \$361,000 from the Dune Management Cost Share Program has been allocated to 124 applicants. As of April 15, the deadline for submitting Sand Relocation Applications, we had received 280 applications. Although we are no longer accepting new applications, the sand relocation program permits the movement of sand through April 30<sup>th</sup>. Our staff is currently conducting final inspections and finalizing project closures.
- Public Beach and Coastal Waterfront Access Grant Program – Staff have submitted the pre-application for this Public Beach and Waterfront Access Grant through the Division of Coastal Management (DCM) for renovations to the June Street Beach Access.
- Outer Banks Regional Hazard Mitigation Plan Update – The Hazard Mitigation Planning Committee, comprised of representatives from Dare County EM, Dare County staff, staff from each town and members of the public from each community, met on Monday, April 22<sup>nd</sup> to discuss the timeline and process for the HMP Update, the aspects of the update that would be undertaken in order to have the HMP qualify for Community Rating System (CRS) points, and the expectations and deliverables needed from each participating community including various forms of outreach efforts.
- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – At their April meeting, the Committee for Art and Culture selected the new vendors to participate in the 2024 Dowdy Park Farmers Market and all applicants have been notified. These markets will be held on Thursday, June 13<sup>th</sup> – August 15<sup>th</sup> from 9am to 1pm. Event Coordinator Paige Griffin has finalized the 2024 Summer Concert Series (poster attached) as well as the schedule of fitness events for the season including Yoga on the Lawn every Tuesday May 7<sup>th</sup> – October 29<sup>th</sup> from 7:30 – 8:30am and Fitness Friday's every Friday June 21<sup>st</sup> – August 16<sup>th</sup> from 7:30 – 8:15am. Paige has also booked two storytelling events on Tuesday July 2<sup>nd</sup> and August 6<sup>th</sup> from 5:30-7:00pm. We are also in receipt of two new art panels created by local artists participating in our Art Mast Project. Artist Jackie Koenig has created an art panel with surfers and artist Kate Lawrence has created another with birds. Public Services will be erecting the art masts and installing these new panels soon.



#### 'Upcoming Meetings and Other Dates

- Wednesday, May 1<sup>st</sup> - Board of Commissioners Meeting
- Tuesday, May 7<sup>th</sup> – Technical Review Committee Meeting
- Wednesday, May 8<sup>th</sup> – Committee for Art and Culture Meeting
- Thursday, May 9<sup>th</sup> – Board of Adjustment Meeting (no hearings)
- Saturday, May 11<sup>th</sup> – Artrageous Kids Art Festival 10am – 2pm @ Dowdy Park
- Wednesday, May 15<sup>th</sup> – Board of Commissioners mid-month meeting
- Tuesday, May 21<sup>st</sup> – Planning Board Meeting”

#### **NEW BUSINESS**

##### Committee Reports

Comr. Lambert – Government Access Channel Committee – met last week and Town Public Information Officer Roberta Thuman also attended; Comr. Lambert encouraged everyone to view the Jockey’s Ridge video.

Mayor Pro Tem Siers – the Dare County Housing Task Force met and Donna Creef and Malcolm Fearing were voted Chair and Vice Chair, respectively, of what is now a standalone committee.

Comr. Brinkley - Septic Health Advisory Committee – Comr. Brinkley added some figures provided by Septic Health Coordinator Conner Twiddy: six loans, 90 inspections, and 98 water credits have been issued to date with the program.

Comr. Brinkley – The Town Multi-Family Ordinance Working Group met and will meet again May 24<sup>th</sup> prior to a report to the Board in June.

Comr. Brinkley - Jennette's Pier Advisory Council next meets May 23<sup>rd</sup>.

Comr. Sanders – Jockey's Ridge 50<sup>th</sup> Anniversary celebration - a lot of behind the scenes work is being done.

Mayor Cahoon – he recently met with the Friends of Jockey's Ridge Chair; State Sen. Bobby Hanig has proposed legislation for consideration during the short session. The legislation would restore the original protections from the 1970's for Jockey's Ridge State Park – to be in effect until the CRC and the Rules Commission come to an agreement. He expressed his appreciation to Sen. Hanig.

Consideration of appointment/reappointment to Boards/Committees

- Firemen's Relief Fund Board
- Arts and Culture Committee

The agenda summary sheet read in part as follows:

"At the May 1<sup>st</sup> Board of Commissioners meeting, request Board consideration of the following appointments/reappointments to Boards/Committees:

'Firemen's Relief Fund Board - Rose Lay's term expires May 2024; she is interested in being reappointed.

'Arts and Culture Committee - The terms of both Ginny Flowers and Samantha Lock expire June 2024; They are both interested in being re-appointed.

'Attached please find the current roster of the Firemen's Relief Fund Board of Trustees as well as the current roster/candidate list for the Arts and Culture Committee."

MOTION: Mayor Pro Tem Siers made a motion to reappoint Rose Lay to the Firemen's Relief Fund Board and to reappoint Ginny Flowers and Samantha Lock to additional terms on the Arts and Culture Committee. The motion was seconded by Comr. Brinkley which passed unanimously.

Discussion of changes to the Town Code of Ordinances to incorporate a ban on the release of balloons on Town property; Discussion of resolution opposing the release of balloons within the Town

Town Manager Garman presented the item re: incorporating a ban on the release of balloons on Town property to include a discussion of a resolution opposing the release of balloons within the Town. The agenda summary sheet read in part as follows:

"At the March 20<sup>th</sup> Board of Commissioners meeting, Board members mentioned the proposal presented during the March 6<sup>th</sup> public comment period from the *Ban Balloon Releases in North Carolina* organization. It was Board consensus that an ordinance banning balloon releases from Town property and public trust areas be discussed/considered at the May 1<sup>st</sup> Board meeting.

'Attached please find a proposed ordinance adding Sec. 26-17 to Town Code Chapter 26 *Offenses and Miscellaneous Provisions* banning the release of balloons.

'In addition, attached please find a proposed resolution opposing the release of balloons town-wide."

Town Manager Garman provided comments from Attorney Leidy on the proposed ordinance: Attorney Leidy recommended that paragraph B (2) be modified to read as follows: "Hot air balloons that are controlled by an operator on board or on ground and are recovered after launching."

MOTION: Comr. Brinkley made a motion to adopt the ordinance incorporating a ban on the release of balloons on Town property with the amended language for paragraph B (2) as follows: "Hot air balloons that are controlled by an operator on board or on ground and are recovered after launching". The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

The Ban Balloons Organization is to be notified of the Board's action.

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

MOTION: Comr. Brinkley made a motion to adopt the resolution opposing the release of balloons within the Town as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

"WHEREAS, The Town of Nags Head's Vision Statement emphasizes preservation of our unique coastal community built upon a legacy rooted in shared values. The Town's Vision includes the preservation and protection of the Nags Head character and environment for present and future generations; AND

'WHEREAS, one of the principles in the Town's Legacy is to ensure access to a well-protected natural coastal environment consistent with the community's vision; AND

'WHEREAS, the release of helium and other lighter-than-air balloons poses a significant environmental threat; AND

'WHEREAS, mylar and latex balloons, found littered along the shoreline, contribute to pollution, detract from the Town's aesthetics, and endanger marine and animal life; AND

'WHEREAS, balloons frequently land in the Atlantic Ocean and the Roanoke Sound, becoming prevalent sources of floating debris; AND

'WHEREAS, research suggests that marine life and animals mistake balloons for edible resources, leading to ingestion and potential harm, risking choking or intestinal blockages; AND

'WHEREAS, government intervention is crucial for mitigating environmental harm and safeguarding public health and safety.

'NOW, THEREFORE, LET IT BE RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, that the Town strongly opposes the release of helium or lighter-than-air balloons within Nags Head to preserve the Town's air, land, and water from contamination, and to protect the well-being of wildlife."

#### Discussion of multi-use path signage

Police Chief Perry Hale summarized his memo which read in part as follows:

"The police department is requesting to add signage to the town's multi-use path in an effort to help with the increasing use of both pedestrians and cyclists. Over the past few years, we have seen an increase in yearly population and vacationers during the summer months which has led to congestion with pedestrians and cyclists. The addition of signage would provide a visual aid in hopes of reducing potential conflicts between pedestrians and cyclists and controlled speeds. Pedestrians will be encouraged to stay to the right to allow for

other faster users to pass on the left. We would be requesting signage for speed limits and walk on the right / pass on the left. In future years, we may also consider striping the path to define travel lanes and provide directional information.

'At the upcoming meeting, the Police Department will provide visuals of suggested measures and request discussion and feedback from the Board.'

Chief Hale displayed photos on screen of possible signage/pavement markings.

Board members spoke in favor of taking some type of action to encourage better behavior by users of the multi-use path. Mayor Cahoon liked the idea of pavement markings instead of additional signage. It was Board consensus to experiment with pavement markings in a high traffic area in an older part of the multi-use path to see if better behavior is observed.

Mayor Pro Tem Siers expressed his appreciation of staff being proactive on this issue.

#### Request for installation of security dash cameras inside/outside sanitation vehicles

Public Services Director Nancy Carawan summarized the agenda summary sheet which read in part as follows:

"Public Services is requesting the installation of dual cameras on the Sanitation trucks in addition to the GPS system we currently have before July 1, 2024. This would allow us to take advantage of a promo for a month of free service for fifteen trucks (\$790.50) and the cameras could be installed in June 2024 at the beginning of our busy season. This will not result in a budget amendment/increase for the current fiscal year. The cameras provide valuable footage that can help protect the town, particularly when documentation is necessary in the event of a crash or incident."

In response to a Board question, Director Carawan noted that the cameras tie in with the current system with an increase in cost and is very helpful during events.

MOTION: Comr. Brinkley made a motion to approve the request for the purchase/installation of security dash cameras inside/outside sanitation vehicles. The motion was seconded by Comr. Lambert which passed unanimously.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**

Attorney Lauren Womble had nothing to report.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**

Town Manager Garman - Consideration of requests for Public Services Dept Sanitation Equipment Operator and Part-time/Seasonal Planning and Development position

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

"Public Services Dept

Public Services is requesting an additional Sanitation Operator in the FY 24/25 budget. This new position will increase the level of service by contributing to weekend work, bulk-yard coverage and day-to-day high-volume operations. We are requesting to fill this position prior to the start of the fiscal year in order to provide support at the beginning of the busy season. This will not result in a budget amendment/increase for the current fiscal year. Attached please find an updated organizational chart reflecting an additional operator.

'Planning and Development Dept

The growing popularity and increasing demands of our Town sponsored events, including the Dowdy Park Farmers Market, Summer Concert Series and Movie Nights, has significantly increased the scope of work and responsibilities of our current Event Planner, Paige Griffin. The addition of a seasonal/part-time position would greatly enhance our ability to maintain the high standards that our community expects and deserves while allowing Paige Griffin the ability to focus on providing quality customer service, detailed event organization, and the ability to have the direct interaction with guests and vendors that make our events special.

'Paige Griffin, who has been instrumental in managing and growing these events, has experienced a noticeable increase in workload, which affects her ability to maintain the unique atmosphere and ensure safety at our Town events. To alleviate this strain and continue providing exceptional service and event management, we are requesting that the Board of Commissioners consider hiring a part-time, seasonal employee for approximately 10 hours per week during the peak season (approximately 10 weeks).

'The financial implication of this request is minimal, with the total cost for the requested seasonal position not exceeding \$4,200 for the 2024-2025 Fiscal Year. We are seeking approval to hire this position immediately to provide necessary support to Paige Griffin and our Town events starting before July 1, 2024."

MOTION: Mayor Pro Tem Siers made a motion to approve the request for a Public Services Dept Sanitation Equipment Operator and for a part-time/seasonal Planning and Development position as presented. The motion was seconded by Comr. Sanders which passed unanimously.

Town Manager Garman - Update on construction of the Public Services Facility

Town Engineer David Ryan provided an update on the work on the new Public Services Facility.

A lot of progress was made in the last month in the Administration Building and yesterday furniture was installed; conference room and several offices were displayed. The Water Distribution Building is also almost ready for occupancy.

No definitive move-in date for the Administration Building due to a delay in delivery of the interior doors – Mr. Ryan expects an answer today.

Town Manager Garman - Presentation of Town Manager's recommended budget

Dep Town Manager Amy Miller distributed the Town Manager's Recommended Budget to Board members.

Town Manager Garman summarized some highlights of his recommended budget as follows:

- No tax or water rate increase
- Town Hall and Fire Station Master Plan – not yet finalized but expects it to be in the next few months and this budget finances the first part of the plan

- Ocean Rescue Housing site at the former Outer Banks Medical Center (OBMC) building
- Fund the Fire Dept Working Group recommendations
- Infrastructure – rehabilitate the multi-use path
- New sidewalks in W Bay Meadow
- Asbestos waterline replacement
- Old Nags Head Place paving
- S Nags Head – S Old Oregon Inlet Road drainage project scheduled for fall 2024
- Alternate power source for traffic signals in the Town
- Pedestrian signal at the Soundside Event site in partner with DCTB and DOT
- Next Beach Nourishment Project in summer of 2027 - planning to begin in 2025
- Continue with sand relocation program
- New vehicles for Public Services and Police Departments
- COLA scheduled at 4%; Continue with employee within-grade increases
- Continue with employee 401K contributions
- Grant applications to continue
- Looking into Cybersecurity grant funding

Manager Garman thanked Finance Officer Miller, Dep Finance Officer Brooke Norris, Public Information Officer Roberta Thuman, Human Resources Coordinator Jan Mielke and all dept heads and staff who worked on the budget as it is a team effort. He also thanked the Board of Commissioners for their engagement and their efforts over the past few years on the budgets.

A Budget Workshop was scheduled for May 15<sup>th</sup> but as some Board members may not be present, he asked the Board if there was another date that would work better.

## **BOARD OF COMMISSIONERS AGENDA**

### Comr. Brinkley - Two Recent Fires in Nags Head

Comr. Brinkley brought up the two fires in Nags Head this past week where both structures were saved by the work of the Town's Fire Dept, Police Dept, and several Mutual Aid Fire Depts. All Board members spoke of the excellent job done in saving the two structures with no injuries. One was in S Nags Head and the other was in Old Nags Head Cove Subdivision. Mayor Cahoon expressed his appreciation as to how well the Nags Head team worked together as observed by Fire Chief Wells with the Police Dept on the spot to assist. Comr. Lambert echoed the sentiments already expressed in appreciation of the Town's Fire Dept along with the neighboring communities.

### Mayor Pro Tem Siers – Nags Head Multi-Family Working Group

Mayor Pro Tem Siers acknowledged the good work being done by the Town's Multi-Family Ordinance Working Group and the Town's Planning Dept, as he has heard from the community. The working group continues to meet in order to review/suggest changes to the proposed ordinance.

Budget Workshop Scheduled

It was Board consensus to schedule a Budget Workshop for Tuesday, May 21<sup>st</sup> in the Town Hall First Floor Police Training Room (due to Planning Board meeting in the Board Room) at 10:30 a.m.

**CLOSED SESSIONS**

MOTION: Comr. Brinkley made a motion to enter Closed Session to discuss possible acquisition of real property located at 4222 S Croatan Highway pursuant to GS 143-318.11(a)(5); to consult with the Town Attorney regarding matters protected by the attorney/client privilege and to preserve that privilege, to include the Cherry, Inc litigation and the pending litigation re: Dare County municipalities vs the State of NC zoning authority pursuant to GS 143-318.11(a)(3). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 10:21 a.m.

**OPEN SESSION**

The Board re-entered Open Session at 11:24 a.m. Attorney Womble reported that the Board did discuss attorney/client privilege items during Closed Session and no actions were taken.

**ADJOURNMENT**

MOTION: Mayor Pro Tem Siers made a motion to recess to May 21<sup>st</sup> at 10:30 a.m. in the Police Training Room. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 11:25 a.m.

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

Date Approved: \_\_\_\_\_

Mayor: \_\_\_\_\_  
Benjamin Cahoon



***DRAFT* MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
RECESSED MEETING  
WEDNESDAY, MAY 21, 2024**

The Nags Head Board of Commissioners met at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, May 21, 2024 at 10:30 a.m. for a Recessed Meeting.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Kevin Brinkley; Comr. Bob Sanders (arrived at 10:34 a.m.); and Comr. Megan Lambert

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Amy Miller; Kelly Wyatt; David Ryan; Perry Hale; Randy Wells; Nancy Carawan; Joe Costello; Brittany Phillips; Roberta Thuman; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 10:30 am. He noted that Comr. Sanders is running a few minutes late and is expected shortly. A moment of silent meditation was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

MOTION: Mayor Pro Tem Siers made a motion to approve the May 21<sup>st</sup> agenda as presented. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Sanders was not present.).

**RECOGNITION**

PROCLAMATION – National Public Works Week

Mayor Cahoon read the Proclamation declaring May 19 – 25, 2024 as National Public Works Week as follows:

“Proclamation - National Public Works Week - “Advancing Quality of Life For All”

‘WHEREAS, public works professionals focus on infrastructure, facilities, and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life, and well-being of the people of Nags Head; AND

'WHEREAS, these infrastructure, facilities, and services could not be provided without the dedicated efforts of public works professionals, who are responsible for rebuilding, improving, and protecting our town's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; AND

'WHEREAS, it is in the public interest for the citizens, civic leaders, and children in Nags Head to gain knowledge of and maintain an ongoing interest and understanding of the importance of public works and public works programs in their respective communities; AND

'WHEREAS, the year 2024 marks the 64<sup>th</sup> annual National Public Works Week sponsored by the American Public Works Association.

'NOW, THEREFORE BE IT RESOLVED THAT, the Nags Head Board of Commissioners do hereby designate the week May 19–25, 2024, as National Public Works Week, and further extends its appreciation to our public services department for the vital services they perform. We encourage all citizens to thank and celebrate our public services employees and to recognize the substantial contributions they make to protecting our health, safety, and quality of life and for making Nags Head a great place to live, work, and visit."

MOTION: Mayor Pro Tem Siers made a motion to adopt the Proclamation declaring May 19 – 25, 2024 as National Public Works Week as presented. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Sanders was not present.).

Public Services Director Nancy Carawan spoke praising the behind the scenes work that the Public Services staff does to keep Nags Head as awesome as it is – she specifically thanked the staff for all that they do with a "can do" attitude.

Board members echoed Director Carawan's sentiments and thanked the employees of the Public Services Department for everything they do.

Comr. Sanders arrived at 10:34 a.m.

## **PUBLIC COMMENT**

Attorney Leidy opened Public Comment at 10:36 a.m. There was no one present who wished to speak during Public Comment.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

- Consideration of updates to *Use of Town Parks* policy and *Use of Dowdy Park* policy to incorporate recently adopted balloon release ordinance and housekeeping items
- Consideration of resolution in support of NC Resilient Coastal Communities Program Grant Application 2024 – 2025

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

The *Use of Town Parks policy* and the *Use of Dowdy Park policy*, as approved, are attached to and made a part of these minutes as shown in Addendum "A".

The Resolution in support of the NC Resilient Coastal Communities Program Grant Application for 2024/2025, as adopted, read in part as follows

"RESOLUTION IN SUPPORT OF THE 2024-2025 NORTH CAROLINA RESILIENT COASTAL COMMUNITIES PROGRAM (RCCP) PHASE 3 GRANT APPLICATION DESIGNING LIVING SHORELINES IN THE ROANOKE SOUND

'WHEREAS, the Town has an adopted Estuarine Shoreline Management Plan and is seeking grant funding to implement recommended nature-based solutions; and

'WHEREAS, the Town has participated in Phases 1 and 2 of the NC Resilient Coastal Communities Program (RCCP); and

'WHEREAS, the Town is in favor of Phase 3 grant funding from the NC Resilient Coastal Communities Program (RCCP) to support the Town's estuarine shoreline project; and

'WHEREAS, the Town is committed to working towards solutions and techniques to address the ongoing shoreline erosion within the estuarine shoreline area; and

'WHEREAS, the Town is working to ensure the success of a living shoreline project.

'NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD:

1. That the Town of Nags Head supports implementing nature-based estuarine shoreline projects as an integrated approach to resiliency; and
2. That the Town of Nags Head supports designing a living shoreline that can serve as an important model for other North Carolina coastal communities to manage and restore their shorelines.
3. That the Town of Nags Head Board of Commissioners fully supports the proposal to apply for a Phase 3 RCCP grant to provide necessary resources to the town to complete several estuarine shoreline stabilization and enhancement projects."

## **ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**

Attorney Leidy reported that the General Assembly, earlier this month, adopted legislation that repealed the Dare County local act that was designed to exempt the affordable housing project from any type of local zoning laws. With this repeal it is now appropriate for the towns to ask for the authority for voluntary dismissal of the lawsuit that they filed.

**MOTION:** Mayor Pro Tem Siers made a motion to authorize the Town Attorney to voluntarily dismiss the lawsuit against the State of NC, along with the other local towns, re: the Dare County local act to exempt the affordable housing project from any type of zoning legislation [this was due to the recent legislation adopted by the General Assembly that repealed the Dare County local act]. The motion was seconded by Comr. Lambert which passed unanimously.

**ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**

Town Manager Garman had nothing new to report.

**BOARD OF COMMISSIONERS AGENDA**

Board members had nothing new to report.

**CLOSED SESSION**

Mayor Cahoon requested a Closed Session to consider applications received for the Nags Header and Lightkeeper awards.

MOTION: Mayor Pro Tem Siers made a motion to enter Closed Session to consider applications received for the Nags Header and Lightkeeper awards pursuant to GS 143-318.11(a)(2). The motion was seconded by Comr. Brinkley which passed unanimously. The time was 10:39 a.m.

**OPEN SESSION**

The Board re-entered Open Session at 10:44 a.m. Attorney Leidy reported that during Closed Session the Board did discuss and take action on the Nags Header and Lightkeeper awards but it is not to be disclosed at this time.

**ADJOURNMENT**

MOTION: Comr. Brinkley made a motion to recess to a Budget Workshop followed by a ribbon cutting at the newly constructed Epstein Street Beach Access Bathhouse. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 10:45 a.m.

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

Date Approved: \_\_\_\_\_

Mayor: \_\_\_\_\_  
Benjamin Cahoon



***DRAFT* MINUTES**  
**TOWN OF NAGS HEAD**  
**BOARD OF COMMISSIONERS**  
**BUDGET WORKSHOP**  
**WEDNESDAY, MAY 21, 2024**

The Nags Head Board of Commissioners met at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, May 21, 2024 at 10:47 a.m. for a Budget Workshop, recessed from the May 21, 2024 recessed meeting.

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

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Amy Miller; Kelly Wyatt; David Ryan; Perry Hale; Randy Wells; Nancy Carawan; Joe Costello; Roberta Thuman; Brittany Phillips; and Town Clerk Carolyn F. Morris

### **BUDGET WORKSHOP**

The Budget Workshop began at 10:47 a.m. with an introduction by Town Manager Andy Garman. He summarized the following slides:

#### FY 2024/25 Budget Workshop

- Recommended Budget presented on May 1, 2024
- Two workshops were held to discuss the CIP and major initiatives for FY 2025/25 (March 6<sup>th</sup> and April 3<sup>rd</sup>)
- FY 2024/25 budget includes no recommended tax or water rate increases
- The recommended budget modifies the CIP from the April 3<sup>rd</sup> workshop; needed to create alignment between budget requests and available CIF funding

He continued with Goals for Today

- To review CIP changes from the April 3<sup>rd</sup> workshop
- To review and receive feedback on total rewards initiatives (COLA, merit, career progression, etc.)
- To review departmental highlights including CIP and non-capital major initiatives
- To discuss the CIF and recommended policy changes
- NOTE: Public Hearing scheduled for June 5, 2024

Finance Officer/Dep Manager Miller presented the CIP Changes slides as follows:

- New Sanitation knuckle boom not included, will look to purchase with Public Services Complex funds/interest available - \$243,000
- Beach Road MUP – FY 2024/25 only budgeted for grant funds (\$650,000; request was \$835,900), reduced future years and spread out over additional year to accommodate CIF
- Eliminated watermain extension project from 10.5 Shoppes to Driftwood – waiting on Water System Master Plan - \$245,100
- Pushed back Gull St chlorine conversion – waiting on Master Plan and water rate study - \$242,190

She continued with Total Rewards slides as follows:

- Strategic initiative – performance-based merit structure (1%) including evaluation component
- Career Progression, WIG
- 4% COLA, 5% 401K
- 3% health insurance increase, 80%/20% split
- Increase in Fire Department’s part-time budget - \$27,000
- New Sanitation, seasonal event employee

She continued with General Government highlights:

- Debt for Ocean Rescue housing and fitness facility - \$127,625 and \$110,000, respectively
- Highest year of debt service on Public Services - \$1,276,200
- Financial Plan GF transfer to CIF \$4,137,500 plus grants
- As done last year, budget includes contingencies for CIF and Operating Budget (\$50,000 and \$100,000, respectively)
- Grants for ESMP at Harvey/Event sites and Villa Dunes / Soundside Road – grants for all but budgeted \$40,000 as a cushion for local match

The remaining slides were summarized by Town Manager Garman and Dep Manager/Finance Officer Miller as follows:

#### Public Services

- Streets – Stormwater S Memorial Ave corridor \$1,630,602  
Includes Powell Bill and Golden LEAF grants totaling \$838,750
- Old Oregon Inlet Road LASII grant for PA # 12 and 13
- Stormwater Master Plan (grant)
- Juncos (grant) and Holden beach accesses
- W Baymeadow / W Windjammer pedestrian projects (grants)
- Replacement Sanitation front load truck - \$379,000
- Tipping fees 9,000 and 900 tons at \$90.07 and \$71.03 per ton
- Gas @ \$3.09; diesel @ \$4.00

### Public Safety

- Traffic light alternate power - \$40,089
- Pedestrian light at Event Site - \$170,000 (contributions budgeted at \$135,000)
- Station 21 flooring - \$22,455
- Police vehicles – 4; utility task vehicle
- Ocean Rescue pickup - \$60,000
- Minimum lifeguard pay - \$19.00/hour

### Water

- Highest year of debt service on LOB - \$455,744
- S Memorial Ave water main lines - \$501,500
- S Nags Head water main planning costs - \$105,000
- Purchased water calculated at \$2.202 per thousand gallons based on 415 million gallons purchased
- Operations pickup - \$48,000
- Water fund contribution to the General Fund based on actuals decreased to \$763,173 from \$844,331

### CIF

- Recommend reducing Fund Balance Policy from 25%-20% = reduced General Fund contribution
- Recommended FY 25 and Financial Plan FY 26 have been budgeted to stay within 20% policy
- In future years, will need to look at projected CIP expenditures relative to CIF vs. original assumptions
- Projecting a General Fund contribution to the CIF that is not accounted for; this would happen after the audit

### Board discussion

Comr. Brinkley expressed his appreciation for the budget review process and how easy it is compared to years past. He appreciates staff providing the amount of information needed so there are no surprises for the Board.

Concerning the Information Technology (IT) dept – Comr. Brinkley questioned the monthly fee to Shoshin of \$10,000. He asked if the Town was getting its money's worth and if it would be more efficient to hire someone in-house instead of paying an outside company. He feels some analysis prior to future budgets should be done. Finance Officer Miller stated that there is more behind the scenes work being done that allows the Town to run smoothly that many are not aware of. Town Manager Garman stated that he would provide an analysis of Shoshin's tasks/duties for Board review prior to next year's (FY 25/26) budget.

Mayor Pro Tem Siers asked if some of the bigger debts the Town has could be paid down to shorten the debt pay-off time. Finance Officer Miller explained that with interest rates and debt rates, the Town is making more in interest than the debt fees. Town Manager Garman explained that staff is able to look at other smaller projects with some of the excess interest funds.

Comr. Lambert thanked staff for their work on the budget and for making it an easy process.

Town Manager Garman thanked Finance Officer/Dep Manager Amy Miller and all the staff involved in the preparation of the upcoming year's budget.

**ADJOURNMENT**

MOTION: Comr. Brinkley made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:18 a.m.

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

Date Approved: \_\_\_\_\_

Mayor: \_\_\_\_\_  
Benjamin Cahoon



# Agenda Item Summary Sheet

Item No: **E-4**  
Meeting Date: **June 5, 2024**

**Item Title:** Annual write-off of uncollectible water accounts

**Item Summary:**

There are no water account write-offs for FY23/24.

In the past 12 months (5/26/23 - 5/25/24) the total water utility sales were \$4,099,874.31.

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Number of Attachments: 0

**Specific Action Requested:**

Provided for Board information; no action is required at this time.

Submitted By: Shannon Beatty, Water Billing Specialist

Date: May 31, 2024

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**Finance Officer Comment:**

No unbudgeted fiscal impact.

Signature: Amy Miller

Date: May 31, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 31, 2024

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**Town Manager Comment and/or Recommendation:**

N/A

Signature: Andy Garman

Date: May 31, 2024



# Agenda Item Summary Sheet

Item No: **E-5**  
Meeting Date: **June 5, 2024**

**Item Title:** Moffat & Nichol and McKim & Creed proposals to conduct annual beach monitoring survey and analysis

**Item Summary:**

Annually, the Town subcontracts surveying and engineering services to perform an annual beach condition survey and engineering data analysis in accordance with the Town's Beach Monitoring & Maintenance Plan. The survey scope of work includes the base project data acquisition of 126 profiles in conjunction with additional transect information data acquisition north of the project area, south of the project area and within reaches 3 and 4. The additional data acquisition was authorized to be added to the work plan in June 2020.

A fee proposal in the amount of **\$69,000** has been submitted by McKim & Creed to complete the base bid work in addition to options 1, 2, and 3. The fees have increased by \$2,750.00 from FY 23/24. Field data acquired by McKim & Creed will be provided to the coastal engineer, Moffat & Nichol, and will be analyzed to review annual shoreline changes, annual volume changes, project performance, background erosion rates, dune behavior and evaluation of long-term trends. This information will be synthesized into a report format and submitted to the Town by mid-September.

A fee proposal, Task 17.1, in the amount of **\$63,485** for the monitoring and analysis has been submitted by Moffat & Nichol to analyze the annual survey data and report preparation. The fee for task 17.1 has increased by \$6,366 from FY 23/24. Optional Tasks 17.2 and 17.3 have been included in the fee proposal and will only be authorized by the Town in the case of a federally declared storm event.

Staff recommends acceptance of the total scope of work presented in the McKim & Creed fee proposal and acceptance of Task Order 17.1 of the Moffat & Nichol Proposal. If the Board of Commissioners is in agreement with the staff recommendation, a motion will be in order to authorize the Town Manager to execute contracts for McKim & Creed, Town of Nags Head Beach Monitoring Surveys, Summer 2024 and the Moffat & Nichol Town of Nags Head 2024 Beach Monitoring and Analysis, Task 17.1.

Attachments: McKim & Creed, Town of Nags Head- Beach Monitoring Surveys, Summer 2024 fee proposal  
Moffat & Nichol, Town of Nags Head 2024 Beach Monitoring and Analysis, Task 17

Number of Attachments: 2

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**Specific Action Requested:**

Provided for Board information and discussion.

Submitted By: Town Engineer David Ryan

Date: May 28, 2024

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**Finance Officer Comment:**

Signature: Amy Miller

Date: May 28, 2024

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**Town Attorney Comment:**

Attorney Leidy will participate in the discussion as necessary.

Signature: John Leidy

Date: May 28, 2024

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**Town Manager Comment and/or Recommendation:**

I concur with the recommendation to proceed with the survey and data analysis.

Signature: Andy Garman

Date: May 28, 2024



## TASK 17 INTRODUCTION

Task 17 includes professional services to conduct the Town of Nags Head Beach Monitoring and Analysis program for one year from the summer 2023 annual monitoring survey to the summer 2024 annual monitoring survey. The Town's Beach Monitoring and Analysis program represents a continued effort of conducting beach monitoring surveys and providing analyses, building upon past efforts by Town of Nags Head from 2012 through 2023 in association with the 2011 and 2019 Nags Head Beach Nourishment post-construction monitoring. The primary purpose of the beach monitoring is to determine the condition of the beaches, measure shoreline change and volumetric rates of erosion and accretion, maintain eligibility for designation as a FEMA engineered beach, estimate when future maintenance activities may be warranted, and evaluate the performance of beach nourishment and other restoration efforts.

In addition to the primary annual (summer 2024) monitoring analysis and report, this Scope of Work includes two optional tasks to conduct, if necessary, analysis and reporting on post-storm monitoring surveys, and preparation of documentation to FEMA requesting post-storm beach restoration funds.

It is understood that McKim & Creed will be conducting the monitoring surveys under a separate contract with the Town. M&N has been coordinating with McKim & Creed to ensure that their survey scope and M&N's analysis scope are in alignment. Under this proposed scope of work, M&N will be responsible for receiving the survey data products from McKim & Creed, writing and production of the reports, and the shoreline/volumetric analyses associated with the reports.

## TASK 17 SCOPE OF WORK

As stated above, the proposed Scope of Work is for the 2024 Town of Nags Head Beach Monitoring and Analysis. In general, the tasks include preparation of an annual report and presentation to summarize the shoreline and volume change analysis of 174 profiles along the Town of Nags Head shoreline that will be surveyed under a separate contract between the Town and McKim & Creed. Two optional tasks have been developed to supplement the annual beach profile analysis including (1) a post-storm survey and analysis and (2) preparation of documentation in support of application for FEMA post-storm beach restoration funds which would only be completed if authorized in writing by the Town. A more detailed outline of project tasks is as follows.

### **Task 17.1 – Completion of Annual Survey Analysis and Report**

**(A) Survey Scheduling and Client Coordination** - The monitoring schedule for each year typically includes a comprehensive survey of the transects conducted by late spring/early summer to ensure seasonal differences in the beach profile are consistently measured from year to year, and to document annual pre-hurricane season beach conditions. **M&N** will coordinate with **McKim & Creed** and the Town to verify that the surveys are collected during this time period. The project team will coordinate with the Town concerning the time and approaches to be followed for each survey.



(B) Survey Profiles – The 126 survey transects established in 2012 for the 2011 Nags Head Beach Nourishment post-construction monitoring and additional 48 transects introduced by **M&N** in 2020 to better track sand movement at southern and northern end of the beach nourishment project and hotspots will be used for analysis.

(C) Data Analysis and Reporting - Using data provided by **McKim & Creed**, **M&N** will perform the following annual monitoring analysis:

#### Annual Shoreline Change

**M&N** will compute shoreline changes between subsequent surveys for the MHW elevation of +1.18 ft NAVD88. **M&N** will report these results at each transect as well as the average changes for each of the previously established subreaches.

#### Annual Volume Change

**M&N** will compute volume changes above several strategically selected elevations to ensure the complete tracking of sand movement along the profile. **M&N** will calculate these volume changes in accordance with the past annual monitoring efforts from a landward point on the back of the dune out to the seaward edge of the nourishment berm (+6 ft NAVD88), above MHW (+1.18 ft NAVD88), above -6 ft NAVD88 (wading depth), above -14 ft NAVD88 (capturing the offshore bar), above -19 ft NAVD88 (depth of closure), and above -30 ft NAVD88 (approximate seaward extent of surveys). **M&N** will report these results at each transect as well as the overall changes for each of the previously established subreaches.

#### Beach Nourishment Project Performance

The volumetric change calculations performed during the annual analyses will be used to track the performance of any beach nourishment or other maintenance projects. Annual changes from each placement area will be documented throughout the nourishment cycle to gain an understanding of actual volume lost, providing insight into future volume need. Comparisons will be made between the current condition of the beach and the developed nourishment triggers, allowing for estimates of when the next nourishment will be needed.

#### Background Erosion Rates

The volumetric change calculations performed during the annual analyses will be used to update estimates of background erosion or accretion rates. These are erosion rates that would be expected if no beach nourishment or maintenance projects were to occur.

#### Dune Behavior

The volumetric change calculations performed during the annual analyses will be used to update estimates of dune growth/erosion trends, allowing for identification of areas vulnerable to overwash or exhibiting significant dune growth.

#### Long-term Trends

The volumetric change calculations performed during the annual analyses will be used to update the evaluation of long-term trends by incorporating the current datasets with those acquired during the 2012 through 2023 monitoring efforts. Annual volume changes from each year (excluding nourishment) will be averaged and plotted for each transect, allowing for



identification of long-term stable locations and erosional hotspots in each survey reach as compared to annual changes that may vary significantly from year to year.

### Reporting

Once all of the analyses are completed, the resulting calculations and analysis will be included within the annual report. One (1) copy of the draft report will be submitted to the Town by September 16, 2024 (or six weeks after receiving all survey products from **McKim & Creed**) for Town review and comment. The report will include sections such as introduction, methodology, results/conclusions, and appendices. **M&N** will submit four (4) hard copies of the final report (including profiles print outs) to the Town by October 2, 2024. **M&N** will also develop, attend and provide a presentation to the Town's Board of Commissioners at one of their monthly, regularly scheduled meetings. Eight (8) hard copies of the report (including profiles print outs) and one (1) electronic copy of the report, the annual presentation, and all data collected for each survey event, etc. will also be provided on a USB flash drive.

### **Task 17.2 – Completion of Post Storm Survey Analysis and Report (OPTIONAL TASK)**

**This task will only be completed if authorized by the Town.**

In the event of a significant coastal storm, and if authorized by the Town, **M&N** will complete a post-storm field reconnaissance trip to document storm effects. It is understood that McKim & Creed will provide post-storm surveying under a separate contract between the Town and McKim & Creed. **M&N** will assist the Town to coordinate the survey with McKim & Creed. Following receipt of the survey data products from McKim & Creed, M&N will prepare a post-storm monitoring report documenting the shoreline and volume change due to the storm and making recommendations on needs for renourishment to address the storm impacts. Shoreline and volume changes will be calculated to assess storm related damages.

### **Task 17.3 – Preparation of Documentation for FEMA Category G Project Funding (OPTIONAL TASK)**

**This task will only be completed if authorized by the Town.**

In the event of a significant coastal storm and a subsequent Federal disaster declaration that provides for Category G Public Assistance, and if authorized by the Town, **M&N** will prepare the supporting documents to show eligibility of the beach for the FEMA Category G post storm restoration funding, reporting previous beach monitoring and maintenance efforts, storm event volume losses, potential sand sources, restoration project cost estimates and schedule. M&N will utilize the post-storm survey and analysis report resulting from Task 17.3 above to support the preparation of documents for FEMA submittal. In association with this subtask, M&N anticipates attending up to two additional in-person meetings in Nags Head and up to four (4) virtual meetings or teleconferences with Federal, State and Town representatives to coordinate the agencies' review of the Category G funding request.

## **TASK 17 PROJECT COST**

The total estimated fee for the 2024 Town of Nags Head Beach Monitoring and Analysis is a lump sum of **\$63,485**, including expenses for travel for a site visit and reproduction. If a



storm event were to occur, post storm monitoring and analysis would total a lump sum of **\$63,485**, including expenses for travel for a site visit and reproduction, and support for FEMA post-storm beach restoration funds would total a lump sum **\$36,670** in the event that these tasks were authorized by the Town.

M&N proposes to invoice the Town monthly on a percent complete basis by Task. Our invoice format can be tailored to meet the Town's requirements and preferences, and the invoice would generally be accompanied by a cover letter or cover sheet summarizing progress on the Task during the invoice period.

The fees for each of these subtasks are summarized below:

<b>Task 17: Beach Monitoring Analysis, Reporting and Post-Storm FEMA Support (2024)</b>	<b>M&amp;N Fee</b>
Task 17.1 – Completion of Annual Survey Analysis and Report	\$63,485
Task 17.2 – Completion of Post Storm Survey Analysis and Report (OPTIONAL TASK)	\$63,485
Task 17.3 – Preparation of Documentation for FEMA Category G Project Funding (OPTIONAL TASK)	\$36,670

April 22, 2024

241547

David Ryan, PE  
Town Engineer  
Town of Nags Head  
PO Box 99  
Nags Head, NC 27959

**Re: Town of Nags Head – Beach Monitoring Surveys, Summer 2024**

David,

McKim & Creed would like to present our proposal for professional surveying services in connection with the referenced project. We understand the scope of work will be identical as the work we performed between 2020 to 2023. Our Scope of work is based on performing a beach monitoring profile survey this summer for the base bid and 3 options.

We understand the profiles generally begin at the landward toe of the primary dune or historic baseline and extend across the dunes and beach face to distance of approximately three thousand five hundred feet or -30 ft NAVD 88, whichever is achieved first.

This project includes 174 beach profile monitoring lines; Base bid includes 126, Option 1 includes 13, Option 2 include 14, Option 3 includes 21 lines.

There are approximately 32 profile lines (1030+00 to 1290+00) located within the boundaries of The Cape Hatteras National Seashore. We will require assistance from the Town of Nags Head to contact and secure access through this area.

In the event of a Post-Storm survey, we can mobilize within 48 hours or as soon as safely possible with a minimum of one land crew and one hydrographic survey crew.

## Scope of Work

- All survey work will be performed to the Standards of Practice for Land Surveying in North Carolina.
- Hydrographic surveys will be performed to meet or exceed the minimum performance standards for the Corps of Engineers Hydrographic Surveys, USACE specifications manual EM 1110-2-1003.
- Horizontal data will be referenced to NC Grid NAD83/2011 or to existing control datum and Vertical datum will be NAVD88.
- Conduct a coordination meeting with the Town of Nags Head and Moffatt & Nichol prior to beginning work. We will maintain open communication in addition to weekly project progress reports and updates.
- Over land data will be captured using Trimble R8/R10 dual frequency GNSS receivers beginning at the Landward toe of the Primary dune and extend out to the surf zone at wading depth (wading will occur at low tide). Land survey crews will have survey grade GNSS receivers mounted on fixed height rover poles that are equipped with topo shoes (flat rod tips that do not sink in the sand). The data collectors are clamped onto the pole; the system is lightweight and ideal for one person. To move up and down the beach efficiently, we will use Side by Side utility vehicles (Kawasaki Mule). Crew trucks are painted with our company logo, field crews wear highly visible orange/yellow shirts and vests.
- Hydrographic surveys will be collected from -30 ft NAVD88 to the surf zone (during the high tide cycle) to achieve overlapping data as weather/sea conditions allow. Our survey vessels range from 22' to 28' in length and are equipped with Inertial Navigation systems that include survey grade dual frequency sonar, IMU, VRS RTK GNSS and sound velocity probes, all of which compensates for heave, pitch, roll, heading and the speed of sound, to calculate position and depth. Prior to beginning work, we perform a bar check to ensure the accuracy of our sonar and we perform sound velocity checks periodically during the survey.
- We will provide the following deliverables:
  - AutoCAD Civil 3D file.
  - XYZ files of the Land, Wade, and Hydro data
  - Signed and Sealed PDF of Final Survey Data Set on Title Block
  - Survey Report detailing the project understanding, planning, methods and procedures used, communication between teams, QA/QC checks and final results..
  - Digital text file with (alongshore) Station and/or Profile ID, coordinates X,Y,Z, and Distance to Baseline (DBL).
  - Digital text file in BMAP direct import format.

- ESRI GIS format floating-point grid or TIN file of the Digital Elevation Model (DEM, surface file), with one combined surface made from all the survey data (on land and underwater).
- Mean High Water (MHW) contour extracted from the DEM, in ESRI GIS shapefile or geodatabase.

**Accuracy**

- Land: The integrated GNSS system (Trimble R8) that we use is rated at a precision of .02’ horizontal and .05’ vertically. Based on the conditions and stability of the sand, we can provide an accuracy of 0.1’ horizontally and less than 0.2’ vertically.
- Hydro: Our equipment is well within the requirements of the USACE Hydrographic Survey Standards. Our soundings will be accurate to within 3’ horizontal and 0.25’ vertically.

**Schedule**

We estimate approximately 3-4 weeks to collect all data sets. We can provide the final deliveries and reports within 2-3 weeks of completion of field work.

For services described in the above Scope of Work, the lump sum fee will be **\$69,000.00** (*Sixty-nine thousand dollars*) inclusive of reimbursable expenses. The option fees are based on performing them at the same time as the base bid.

Base Bid (126 profiles) .....	\$50,830.00
Option 1 (13 profiles) .....	\$4,750.00
Option 2 (14 profiles) .....	\$5,100.00
Option 3 (21 profiles) .....	<u>\$7,570.00</u>
<b>Total.....</b>	<b>\$68,250.00</b>
Post-storm survey.....	\$68,250.00 per event
<i>(Includes same scope of work and detail of the annual survey)</i>	

This proposal is submitted contingent upon the negotiation of a contract with mutually acceptable terms and conditions prior to the commencement of any work.-

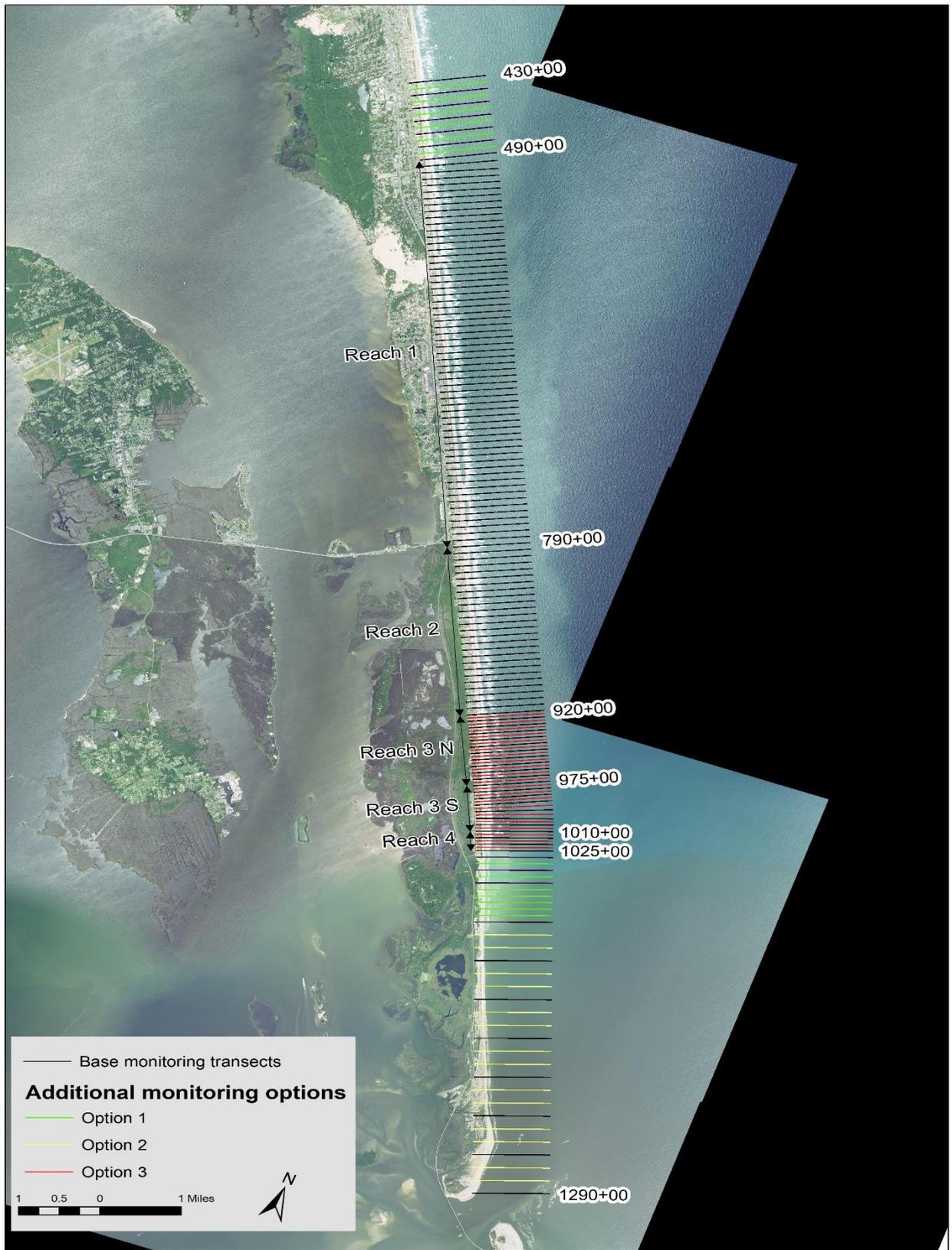
We appreciate the opportunity to provide this proposal to you and look forward to working on the project with you.

Sincerely,

McKIM & CREED, INC.

A handwritten signature in black ink that reads "Jared Lambert". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jared Lambert  
Hydrographic Division Manager





# Agenda Item Summary Sheet

Item No: **E-6**  
Meeting Date: **June 5, 2024**

**Item Title:** Consideration of Personnel Policy Change – Limitation of employment of relatives

**Item Summary:**

Staff recommends updating the Limitation to the Employment of Relatives policy that allows the town manager to make an exception to this policy in unique circumstances. For example, this revision would allow the town manager to approve members of the same family to work in the same department under limited circumstances. For example, this would include family members working in an intermittent/part-time position (approximately 1-2 days month) in the fire department, or to be hired seasonally as Ocean Guards. Under no circumstances would this create a situation where a family member would be supervising another family member.

Number of Attachments: 1

**Specific Action Requested:**

Approval of Coverage Policy Change

Submitted By: Administrative Services

Date: May 30, 2024

**Finance Officer Comment:**

Signature: Amy Miller

Date: May 30, 2024

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 30, 2024

**Town Manager Comment and/or Recommendation:**

I concur with staff's request.

Signature: Andy Garman

Date: May 30, 2024

## Section 9. Limitation of Employment of Relatives

- A. The members of an immediate family shall not be employed in the same department at the same time. Neither shall two (2) members of an immediate family be employed at the same time if such employment would result in an employee directly or indirectly supervising a member of the immediate family.
- B. Immediate family is defined for the purpose of this section as spouse, mother, father, guardian/ward, children, sister, brother, grandparents, grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those named, or a significant other living as a part of the same household.
- C. In unique cases, the town manager may provide an exception to this policy. Circumstances for this special approval may include seasonal or temporary employment, or a work schedule that is part-time and intermittent. Approval from the town manager must be obtained prior to an offer of employment in these cases.



# Agenda Item Summary Sheet

Item No: **E-7**  
Meeting Date: **June 5, 2024**

**Item Title:** Consideration of change order for dune grass plantings as part of the Coastal Storm Damage Mitigation Grant

**Item Summary:**

In October 2022, the Town was awarded a \$300,000 grant from the Coastal Storm Damage Mitigation Fund for the installation of dune plantings along the oceanfront. Awards from the Coastal Storm Damage Mitigation Fund support beach nourishment, dune restoration, and other remediation and stabilization projects. Matching funds are required for a project total of \$600,000.

Earlier this year, \$348,140 of the \$600,000 project budget was expended for the installation of 1,300,000 of American Beachgrass sprigs. This work was performed by Carolina Landscaping.

This request is to complete the remaining balance of plantings with the installation of approximately 150,000 Sea Oat sprigs. The cost of this scope of work is \$245,000. The different variety of plant species provides a more stable dune profile and more closely resembles a natural dune habitat.

The remaining balance of funds will go towards project-related engineering costs.

This request is to modify the existing agreement amount with Carolina Landscaping for the installation of 150,000 Sea Oat sprigs.

Staff requests Board of Commissioners consideration to authorize the Town Manager to amend the existing agreement with Carolina Landscaping in the amount of \$245,000 for the installation of 150,000 Sea Oat sprigs.

Attachments: Carolina Landscaping - FY 23/24 Sprigging Change Order #1

Number of Attachments: 1

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**Specific Action Requested:**

Provided for Board information and discussion.

Submitted By: Town Engineer David Ryan

Date: May 28, 2024

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**Finance Officer Comment:**

The budget ordinance has already been amended to incorporate this grant. Spending these funds are a grant requirement.

Signature: Amy Miller

Date: May 28, 2024

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**Town Attorney Comment:**

Attorney Leidy will participate in the discussion as necessary.

Signature: John Leidy

Date: May 28, 2024

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**Town Manager Comment and/or Recommendation:**

I concur with this request.

Signature: Andy Garman

Date: May 28, 2024

Date of Issuance: May 24, 2024	Effective Date: May 28, 2024
Owner: Town of Nags Head	Owner's Contract No.:
Contractor: Carolina Landscaping	Contractor's Project No.: N/A
Engineer: David M. Ryan, P.E.	Engineer's Project No.: N/A
Project: FY 23/24 Sprigging	Contract Name: FY 23/24 Sprigging

The Contract is modified as follows upon execution of this Change Order based upon the following:

**Price Increase-** For installation of approximately 150,000 Sea Oat plantings- **\$245,000.00**

Attachments: Change order for revised scope of work from M&N e-mail dated May 17, 2024

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>348,140.00</u>	Original Contract Times: Substantial Completion: <u>N/A</u> Final Completion: <u>4/12/24</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>0</u> to No. <u>1</u> : \$ <u>0.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>0</u> to No. <u>1</u> : Substantial Completion: <u>N/A</u> Final Completion: <u>N/A</u> days
Contract Price prior to this Change Order: \$ <u>348,140.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>N/A</u> Final Completion: <u>4/12/24</u> days or dates
[Increase] [Decrease] of this Change Order: \$ <u>245,000.00</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>9/13/24</u> Final Completion: <u>9/20/24</u> days or dates
Contract Price incorporating this Change Order: \$ <u>593,140.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>9/13/24</u> Final Completion: <u>9/20/24</u> days or dates

ACCEPTED:  
BY: \_\_\_\_\_

ACCEPTED:  
BY: \_\_\_\_\_

TITLE: Town Manager

TITLE:

This instrument has been preaudited in the manner  
Required by the Local Government Budget and  
Fiscal Control Act.

\_\_\_\_\_  
Finance Officer



# Agenda Item Summary Sheet

Item No: **E-8**  
Meeting Date: **June 5, 2024**

**Item Title:** Request for Public Hearing to consider NC Public Beach and Coastal Waterfront Access grant application

## Item Summary:

Staff is requesting to apply for a NC Public Beach and Coastal Waterfront Access grant for improvements to the June Street Public Beach Access in South Nags Head. Attached please find a grant pre-application prepared by Planning staff which was submitted earlier this year. The Town has now been invited to submit a final grant application for this project. A brief description of the proposed improvements are as follows:

- The Town proposes to construct a new ADA-accessible elevated dune crossover. The six-foot-wide wooden structure will be approximately 1,650 square feet long and require about three switchbacks. The new walkover will contain handrails. In conjunction with the new walkover, a sixteen-foot octagonal gazebo, new shower station and platform and new solar powered lamp post will be constructed. The existing porta-john wooden enclosure and trash wooden enclosure will be removed, and new enclosures will be constructed.

Request a Public Hearing be scheduled for the July 3<sup>rd</sup> Board of Commissioners meeting in accordance with CAMA rules.

Number of Attachments: 1

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### Specific Action Requested:

Request a Public Hearing be scheduled for the July 3, 2024 Board meeting.

Submitted By: Town Engineer David Ryan

Date: May 29, 2024

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### Finance Officer Comment:

N/A

Signature: Amy Miller

Date: May 29, 2024

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### Town Attorney Comment:

N/A

Signature: John Leidy

Date: May 29, 2024

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### Town Manager Comment and/or Recommendation:

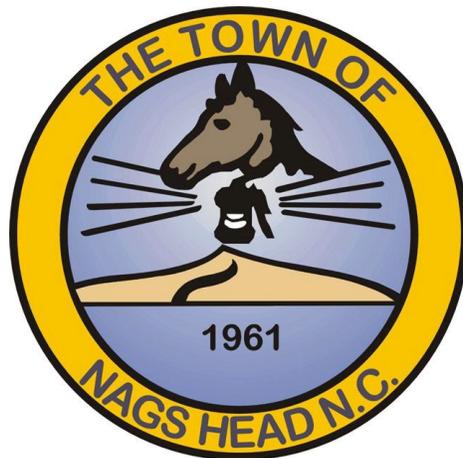
This project has been budgeted with grant funds in the FY 24/2025 budget. This implements plans for beach access improvements for the coming year.

Signature: Andy Garman

Date: May 29, 2024

North Carolina  
Public Beach and Waterfront Access Grant Program  
2024-25 Pre-Application

**The Town of Nags Head**  
**June Street Public Beach Access Improvements**



April 4, 2024

The Town of Nags Head June Street Public Beach Access

**1. Site location maps: Provide a regional location map and a detailed vicinity map (street map) showing the location of the proposed project. Include a north arrow, and legible street names.**

*See Attachment 1.*

**2. Site description: Provide a description of the site where the project will be located, including natural features and existing improvements. Also include NC Division of Water Resources [Surface Water Classification\(s\)](#).**

*The June Street Neighborhood Beach Access is currently a developed site with an improved dune crossing that provides access to the oceanfront. The site is accessible from a paved drive aisle and contains a 14-stall parking area comprised of concrete grid pavers (Turfstone). The site also contains two ADA parking spaces. The ADA parking spaces have appropriate and compliant signage and striping. Other site elements include a porta-john and enclosure, trash receptacle and enclosure, red mailbox, dedication post to Todd Krafft, shower station, lamp post, dog bag station and bike rack. The site topography slopes gently from west to east, from an elevation of 3' msl at S. Old Oregon Inlet Rd. (SR 1243), to approximately 15' msl along the crest of the improved walkway through the frontal dune system and then, with moderate slopes, transitions back towards sea level to the Atlantic Ocean. The primary dunes are heavily vegetated with native grasses along both sides of the walkway. The vegetation becomes sparser towards the crest and the oceanward side of the dune. The Atlantic Ocean is the nearest surface water with a classification designation of SB, recreational.*

**3. National Flood Insurance Program Floodways & Non-encroachment Areas: Indicate if the project site or improvements are located in [Floodway or Non-encroachment area](#) per 40 C.F.R. § 60.3(d)(3). If the project or improvements are located in one of these areas, additional engineering studies may be needed.**

N/A

**4. Project description: Site improvements projects: Provide a description of the access facilities to be built, including information on features, materials, and proximity to [closest/other access sites](#).**

*The Town proposes to construct a new ADA-accessible elevated dune crossover. The six-foot-wide wooden structure will be approximately 1,650 square feet long and require about three switchbacks. The new walkover will contain handrails. In conjunction with the new walkover, a sixteen-foot octagonal gazebo, new shower station and platform and new solar powered lamp post will be constructed. The bike rack, dog bag station, custom bench, dedication to Todd Krafft and the red mailbox will remain in their existing locations. The existing porta-john wooden enclosure and trash wooden enclosure will be removed, and new enclosures will be constructed.*

*The site is located approximately .6 of a mile south of the extremely popular Outer Banks Fishing Pier and Fish Heads Bar and Grill in south Nags Head. There are other beach accesses both to the north, approximately .21 mile, and to the south, approximately .15 mile. The June Street beach access is located within close proximity to single-family homes, townhomes, cottage courts, and vacation rentals.*

**5. Project justification: Explain why the project is needed and how it will benefit your community.**

*The June Street public access walkover was originally constructed via a CAMA access grant awarded in 2006-2007. The original structure was comprised of an elevated dune walkover structure. However, since this original grant, the walkover has fallen into disrepair. Although advertised as an ADA accessible beach access, many of the boards have weathered and are sticking up or uneven. The disrepair of the facility makes access a challenge for those pushing strollers and for disabled individuals, despite having ADA compliant parking in good condition.*

*The proposed construction of an ADA accessible boardwalk is critical to providing adequate facilities for visitors and citizens in this popular segment of beach. The new boardwalk will allow people of all abilities and ages to gain access more easily and safely to the public beach through the use of a beach wheelchair, available in the Town with a reservation at the nearby fire station. Additionally, the new shower station and platform will provide a much-improved opportunity for visitors to rinse sand off themselves, their pets, and belongings. The gazebo will provide an elevated area for sitting, picnicking, and resting with picturesque views of the shoreline and protection from sun, wind and sand. There isn't another public beach access nearby with a gazebo and ADA accessibility, providing a much-needed amenity for residents and visitors looking for some refuge or alternate beach experience.*

**6. List the types and sources of utilities proposed; and identify associated costs on Project Budget (pg. 3). Note above ground utilities must be identified.**

*There is an existing rinse-off station and lamp post. Both will be renovated through this project to include a new solar powered street-light and upfitted shower station. A water tap is already available on site.*

**7. Project site plan: Provide a to-scale site plan showing property lines (label existing uses on adjacent lots), proposed site improvements, existing facilities, and significant natural features.**

- Include a legend, north arrow and graphic scale.
- Improvements shown as an overlay on aerial photos also may be submitted.
- Provide to-scale building elevations and floor plans as applicable.

*See Attachments 2 and 3.*

**8. Pre-project tasks: Identify tasks that must be completed prior to starting the project.**

*N/A*

**9. Permits: List all necessary permits and/or certifications.**

- CAMA Minor Permit
- Zoning Permit
- Floodplain Review
- Land Disturbance Permit

- *Building Permit*

**10. ADA Transition Plan: Is this project site identified in your community's ADA Transition Plan? If yes, provide a brief description of the improvements identified in the plan and outline how this project addresses them.**

N/A

**11. ADA requirements: Does this project meet ADA requirements? If yes, describe the handicapped accessible features of this project. If no, describe why a handicapped accessible facility is impracticable and outline how handicapped accessibility needs are met within the area. See Designing Facilities for ADA in the application packet.**

*Yes, this project will be designed to meet ADA requirements. The parking lot already has existing ADA parking spaces and will provide connecting at-grade access to the proposed wooden dune walkover, which will be 6' in width. Three switchbacks will ensure that crossover meets required ADA running slope and cross slope requirements. The walkover will also have handrails, further ensuring an ADA compliant public access site.*

**12. Exceeding ADA requirements: Does this project exceed ADA requirements? If yes, describe the handicapped accessible features that exceed ADA requirements. See Designing Facilities for ADA in the application packet.**

*In the Access Board's document, "Outdoor Developed Areas: A Summary of Accessibility Standards for Federal Outdoor Developed Areas," clear width's for walkover structures are required to be a minimum of sixty inches and sections that are not removable can be reduced to a minimum of forty-eight inches at dune crossings. The Town is proposing seventy-two inches of clear width for the entirety of the dune cross over in addition to the provision of handrails. Beach wheelchairs are also available 365 days per year by reservation at the Nags Head Fire Station 16.*

**13. Is this project identified as high local priority in your certified Future Land Use Plan or local Access Plan? If yes, provide a brief description of the plan and a statement of the extent to which the project implements the policies of the plan.**

*Yes, this project is high local priority as represented in the following:*

***The 2022 Town of Nags Head Comprehensive and CAMA Land Use Plan***

*The Town of Nags Head Comprehensive Plan was developed with community input. The vision recognizes that, "a high-quality beach experience is fundamental to protecting and promoting our small-town character." Further, "ensuring access to a well-protected natural coastal environment" is a fundamental part of our legacy and quality of life.*

*The 2022 Comprehensive Plan describes the South Nags Head Character Area, "All development and redevelopment should connect to both existing and planned recreational improvements such as multi use paths, beach accesses, and parks". Access to the beach is central to the character of South Nags Head.*

## NORTH CAROLINA PUBLIC BEACH AND WATERFRONT ACCESS PROGRAM

N. C. Division of Coastal Management

*As part of the community engagement process, residents were asked to indicate the most positive changes in the community in the last five years. Participants indicated that beach access was one of the most positive changes in the community.*

*In section 3.63 of the Comprehensive Plan, Subsection E: Public Access and the Beach states:*

*Improving handicap access is an important concern at the town's public beach accesses. In addition to handicap access, the town has beach wheelchairs that are available for public use. In addition, the plan contains the following policies that speak to the importance of access to the beach in Nags Head.*

*The town should work to offer greater ADA accessibility at existing facilities.*

- *PR-3 Expand and develop public access to ocean and estuarine shorelines that accommodate different user types, age groups, and needs.*
- *NR-19 Provide substantial opportunity for the public to access the beach. This includes beach accesses with adequate parking at regular intervals for the length of the town with accessible facilities.*

**14. Is this project reflected in other policy documents or ordinances? If yes, provide a brief description of the document or ordinance and a statement of the extent to which the project implements goals of the document or ordinance.**

*Yes, this project is also reflected in the following documents:*

***Town of Nags Head Capital Improvement Plan (CIP)*** *The adopted CIP for fiscal year 2024/25 identifies, prioritizes, and funds the construction of an accessible public beach access at June Street. Construction of this beach access would complete the goal of CIP. The development of the improved ADA accessible walkover will improve upon the level of service that previously existed.*

***The Town of Nags Head Parks and Recreation Plan Core Values (Live, Visit, Play, Thrive)*** *all share a common thread of access and protection of the Town's abundant natural resources, including the beach. Public access to the beaches for residents and visitors promotes a healthier lifestyle and connects people with each other and the environment, improving the overall quality of life. Many of the residential lots in the Town do not have beach front access, and without public access points, would not have a way to access the beach.*

*The goals, objectives, and actions of this plan were developed from community input gained through a series of surveys and community meetings. One of the top responses received from that citizen input effort was increased access to the beach and enhancement of existing beach accesses with restrooms, showers, and other amenities. The Town is committed to maintaining beach access for both residents and visitors.*

NORTH CAROLINA PUBLIC BEACH AND WATERFRONT ACCESS PROGRAM

N. C. Division of Coastal Management

**15. Previous grants: List Access Grants previously received from DCM at this site by year. Use the [DCM map of past grants awarded](#).**

A previous access grant was received for the June Street Public Beach Access in 2006-2007. The grant included installation of a paved parking lot with approximately fourteen (14) spaces, including handicapped accessible parking spaces, installation of a water tap and shower, a bike rack, lighting, landscaping, and a sandblasted sign.

**16. User fees: Is a user fee charged at this site? Do you charge user fees at any other DCM funded sites? If yes to either of these questions, provide the most recent annual accounting report as required by [15A NCAC 07M .310\(d\)](#).**

N/A

**17. Proposed Summary Budget**

	<b>Grant Assistance Requested</b>	<b>Local Cash Contribution</b>	<b>Local In-Kind Contribution</b>	<b>TOTAL</b>
<b>Land Acquisition Costs:</b>	NA	NA	NA	NA
<i>Subtotal</i>	\$0.00	\$0.00	\$0.00	\$0.00
<b>Permit and Design Fees:</b>				
<i>Permits</i>	\$0.00	\$0.00	\$800.00	\$800.00
<i>Design</i>	\$0.00	\$0.00	\$8,000.00	\$8,000.00
<i>Survey</i>	\$0.00	\$2,200.00	\$0.00	\$2,200.00
<i>Subtotal</i>	\$0.00	\$2,200.00	\$8,800.00	\$11,000.00
<b>Demolition and Site Prep:</b>				
<i>Site Prep (erosion control and grading)</i>	\$4,000.00	\$0.00	\$0.00	\$4,000.00
<i>Demolition/removal of walkover, porta john enclosure, trash can enclosure, shower station, lamp post.</i>	\$10,000.00	\$0.00	\$0.00	\$10,000.00
<i>Subtotal</i>	\$14,000.00	\$0.00	\$0.00	\$14,000.00
<b>Site Improvement Costs:</b>				
<i>Materials</i>				
<i>1650 sf of 6' wide wood dune walkover</i>	\$80,000.00	\$20,000.00	\$0.00	\$100,000.00
<i>Site improvements: 16' octagonal gazebo</i>	\$9,000.00	\$3,000.00	\$0.00	\$12,000.00

NORTH CAROLINA PUBLIC BEACH AND WATERFRONT ACCESS PROGRAM

N. C. Division of Coastal Management

<i>Site improvements: shower station, solar powered lamp post, porta-john enclosure, trash can enclosure</i>	\$3,487.50	\$1,162.50	\$0.00	\$4,650.00
<i>Subtotal</i>	\$92,487.50	\$24,162.50	\$0.00	\$116,650.00
<b>Site Improvement Costs:</b>				
<i>Labor</i>				
<i>6' wide wood dune walkover</i>	\$82,000	\$28,000.00	\$0.00	\$110,000.00
<i>Site improvements: 16' octagonal gazebo</i>	\$11,250	\$3,750.00	\$0.00	\$15,000.00
<i>Site improvements: shower station, solar powered lamp post, porta-john enclosure, trash can enclosure</i>	\$3,112.50	\$1,037.50	\$0.00	\$4,150.00
<i>Subtotal</i>	\$96,362.50	\$32,787.50	\$0.00	\$129,150.00
<b>Local Admin Costs:</b>	\$0.00	\$0.00	\$0.00	\$0.00
<i>5 % Project Contingency</i>	\$4,818.13	\$1,639.38	\$0.00	\$6,457.50
<b>TOTAL BUDGET</b>	\$207,668.13	\$60,789.38	\$8,800.00	\$277,257.50



# NORTH CAROLINA PUBLIC BEACH AND WATERFRONT ACCESS PROGRAM PRE-APPLICATION 2024-2025

Local Government: \_\_\_\_\_ Federal ID Number: 56- \_\_\_\_\_

Project Name: \_\_\_\_\_

Brief Project Description:

<b>Local Government Project Administrator</b> Name: _____ Title: _____ Address: _____ City, State, Zip: _____ Telephone: _____ Email: _____	<b>Project Type (choose one):</b>  Land Acquisition  Site Improvement  Site Maintenance
<b>Costs rounded to nearest dollar:</b> Grant funds requested: \$ _____ .00  Local government's matching funds: \$ _____ .00 Cash Match: \$ _____ .00 In-kind Match: \$ _____ .00  Total cost of project: \$ _____ .00	<b>Site Control (check all that apply):</b>  Owned by local government  To be obtained with this land acquisition project  Land acquired under an approved waiver. Expiration date: _____ .  Leased by applicant for 25 years or more  Easement by applicant for 25 years or more  Owned by other State, Federal, or government agency with a Joint Use Agreement.

## LOCAL GOVERNMENT REPRESENTATIVE SIGNATURE

\_\_\_\_\_

Print or Type Name

\_\_\_\_\_

Title

\_\_\_\_\_ *Joe Costello* \_\_\_\_\_  
Signature

**Provide the following ATTACHMENTS and NARRATIVE:**

1. **Site location maps:** Provide a regional location map and a detailed vicinity map (street map) showing the location of the proposed project. Include a north arrow, and legible street names.
2. **Site description:** Provide a description of the site where the project will be located, including natural features and existing improvements. Also include NC Division of Water Resources [Surface Water Classification\(s\)](#).
3. **National Flood Insurance Program Floodways & Non-encroachment Areas:** Indicate if the project site or improvements are located in [Floodway or Non-encroachment area](#) per 40 C.F.R. § 60.3(d)(3). If the project or improvements are located in one of these areas, additional engineering studies may be needed.
4. **Project description:**
  - a. **Land acquisition projects:** Provide an exhibit or boundary survey indicating land area, an estimated cost of the property, and basis for the estimate. An overlay on aerial photos may be submitted. Indicate if the property would be acquired in phases.
    - i. The community has five years to begin developing beach and water access facilities on an acquired site. Describe how the public will be able to use the site until improved access facilities are in place.
  - b. **Site improvements projects:** Provide a description of the access facilities to be built, including information on features, materials, and proximity to [closest/other access sites](#).
  - c. **Maintenance of a previously funded site projects:** describe the repair and maintenance being proposed. Describe why repairs and maintenance are needed at this site.
5. **Project justification:** Explain why the project is needed and how it will benefit your community.
6. **List the types and sources of utilities proposed; and identify associated costs on Project Budget (pg. 3). Note above ground utilities must be identified.**
7. **Project site plan:** Provide a to-scale site plan showing property lines (label existing uses on adjacent lots), proposed site improvements, existing facilities, and significant natural features.
  - Include a legend, north arrow and graphic scale.
  - Improvements shown as an overlay on aerial photos also may be submitted.
  - Provide to-scale building elevations and floor plans as applicable.
8. **Pre-project tasks:** Identify tasks that must be completed prior to starting the project.
9. **Permits:** List all necessary permits and/or certifications.

- 10. ADA Transition Plan:** Is this project site identified in your community's ADA Transition Plan? If yes, provide a brief description of the improvements identified in the plan and outline how this project addresses them.
- 11. ADA requirements:** Does this project meet ADA requirements? If yes, describe the handicapped accessible features of this project. If no, describe why a handicapped accessible facility is impracticable and outline how handicapped accessibility needs are met within the area. See Designing Facilities for ADA in the application packet.
- 12. Exceeding ADA requirements:** Does this project exceed ADA requirements? If yes, describe the handicapped accessible features that exceed ADA requirements. See Designing Facilities for ADA in the application packet.
- 13. Is this project identified as high local priority in your certified Future Land Use Plan or local Access Plan?** If yes, provide a brief description of the plan and a statement of the extent to which the project implements the policies of the plan.
- 14. Is this project reflected in other policy documents or ordinances?** If yes, provide a brief description of the document or ordinance and a statement of the extent to which the project implements goals of the document or ordinance.
- 15. Previous grants:** List Access Grants previously received from DCM at this site by year. Use the DCM [map of past grants awarded](#).
- 16. User fees: Is a user fee charged at this site?** Do you charge user fees at any other DCM funded sites? If yes to either of these questions, provide the most recent annual accounting report as required by [15A NCAC 07M .310\(d\)](#).

# Project Budget

This form must be completed and included with your application. Round project costs to the dollar.

If available, attach a detailed breakdown of the cost assumptions upon which the Project Budget is based.

Proposals that include this information increase their likelihood of funding.

Project Elements	Grant	Cash Match	In Kind	Total
<b>Land Acquisition Costs</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
<b>Permit and Design Fees</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
<b>Site Improvement Costs: Materials</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
<b>Site Improvement Costs: Labor</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
<b>Local Administrative Costs</b>				
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$

<b>Totals</b>	\$	\$	\$	\$
<b>Match Percentages</b>	%	%	%	%

# Proposed Local Match

Local Government: \_\_\_\_\_ Project Name: \_\_\_\_\_

**Instructions:** Use the form below to show the sources of your matching funds. Indicate if these funds are currently available or are the funds yet to be approved. If funds are yet to be approved, list the date for approval. If applicable, provide additional narrative related to in-kind match and/or state/federal funds.

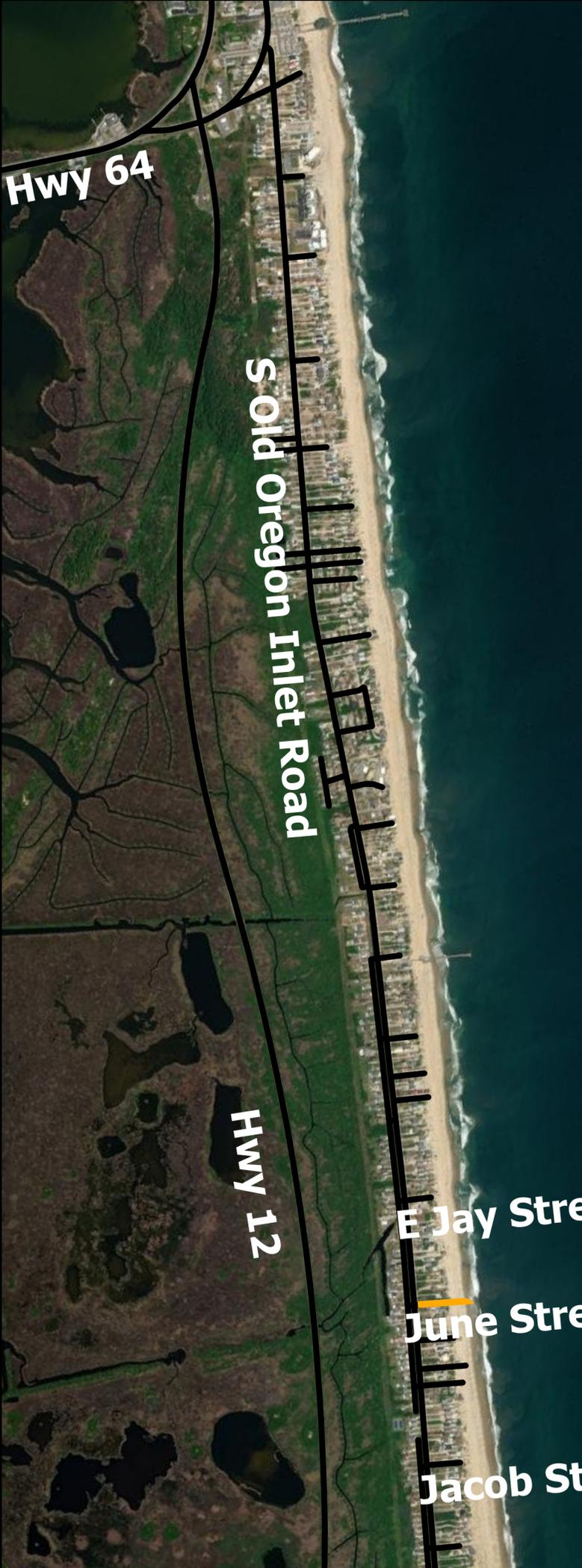
Applicants are encouraged to include their local contribution in their budget.

Source of Matching Funds			
Type of Matching Funds	Amount of Funds	Funding Source	Availability (Month/Year)
	\$		
	\$		
	\$		
	\$		
	\$		
<b>Total Matching Funds:</b>	\$		

## Additional Narrative:

Provide narrative explaining the relevance of proposed in-kind match to the project.

If other state and/or federal funds are to be used as local match, indicate the specific project elements that will qualify for joint funding. How viable is the project if complementary funding from another program is not secured?



# June Street Vicinity Map Attachment 1



 June Street Public Beach Access

# June Street Beach Access Existing Conditions

## Attachment 2

Zoning: R2 Medium-Density Residential  
Existing Use: Residential Townhouse

porta john, trash receptacle, lamp post,  
dog pickup station, shower station/water tap,  
custom bench, red mailbox/dedication

Existing Parking to Remain

bike rack

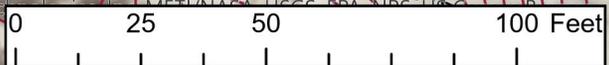
Zoning: R2 Medium-Density Residential  
Existing Use: Single Family Residential

**Legend**

- Existing Site Elements
- June Street Beach Access Property Boundary
- 1 Foot Contours
- Parcels



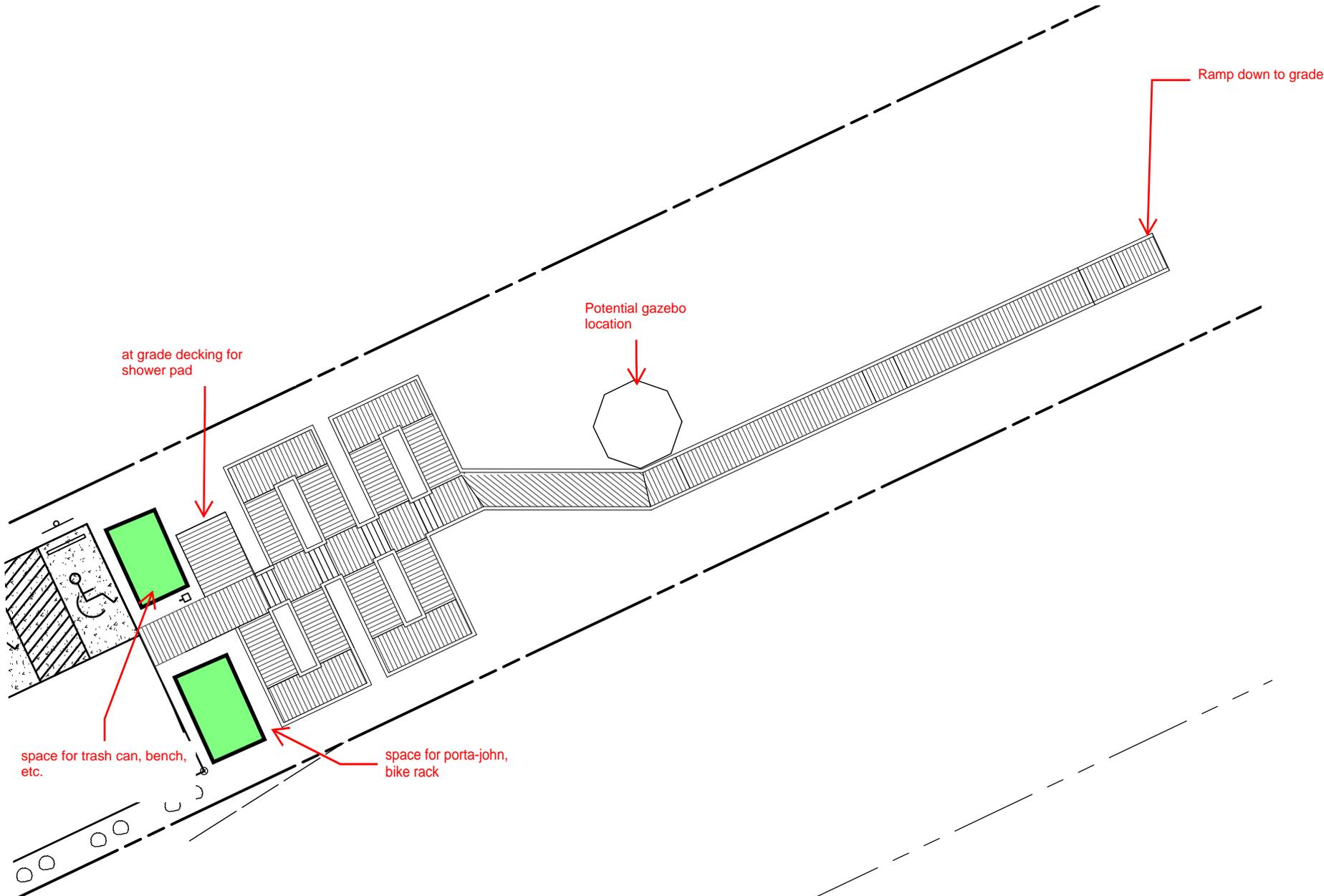
Esri Community Maps Contributors, State of North Carolina DOT, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoT...



ATTACHMENT 3

JUNE STREET CONCEPT

N



at grade decking for shower pad

Potential gazebo location

Ramp down to grade

space for trash can, bench, etc.

space for porta-john, bike rack

SCALE:1"=20'



## Agenda Item Summary Sheet

Item No: **F-2**  
Meeting Date: **June 5, 2024**

**Item Title:** Public Hearing to consider text amendments to the Unified Development Ordinance to prohibit parking on septic systems

**Item Summary:**

At their February 20, 2024, meeting, the Planning Board reviewed and recommended adoption of a proposed amendment to the Unified Development Ordinance that would stipulate when a physical barrier must be installed to prohibit driving and parking on residential septic system areas. However, both staff and the Planning Board recognized that the original proposal would likely impose an unnecessary burden on many property owners who would not/do not have issues with parking on their septic areas. In light of this, staff developed a revised amendment that aligns with septic protection goals discussed by the Septic Health Advisory Committee (SHAC), while only mandating physical barriers for properties if found to be in violation of the ordinance.

The revised amendment expressly prohibits parking on designated septic system areas. Should staff become aware of any violations, either through complaints or proactive monitoring by town staff, a Notice of Violation will be issued to the property owner, and if applicable, provided to the rental agency managing the property. This notice will spell out the remedy which will include the installation of a physical barrier to prevent future infractions. Additionally, when evaluating and issuing permits for residential development where there is a potential for excessive or overflow parking, staff will recommend installation of a physical barrier from the outset.

**Planning Staff and Planning Board Recommendation**

At their April 16, 2024, meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendment as presented.

Number of Attachments: 3

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**Specific Action Requested:**

Conduct the Public Hearing for the proposed text amendment.

Submitted By: Planning and Development

Date: May 28, 2024

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**Finance Officer Comment:**

Insufficient information to determine fiscal impact.

Signature: Amy Miller

Date: May 28, 2024

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**Town Attorney Comment:**

Attorney Leidy will participate in the discussion as necessary.

Signature: John Leidy

Date: May 28, 2024

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**Town Manager Comment and/or Recommendation:**

I will participate in the discussion.

Signature: Andy Garman

Date: May 28, 2024

**Benjamin Cahoon**  
Mayor

**Michael Siers**  
Mayor Pro Tem

**Andy Garman**  
Town Manager



**Town of Nags Head**  
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**Kevin Brinkley**  
Commissioner

**Bob Sanders**  
Commissioner

**Megan Lambert**  
Commissioner

## **PUBLIC NOTICE**

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, June 5, 2024** beginning at 9:00 am in the Board Room of the Municipal Complex, 5401 S Croatan Highway, Nags Head, NC to consider and take action upon the following requests:

Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2024 – June 30, 2025, proposed CIP requests for FY 24/25 through FY 28/29, and updated Consolidated Fee Schedule

Public Hearing to consider a text amendment to prohibit driving or parking on residential septic systems

Public Hearing to consider a text amendment submitted by Jordan Harrell of Jernigan Oil Company, Inc. to allow LED, digital displays for Fueling Stations

A copy of the application requests will be available for public inspection at the Nags Head Planning and Development Department and the Office of the Town Clerk, Town Municipal Complex, 5401 S. Croatan Hwy, Nags Head, NC 27959, telephone (252) 441-5508 during normal business hours.

As a result of these hearings, substantial changes may be made in the proposals as advertised to reflect objections, debate and discussion at the hearings. Any person desiring to be heard on the proposals as stated above should appear at the time and place specified above.

This is the 13<sup>th</sup> day of May 2024.

Kelly Wyatt  
Planning Director

*For publication in the Coastland Times on Wednesday, May 22<sup>nd</sup> and on Wednesday, May 29<sup>th</sup> 2024.  
Please use Nags Head logo and legal print.*



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

---

To: Board of Commissioners

From: Joe Costello, Deputy Planning Director  
Conner Twiddy, Environmental Planner  
Kelly Wyatt, Planning Director

Date: May 28, 2024

Subject: Consideration of text amendments to the Unified Development Ordinance (UDO) to prohibit parking on septic systems.

---

Included for the Board of Commissioners consideration is a text amendment to the Unified Development Ordinance which, if adopted, would expressly prohibit parking on the designated septic area for residential properties within the Town. This ordinance amendment was generated following discussions with the Septic Health Advisory Committee (SHAC) and has been revised to minimize unnecessary impacts on property owners who would not/do not have issues with parking on their septic systems. Instead, it provides a mechanism of enforcement for those properties who are identified to be in violation of this ordinance. Should staff become aware of any violations either through complaints received or proactive monitoring by town staff, a Notice of Violation will be issued to the property as required in Section 1.10, Violation of UDO Regulations. If applicable, this notice will also be provided to the rental agency managing the property. This Notice of Violation will outline the required remedy, including the installation of a physical barrier to prevent any future violations of the ordinance.

During the evaluation and issuance of permits for residential development with potential for excessive or overflow parking, staff will recommend installation of a physical barrier from the outset.

The Planning Department will prioritize outreach and education on the importance of protecting and maintaining septic systems. If the ordinance is adopted, we will make notable efforts to inform property owners, contractors, rental management companies, and other relevant parties and organizations about this new ordinance prior to issuing any Notice of Violation.

The staff reports from the Planning Boards February 20<sup>th</sup> and April 16<sup>th</sup> meetings are included below for the Board of Commissioners review.

### **POLICY CONSIDERATIONS**

The 2017 Comprehensive Land Use Plan provides the following policies and actions which should guide the Town's zoning and development actions:

- LU-1 – Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by: Development of low density and intensity served primarily with on-site wastewater systems.
- LU-12 – Utilize on-site wastewater systems as the preferred method of wastewater treatment as long as they remain viable to effectively treat effluent and protect water quality.

- NR-16 – Minimize impacts of future sea level rise. NR-16e – Maintain and expand the Septic Health Initiative by providing government assistance for septic retrofits, assisting homeowners in maintaining their septic systems, conducting more groundwater sampling, securing wells for sampling, developing partnerships to assist with the peer review of existing data, transition to a mandatory septic inspection program with incentives and mapping of groundwater.
- NR-24 – Preserve, protect, and improve water quality and natural estuarine functions to ensure public health, protection of natural resources and habitats, and recreational use.
- NR-25 – Increase public understanding of the relationship between water quality, ecosystem health, and human health advisories relating to water quality.

### **PLANNING BOARD RECOMMENDATION**

At their April 16, 2024, meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendment as presented.

If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements (attached).

### **Staff Report for Planning Board's April 16<sup>th</sup>, 2024 Meeting (as reference)**

At their meeting on February 20, 2024, the Planning Board reviewed and recommended the adoption of a proposed amendment to the Unified Development Ordinance (UDO) that would stipulate when a physical barrier must be installed to prohibit driving over and parking on residential septic system areas. However, both staff and the Planning Board recognized that the original proposal might have imposed unnecessary burdens on many property owners who would not/do not have issues with parking on their septic areas. In light of this, staff has now developed a revised amendment that aligns with the septic protection goals discussed by the Septic Health Advisory Committee (SHAC), while only mandating physical barriers for properties if found to be in violation of the ordinance.

The revised amendment expressly prohibits parking on designated septic system areas. Should staff become aware of any violations, either through complaints or proactive monitoring by town staff, a Notice of Violation will be issued to the property owner and, if applicable, provided to the rental agency managing the property. This notice will require the installation of a physical barrier to prevent future infractions.

This approach ensures that the enforcement of septic system protection is tied to a formal violation of the UDO, with a clear remedy outlined.

Additionally, when evaluating and issuing permits for residential development where there is a potential for excessive or overflow parking, staff will recommend installation of a physical barrier at the outset.

Outreach and education on the importance of protecting and maintaining septic systems will continue to be a priority of the Planning Department.

Planning staff will be available at the Planning Board's April 16, 2024, meeting for further discussion.

### **Staff Report from February 20, 2024 Planning Board Meeting (as reference).**

At their October 24, 2023, meeting the Septic Health Advisory Committee (SHAC) discussed the importance of prohibiting, or at a minimum discouraging, driving over and/or parking on top of active septic and drain field areas on residential properties. While providing the Planning Board with an update on the Septic Health Committee at their November 2023 regularly scheduled meeting, it was the consensus of the Planning Board to initiate the text amendment process for this item.

Currently, vacationers and property owners alike may be unaware that their property has a septic system. Many others are unsure what is required to properly maintain their septic systems. Parking or driving on septic systems can compromise the proper function of a septic system by rupturing pipes, cracking the tank, or compacting or damaging soil, depending on the soil type. Damage to septic systems can lead to costly repairs and environmental hazards to include the potential pollution of water sources and the proliferation of bacteria which can be dangerous to human and wildlife health.

As part of a discussion on the impacts of over-occupancy, the Septic Health Advisory Committee recommended that the Town consider requiring a physical barrier to prevent driving over and/or parking on the septic system area.

Staff has defined this area as the area containing the septic tank, disposal field/drain field and other components of a working septic system as approved on a recorded plat or an approved, stamped site plan by the Dare County Environmental Health Department. Property owners will

have different options on how to achieve this result to include placement of post and rope, landscaping, planters, raised landscape beds and fencing. Other landscaping, barrier and deterrence measures and solutions may be used if determined to be acceptable by the Unified Development Ordinance (UDO) Administrator.

Outreach and education will be necessary to provide property owners, design professionals, and contractors with information on what methods are acceptable to prevent driving over and/or parking on septic system areas.

Continued implementation of the Decentralized Wastewater Management Plan (DWMP) and development of creative strategies to increase awareness and participation in the Septic Health Initiative is an action item in the Towns 2024 Strategic Plan. A town-wide outreach and education campaign will be needed to accomplish this action item. As part of this campaign staff will create various educational initiatives to educate and notify property owners, visitors, homebuilders, and rental companies about all aspects of the Septic Health Initiative including consequences of a damaged septic tank or drain field as well as the acceptable forms of barriers.

If adopted, compliance with this ordinance would be required for any new residential construction and substantial improvement of any existing residential development as it relates to any increase in habitable area, increase in the number of allowable bedrooms, and driveway and parking improvements. In the event of new residential construction and substantial improvement of existing residential structures, a development permit will be required. Compliance with this ordinance will be a condition of final zoning approval in advance of receiving a certificate of occupancy/compliance. If a property owner wishes to provide this barrier outside of a larger scope of work, this will be handled similarly to a fence permit (non-pool barrier) as a no cost permit.

This ordinance applies specifically to residential properties. Commercial properties are required to go through a site plan approval process where there are mechanisms to ensure parking is not to occur on a septic system area.

To enforce this ordinance, staff will first provide an informal warning to those found to be in noncompliance. This will include contacting the property owner and occupant of the home if not the same, as well as the rental company if the home is within a rental program to explain the issue. If continued violations occur at a property, a formal Notice of Violation will then be issued consistent with Section 1.10, Violation of UDO Regulations, of the Unified Development Ordinance.

Note: Planning staff would like to encourage the Planning Board to consider and discuss whether this ordinance should apply to all residential properties within the Town or to a subset of properties. Examples may include the applying this ordinance to residential homes within a rental program only, or to homes adjacent to NC 12 and NC 1243 as these are the areas where overflow parking on septic and drain field areas is primarily observed.

Planning staff will be available at the Planning Board's February 20, 2024, meeting for further discussion.

(DRAFT)

**AN ORDINANCE AMENDING THE TOWN CODE AND UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO PROHIBITION OF DRIVING OVER AND/OR PARKING ON SEPTIC AREAS.**

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160D-701, 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. 160D-702, 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. § 160D-103, which allows the Town to combine certain land development ordinances into a unified ordinance;

**WHEREAS**, Section 2.4.4.3 of the Unified Development Ordinance provides that the powers and duties of the Planning Board include developing and recommending policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

**WHEREAS**, Section 3.5.1. of the Town Code makes clear that a zoning ordinance text amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town;

**WHEREAS**, the Septic Health Advisory Committee recommended the Planning Board consider a text amendment to inhibit parking and driving on septic systems as this can cause expensive repairs to the property owner and a health risk to people and wildlife;

**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.**

PART I. That **Section 10.12.9, Parking on Septic Areas Prohibited**, be added as follows:

**10.12.9** Driving or parking on the designated septic system areas is expressly prohibited. To resolve violations of this ordinance, the property owner may be required to install a physical barrier separating vehicular areas from septic system areas in order to limit damage to the system. Acceptable physical barriers may include fencing, posts with rope, raised landscape beds, landscape timbers or other landscaping treatments as approved by the Unified Development Ordinance (UDO) Administrator. Physical barriers must be installed with an adequate setback to prevent damage to the septic system, as determined by the UDO Administrator.

PART II. That **Appendix A – Definitions**, be amended to add the following definitions:

**Septic System** means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.

Septic Tank means a watertight receptacle for sewage which, after bacterial action, discharges the effluent.

Disposal Field aka 'drain field' or 'dispersal field' means an area of ground under whose surface the overflow from a septic tank is distributed in drain tile to be absorbed in the soil.

Septic System Area means an area containing the septic tank, disposal field/drain field and other components of a working septic system as approved on a recorded plat or an approved, stamped site plan by the Dare County Environmental Health Department.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.  
This ordinance shall be in full force and effect from and after the \_\_\_ day of \_\_\_\_ 2024.

\_\_\_\_\_  
Benjamin Cahoon, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Date adopted: \_\_\_\_\_

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS

## APPENDIX A

### SECTION 3.5.4. ACTION BY THE BOARD OF COMMISSIONERS

Pursuant to Section 3.5.4.2. of the UDO, 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.

Pursuant to Section 3.5.4.5. of the UDO, prior to voting to adopt or reject the proposed text amendment, the Board should adopt a statement approving the amendment and describing the amendment's consistency with the Town's adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest, 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, or a statement approving the amendment and containing at least all of the following:

- 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.
- 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.
- Why the action was reasonable and in the public interest.



# Agenda Item Summary Sheet

Item No: **F-3**  
Meeting Date: **June 5, 2024**

**Item Title:** Public Hearing to consider text amendments to the Unified Development Ordinance as it pertains to LED, digital displays for fueling stations

**Item Summary:**

At their meeting on March 19, 2024, the Planning Board reviewed and recommended the adoption of proposed text amendments that would permit the use of LED digital signage exclusively for displaying fuel prices, provided certain supplemental regulations are met. Following the meeting, the Town's attorney expressed concerns after reviewing the amendments, particularly in light of the Supreme Court decision in Reed v. Town of Gilbert, 576 U.S. 155 (2015). This ruling has significantly influenced how local governments regulate signage, emphasizing the need for content-neutral sign codes that do not favor one type of speech over another. Attorney Leidy noted that the Town's current prohibition on LED and digital signs is a valid content-neutral regulation of speech, as it does not differentiate based on the content of the speech. However, creating an exemption specifically for fuel price displays would likely introduce content-based discrimination, as it would allow certain messages while continuing to restrict others conveyed through LED and digital signs. Considering these concerns, staff, in consultation with the attorney and the applicant, proposed an alternative approach. The revised ordinance language would incorporate the LED digital display standards into the use regulations for fueling stations within Section 7.20 of the UDO. These standards would govern the maximum dimensions of the display, the number of character panels allowed, the frequency of rotation, and increased illumination beyond ambient light.

**Planning Staff and Planning Board Recommendation**

The town has valid concerns about signs with rotating, flashing, moving, or alternating lights. However, it may be worth revisiting the possibility of allowing digital signs exclusively for fuel price displays. Although we cannot specify that the display area is solely for gas price digits, we have proposed a set of narrow restrictions, expecting that they will primarily be used for fuel pricing. With the recommended supplemental standards, staff believes the proposal is generally consistent with the Town's adopted Comprehensive Plan, however Policy LU-19 does state that the Town will not permit signs that are digital.

At their April 16, 2024, meeting the Planning Board voted 5-1 to recommend adoption of the text amendment as proposed and requested that staff provide additional restriction on lighting levels for the digital characters. Gary Ferguson cast the Nay vote stating a concern that if gas stations are allowed to have digital signs other businesses will likely follow.

Number of Attachments: 3

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**Specific Action Requested:**

Conduct the Public Hearing for the requested text amendments.

Submitted By: Planning and Development

Date: May 28, 2024

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**Finance Officer Comment:**

Insufficient information to determine precise fiscal impact.

Signature: Amy Miller

Date: May 28, 2024

---

**Town Attorney Comment:**

Attorney Leidy will participate in the discussion as necessary.

Signature: John Leidy

Date: May 28, 2024

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**Town Manager Comment and/or Recommendation:**

I will participate in the discussion.

Signature: Andy Garman

Date: May 28, 2024

**Benjamin Cahoon**  
Mayor

**Michael Siers**  
Mayor Pro Tem

**Andy Garman**  
Town Manager



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**Kevin Brinkley**  
Commissioner

**Bob Sanders**  
Commissioner

**Megan Lambert**  
Commissioner

## **PUBLIC NOTICE**

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, June 5, 2024** beginning at 9:00 am in the Board Room of the Municipal Complex, 5401 S Croatan Highway, Nags Head, NC to consider and take action upon the following requests:

Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2024 – June 30, 2025, proposed CIP requests for FY 24/25 through FY 28/29, and updated Consolidated Fee Schedule

Public Hearing to consider a text amendment to prohibit driving or parking on residential septic systems

Public Hearing to consider a text amendment submitted by Jordan Harrell of Jernigan Oil Company, Inc. to allow LED, digital displays for Fueling Stations

A copy of the application requests will be available for public inspection at the Nags Head Planning and Development Department and the Office of the Town Clerk, Town Municipal Complex, 5401 S. Croatan Hwy, Nags Head, NC 27959, telephone (252) 441-5508 during normal business hours.

As a result of these hearings, substantial changes may be made in the proposals as advertised to reflect objections, debate and discussion at the hearings. Any person desiring to be heard on the proposals as stated above should appear at the time and place specified above.

This is the 13<sup>th</sup> day of May 2024.

Kelly Wyatt  
Planning Director

*For publication in the Coastland Times on Wednesday, May 22<sup>nd</sup> and on Wednesday, May 29<sup>th</sup> 2024.  
Please use Nags Head logo and legal print.*



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Board of Commissioners

From: Kelly Wyatt, Planning Director  
Joseph Costello, Deputy Planning Director

Date: May 28, 2024

Subject: Consideration of text amendments to the Unified Development Ordinance as it pertains to digital sign displays for fueling stations.

---

Jordan Harrell of Jernigan Oil Company, Inc. has submitted a request to amend the Unified Development Ordinance to allow digital, LED signage for displaying fuel prices at gas stations within the Town. Mr. Harrell has noted that the primary reason for this request is to enhance the safety of staff and customers. With advancements in technology and LED price signs, you can remotely change price signs, eliminating the need for employees to manually change fuel prices using a pole suction cup in the parking lot, which can be hazardous during busy times. In addition, the high winds in this area frequently damage signs and dislodge the plastic digit replacements.

Currently Section 10.22.6.17 of the Unified Development Ordinance states, "*LED and digital signs are prohibited*".

Pursuant to Appendix A, of the Unified Development Ordinance, the definition of "digital sign" is as follows:

***Sign, digital*** means any sign featuring electronic display or moving images created by incandescent, LCD, plasma, LED or projected images for any purposes other than traffic control devices. This definition is intended to include any sign containing incandescent lights or exposed light bulbs used as a message or reader board, or to project images. This definition does not include LED technology used only for the purpose of illuminating a structural sign face.

The language of Section 10.22.6.17 and the definition of digital sign were adopted on January 4, 2012. At their November 15, 2011 meeting, the Planning Board reviewed various documents and put forward a recommended ordinance for a complete prohibition of all digital and LED signage. The staff report and minutes associated with this meeting are included for the Planning Board's consideration. It is noted that fuel price displays were specifically mentioned, and not all members were opposed to digital signage for this purpose, provided it was regulated appropriately. The Board of Commissioners first discussed this proposed amendment at their December 7, 2011, meeting before voting to adopt the proposed prohibition on digital and LED signage at their January 4, 2012, meeting. Minutes from both the December 2011 and January 2012 Board of Commissioners meetings are attached. The primary concern appears to be potential proliferation of signage, especially those that flash, rotate, move, or are animated. There were aesthetic concerns regarding whether this type of signage maintains the town's visual appeal and character, contributes to light pollution, affects night sky visibility, and potentially distracts drivers.

At their meeting on March 19, 2024, the Planning Board reviewed and recommended the adoption of proposed text amendments to the UDO that would permit the use of LED digital signage exclusively for displaying fuel prices, provided certain supplemental regulations are met. Following the Planning Board's March 19<sup>th</sup> meeting, the Town's attorney expressed concerns after reviewing the amendments, particularly in light of the Supreme Court decision in *Reed v. Town of Gilbert*,

576 U.S. 155 (2015). This ruling has significantly influenced how local governments regulate signage, emphasizing the need for content-neutral sign codes that do not favor one type of speech over another. In response to this decision, the Town previously undertook a comprehensive revision of its sign regulations. An article from the North Carolina School of Government has been included in your packet for further information on this case.

Attorney Leidy noted that the Town's current prohibition on LED and digital signs is a valid content-neutral regulation of speech, as it does not differentiate based on the content of the speech. However, creating an exemption specifically for fuel price displays would likely introduce content-based discrimination, as it would allow certain messages while continuing to restrict others conveyed through LED and digital signs. Such an amendment could lead to First Amendment challenges from those still restricted by the ordinance, with the exemption for fuel price signs potentially serving as evidence of content-based regulation.

In light of these concerns, staff, in consultation with the attorney and the applicant, has proposed an alternative approach. The revised ordinance language would incorporate the LED digital display standards into the use regulations for fueling stations within Section 7.20 of the UDO. These standards would govern the maximum dimensions of the display, the number of character panels, and the frequency of rotation.

Based upon information provided by the applicant, the minimum display area needed for the use of 16-inch digits is approximately 42-inches x 19-inches. This allows for three characters/digits and a panel for the fraction which is commonly used. In applying this restriction, staff believes that it meets the needs of the applicant while maintaining content neutrality. It is important to note that this provision would technically allow a gas station to display a word within the four panels blocks, or an image. Although staff believe this is unlikely, it is worth mentioning. Additionally, the proposed amendment would restrict the display within this designated area from changing more than once in a 24-hour period.

As previously mentioned by staff, the town has valid concerns about signs with rotating, flashing, moving, or alternating lights. However, it may be worth revisiting the possibility of allowing digital signs exclusively for fuel price displays. Although we cannot specify that the display area is solely for gas price digits, we have proposed a set of narrow restrictions, expecting that they will primarily be used for fuel pricing. With the recommended supplemental standards, staff believes the proposal is generally consistent with the Town's adopted Comprehensive Plan, however Policy LU-19 does state that the Town will not permit signs that are digital.

## **POLICY CONSIDERATIONS**

LU-1 – Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by:

- A visible dark sky night maintained by lighting that is minimal and carefully designed.
- Commercial development that serves the needs of residents and visitors but respects the goals of the community related to design and appearance.

LU-16 – Preserve the dark sky night through implementation and enforcement of quality lighting fixtures and codes, dark sky education, and citizen support.

LU-18 – Encourage signage designed to serve the needs of residents and visitors but respects the goals of the community related to design and appearance.

LU-18a – Develop appropriate freestanding sign standards based on the desired character of each area, particularly along roadway corridors.

LU-18b – Ensure that future revisions to signage regulation remain content neutral.

LU-19 – Support signage that provides adequate communication but does not dominate the landscape. The town will not permit signs or attention getting devices that flash, spin, rotate, blink, or are digital. Signs shall not be directed to or face the ocean beach or sound waters.

## **PLANNING BOARD RECOMMENDATION**

At their April 16, 2024, meeting the Planning Board voted 5-1 to recommend adoption of the text amendment as proposed and requested that staff provide additional restriction on lighting levels for the digital characters. Gary Ferguson cast the Nay vote stating a concern that if gas stations are allowed to have digital signs other businesses will likely follow.

Following their request for additional information concerning lighting levels for the digital characters, staff prepared and presented a presentation to the Planning Board at their May 21, 2024 meeting. Staff outlined how most jurisdictions regulate LED digital sign brightness/illuminance using units of measurements called "footcandles" or "nits".

A footcandle is a measure of illuminance onto a surface, whereas a nit measures illuminance from a luminous source, perpendicular to the rays of the source. While a nit is the scientific manner of measuring light energy being emitted from an internally illuminated sign, it does not factor into ambient light and how the human eye sees illuminance from a point at a certain distance. For this reason, measuring illuminance by footcandles is typically the more restrictive and preferred by regulatory agencies. Staff relied heavily on a document produced by the Outdoor Advertising Association of America (OAAA) and has included this for the Board's consideration. The Outdoor Advertising Association of America recommends that digital signs not exceed 0.3 footcandles above ambient lighting as a standard. At their May 21, 2024 meeting the Planning Board voted 5 – 1 to include this language as a regulatory measure regarding increased illuminance from the digital characters themselves. To apply this, any fueling station wishing to install LED Digital characters will be required to coordinate with staff to conduct illuminance measurements at specific times of the day, under various daytime and nighttime conditions with the digital display off to record the ambient light as a baseline measurement of the surrounding light without the digital signs influence. When the digital display is then turned on, staff will need to conduct the same illuminance measurements at the same or similar times of the day, under the same or similar conditions to ensure that illuminance levels are no greater than 0.3 footcandles higher at the same fixed locations.

Additionally, staff would note that any fueling station must adhere to the minimum and maximum photometric requirements as already set forth in Section 10.37 of the UDO, Parking Lot Lighting Standards with a maximum maintained footcandle of 10.0 fc and a minimum footcandle of 0.7 fc.

## **STAFF ANALYSIS & RECOMMENDATION**

The Town of Nags Head has long expressed legitimate concerns regarding any type of digital, led signage that employs rotating, flashing, moving, or alternating lighting. Should the Board of Commissioners desire to revisit or reconsider the allowance of digital signs for fuel price displays only, staff would submit that with proposed content-neutral regulations regarding the size, number of characters, frequency of rotation, and brightness, the proposed amendment is likely consistent with the Town's adopted Comprehensive Plan.

If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements (attached).

(DRAFT)

**AN ORDINANCE AMENDING THE TOWN CODE AND UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO SUPPLEMENTAL REGULATIONS FOR FUELING STATIONS AND LED, DIGITAL DISPLAYS.**

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160D-701, 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. 160D-702, 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. § 160D-103, which allows the Town to combine certain land development ordinances into a unified ordinance;

**WHEREAS**, Section 2.4.4.3 of the Unified Development Ordinance provides that the powers and duties of the Planning Board include developing and recommending policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

**WHEREAS**, Section 3.5.1. of the Town Code makes clear that a zoning ordinance text amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town;

**WHEREAS**, Mr. Jordan Harrell of Jernigan Oil Company, Inc. has submitted a text amendment request as it pertains to the use of LED and Digital displays for the purpose of displaying fuel prices only.

**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.**

PART I. That **Section 7.20, Supplemental Regulations for Fueling Stations** shall be amended as follows:

**Section 7.20 - Fueling Station.**

Fueling stations are permitted in accordance with [Section 6.6](#), Table of Uses and Activities, provided that the following additional requirements and conditions are met:

**7.20.1.** No petroleum pumps shall be nearer than fifty (50) feet to any right-of-way or property line.

**7.20.2.** All underground fuel storage tanks shall be equipped with leak detection devices. The type of detection device shall be approved by and subject to periodic inspections by the Town.

**7.20.3.** In addition to the buffering requirements of [Section 10.93](#), Landscaping, Buffering, and Vegetation Preservation, a ten-foot wide commercial transitional protective yard shall be placed along the frontage of any street right-of-way.

**7.20.4.** Fueling Stations shall have no more than four (4) fuel dispensers.

**7.20.5.** Convenience store use associated with a fueling station shall not exceed 3,500 sf. of habitable building area.

**7.20.6.** As of (insert ordinance adoption date) no new fueling station, with or without a convenience store, shall be constructed on a lot having frontage on NC 12.

**7.20.7. Signage for fueling stations. Businesses engaged in the retail sale of gasoline may use manual changeable copy displays or digital/electronic displays on their approved freestanding sign. If utilizing an electronic display the following conditions shall apply:**

**7.20.7.1 A maximum of two elements of the approved freestanding sign shall be digital display.**

**7.20.7.2 No single digital display element may exceed 42 inches in length and 19 inches in height. The total digital display of all elements combined shall not exceed 11 square feet.**

**7.20.7.3 Within each digital display element, no more than four (4) characters are permitted. The characters shall not exceed a height of 16-inches.**

**7.20.7.4 The digital display shall be two-color LED technology only (e.g., red display for regular fuel; green display for diesel fuel).**

**7.20.7.5 The digital display shall have automatic dimming capabilities and shall automatically dim in response to ambient light. In no instance shall the digital display cause light trespass onto adjacent residential districts or uses.**

**7.20.7.6. The digital display shall be fixed and shall not change or rotate more than twice in a 24-hour period.**

**7.20.7.7. The digital display shall provide illumination at a level no greater than 0.3 footcandles over ambient lighting levels.**

PART II. That **Section 10.22.6, Prohibited Signs**, be amended as follows:

**10.55.6.17.** LED and digital signs are prohibited, except for those specified in Section 7.20, Fueling Stations.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the \_\_\_ day of \_\_\_\_ 2024.

\_\_\_\_\_  
Benjamin Cahoon, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Date adopted: \_\_\_\_\_

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS

## Coates' Canons NC Local Government Law

### Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

**Published: 07/21/15**

**Author Name: Adam Lovelady**

Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of *Reed v. Town of Gilbert*, 576 U.S. \_\_\_ (2015), and its impact on local sign ordinances.

#### **Context of Free Speech Caselaw**

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

***Content-Neutral Sign Regulations.*** Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other

things. These regulations are allowed, provided they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

***Content-Based Sign Regulations.*** Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens’ blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson* test is unclear.

### **Case Summary**

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn’t fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were

based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depende[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town’s distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town’s distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

### **Impact of Local Ordinances**

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert’s sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the

impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

***Content-Based Distinctions.*** In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street numbers associated with private houses.

***Content-Neutral Distinctions.*** The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs\*
- And time restrictions on signs advertising a one-time event\*

\* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

## **Open Questions**

### ***Content-ish Regulations***

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring

in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas' hard line. Thus, Alito's opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito's list points to some room for defining signs based on function.

And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

***Commercial and Noncommercial Speech.*** In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (*See, generally, Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision. Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

## **Conclusion**

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.

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## Explanation of OAAA Recommended Brightness Guidelines

There are at least two ways to evaluate the brightness of a LED digital display. A preferred method uses a footcandle meter to determine the amount of light that reaches various points in front of the digital display. A second method uses a luminance meter (frequently called a nit gun) to determine the amount of light emitted by a light source.

### Explanation of Footcandles vs. Nits

A brightness standard measured in nits (candelas/square meter) typically contains a maximum value for daytime and nighttime. The footcandle standard has only one value but is measured from different distances based on display size.

An LED sign generates luminance at the source (measured in nits), but this raw source is not what the human eye sees from a distance. The human eye sees illuminance (measured in foot candles) from a point at a certain distance from the LED sign. Illuminance is greatly affected by ambient light and surrounding conditions. As such, it is usually preferred by regulators.

### Q: What is the definition of Luminance<sup>1</sup>?

lu·mi·nance/'lumənəns/ [loo-muh-nuhns]—noun

1. The state or quality of being luminous.
2. Also called luminosity, the quality or condition of radiating or reflecting light: the blinding luminance of the sun.
3. Optics - The quantitative measure of brightness of a light source or an illuminated surface, equal to luminous flux per unit solid angle emitted per unit projected area of the source or surface.

### Q: What is the definition of Illuminance?

/i'lumənəns/ Compare irradiance E v, Sometimes called: illumination the luminous flux incident on unit area of a surface. It is measured in lux<sup>2</sup>

### Q: What is a foot candle?

n. (Abbr. fc or ft-c)

[foot-kan-dl]

noun Optics.

A unit of illuminance or illumination, equivalent to the illumination produced by a source of one candle at a distance of one foot and equal to one lumen incident per square foot. Abbreviation: FC<sup>3</sup>

Also:

A unit of illuminance on a surface that is everywhere one foot from a point source of one candle<sup>4</sup>

<sup>1</sup> Dictionary.com <http://dictionary.reference.com/browse/luminance?s=t>

<sup>2</sup> Dictionary.com <http://dictionary.reference.com/browse/illuminance?s=ts>

<sup>3</sup> Dictionary.com <http://dictionary.reference.com/browse/foot+candle?s=t>

<sup>4</sup> TheFreeDictionary.com <http://www.thefreedictionary.com/Footcandle>

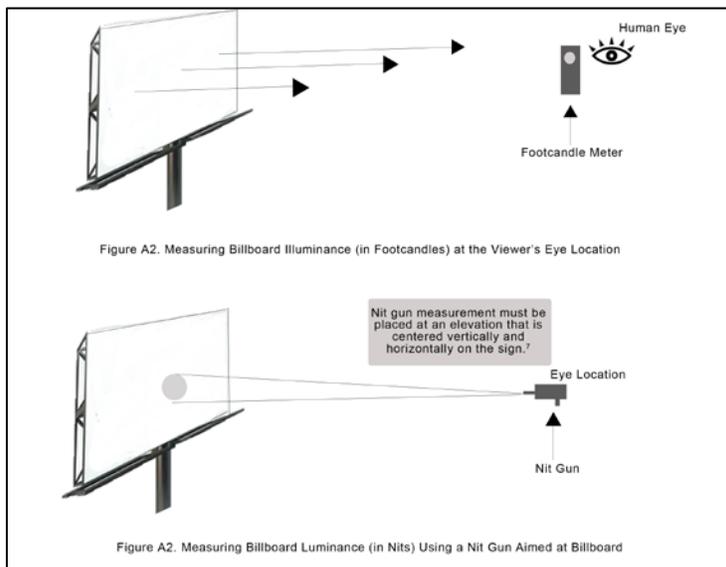
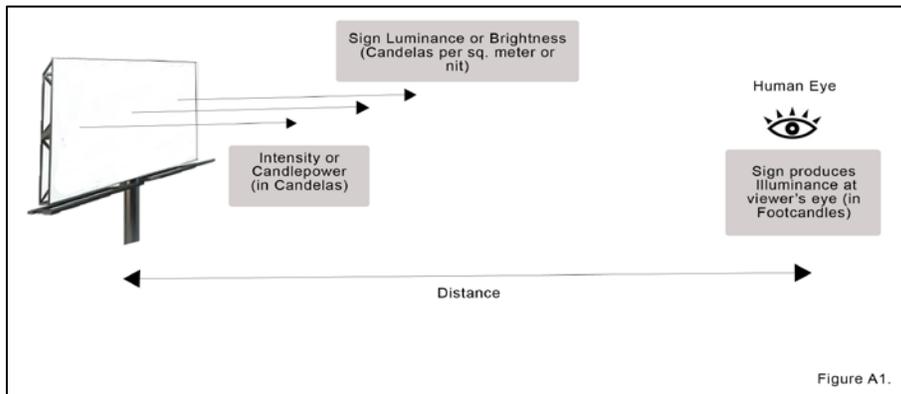
## Q: What is a nit?

A:

noun Physics.

a unit of luminous intensity equal to one candela per square meter. Abbreviation:  $\text{nt}^5$

-A unit of illuminative brightness equal to one candle per square meter, measured perpendicular to the rays of the source.<sup>6</sup>



<sup>5</sup> Dictionary.com <http://dictionary.reference.com/browse/nits?s=t>

<sup>6</sup> TheFreeDictionary.com <http://www.thefreedictionary.com/nit>

<sup>7</sup> Nit gun readings are most accurate when the readings are taken directly perpendicular from the light source. As a result, the best place to take Nit gun readings is from an elevated height perpendicular to the digital display. If this is not possible, moving back from the digital display 350' to 500' on the center line will minimize the loss of accuracy. However, the distance away from the digital display cannot cause the nit gun measurement circle to fall outside the lighted digital billboard face.

-Source: Dr. Ian Lewin, Ph.D. Lighting Sciences, Inc. Digital Billboard Recommendations and Comparisons to Conventional Billboards.

### Why use Foot candles over Nits as a unit of measurement?

- Foot candles measure the variance from ambient light. This assures a government that the sign will not be too bright for conditions. At different parts of a day the ambient lighting can be significantly different with clouds or fog. Conversely, the same can be true about nighttime conditions when an adjacent commercial lot turns on or off their parking lot lighting. Regulation using Nits merely sets a maximum and minimum level for day and night time conditions. Using the foot candle standard will not allow the sign to be too bright under a variety of conditions. (See Figure A2)
- Nits measure the brightness of the light at its source, without regard to ambient light. Establishing a lighting standard that ignores the brightness of the area (ambient light) allows the digital billboard to be too bright in dark environments and too dim in highly illuminated areas. In other words, fixed nit standards can allow the digital to operate at significantly higher luminance than is needed over the course of a 24 hour period.
- Nits: To measure nits you need to be directly perpendicular to the sign to measure, and get an accurate measurement. This is factored horizontally and vertically. There is a little bit of leeway on angle. Nits are directional in nature and billboard signs are usually aimed directly at the middle of the roadway. This in many cases puts the person performing the measurement in the travel lanes. In addition, due to the height of the average digital billboard a truck with a man-lift may be required. There is no specified distance you must be away from the sign to measure. (See Figure A2)
- Footcandles: With the footcandle standard you should be as perpendicular to the face as you can, but you do not have to be, to get a valid, accurate measurement. Footcandles can be measured multi directionally. You can take measurements at an angle to the sign face and receive valid measurements. The distance from which to measure is set at 250 ft away from the sign face for 14 x 48 size. This gives a regulator more options on places to stand.
- This makes the footcandle standard superior in ease of implementation. But even if we assumed they are both different, but similar in this regard, other more important factors tip the scales.
  - The footcandle standard is more restrictive in terms of lighting allowed, in a variety of conditions. As such, is usually preferred by regulators once they are educated on the differences.
  - The industry footcandle standard is tied to a required light sensor and dimming software.
  - Footcandles measure what the driver sees through their windshield in terms of light, where his car is.
  - Nits measure the light emanating from the sign face, typically a few hundred feet away. Not necessarily what the driver is seeing.
- It also can benefit a government to use foot-candles instead of Nits as Nit guns are very expensive (estimated cost \$3,000.00). Light meters can cost as little as \$250.00.

### There are 3 necessary components to insure a digital billboard will never be too bright for conditions.

1. Maximum brightness limits incorporating a footcandle standard
2. An ambient light sensor installed on the sign structure
3. Dimming software

The ambient light level of a digital billboard will not vary significantly from that of a traditional billboard display and, in many cases it will be less. The light output levels will be set to be appropriate for the surroundings.

OAAA recognized/member companies utilize a photocell on digital billboards so that the display will easily be seen by motorists under changing light conditions. Sophisticated dimming software constantly changes the brightness of the display in response to changing ambient lighting conditions. This insures a digital billboard will never be too bright for conditions.

The range of brightness varies greatly between daytime and nighttime conditions. In bright daylight, the unit must have higher intensity in order to be seen. During darkness conditions, the brightness can be set low and still be easily seen by motorists.

### **Why was 0.3 Footcandles chosen as the limit?**

The 0.3 footcandle maximum illuminance level was carefully derived from a report completed by a former president of the IESNA.<sup>8</sup> The recommended technique is based on accepted IESNA practice for “light trespass.”

The Outdoor Advertising Association of America (OAAA) commissioned Dr. Ian Lewin, in 2008 a principal at Lighting Sciences, Inc., Scottsdale, AZ, to recommend criteria for brightness levels on digital billboards<sup>9</sup>. The standards are designed to minimize the risk of glare or unreasonable driver distraction.

Footcandle measurements are commonly used throughout the United States. Footcandle measures are widely used in the lighting industry, photography, film, television, conservation lighting, and construction related engineering and building code regulations<sup>10</sup>. In addition, footcandles are frequently cited in OSHA regulations. The OAAA believes that these lighting standards reflect the best practices of the Out of Home Industry.

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<sup>8</sup> IESNA – Illuminating Engineering Society of North America

<sup>9</sup> Digital Billboard Recommendations and Comparisons to Conventional Billboards, by Dr. Ian Lewin Ph.D., FIES, L.C. Lighting Sciences, Inc., 7826 East Evans Road, Scottsdale, Arizona 85260

<sup>10</sup> [wikipedia.org/wiki/Footcandles](http://wikipedia.org/wiki/Footcandles)

## Appendix

### OAAA Recommended Brightness Guidelines

#### Criteria #1 - Lighting Standards – Measurements:

The industry recommended criteria follows the lighting standards established by the Illuminating Engineering Society of North America (IESNA). The OAAA and member companies voluntarily adhere to the following guidance.

Recommended regulatory criteria:

Lighting levels should not exceed 0.3 foot candles (over ambient levels) as measured using a foot candle meter at a pre-set distance.

Pre-set distances to measure the foot candles impact vary with the expected viewing distances of each size sign. Measurements should be taken as close to perpendicular to the face as practical.

Measurement distance criteria:

Nominal Face Size	Distance to Measure From
12' x 24'	150'
10'6 x 36'	200'
14' x 48'	250'
20' x 60'	350'

Each display must have a light sensing device that will adjust the brightness as ambient light conditions change.

#### Criteria #2 - Alternate Regulatory Criteria

The brightness of light emitted from a changeable message sign should not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') feet for those sign faces less than or equal to three hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200 ft.), for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250 ft.), for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350 ft.) for those sign faces greater than six hundred eighty square feet (680 sq. ft.)

Or use Alternate Table:

Sign Face Size	Distance of Measurement
681-1200 square feet	350 feet
385-680 square feet	250 feet
300-385 square feet	200 feet
200-300 square feet	150 feet

Each display must have a light sensing device that will adjust the brightness as ambient light conditions change.

**Criteria #3 - Optional Regulatory Addendum** - (If standardized distances cannot be achieved in compliance with MUTCD roadside work, or if the site conditions will not allow measurements from the previous distances.)

In the event it is found not to be practical to measure a digital billboard at the set distances prescribed above, a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth below. In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed footcandle level above ambient light shall not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the following tables (A), (B), (C), and (D), as applicable:

(A) For changeable message signs less than or equal to 300 square feet:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	0.68
125	0.43
150	0.3
200	0.17
250	0.11
275	0.09
300	0.08
325	0.06
350	0.06
400	0.04

(B) For changeable message signs greater than 300 square feet but less than or equal to 385 square feet:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	1.2
125	0.77
150	0.53
200	0.3
250	0.19
275	0.16
300	0.13
325	0.11
350	0.1
400	0.08

(C) For changeable message signs greater than 385 square feet but less than or equal to 680 square feet:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	1.88
125	1.2
150	0.83
200	0.47
250	0.3
275	0.25
300	0.21
325	0.18
350	0.15
400	0.12

(D) For changeable Message Sign greater than 680 square feet: Alternative Measuring Distance:  
Prescribed Foot Candle Level:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	3.675
125	2.35
150	1.63
200	0.92
250	0.59
275	0.49
300	0.41
325	0.35
350	0.3
400	0.23
425	0.2
450	0.18
500	0.15

202400146

Unified Development Ordinance (UDO) Text Amendment  \$750  
Zoning Map Amendment  \$750 +  
\$500/acre or fraction thereof

UNIFIED DEVELOPMENT ORDINANCE TEXT/  
ZONING MAP AMENDMENT APPLICATION  
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Jernigan Oil Company Inc / Duck Thru Food Stores

Mailing address PO Box 688, Ahoskie NC 27910

Explanation of request

- Unified Development Ordinance (UDO) - Section(s) 10.22.6.17  
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

See Attached.

Reason for request

See Attached.

Jordan M. Harrell  
Applicant

01/23/2024  
Date

## **Nature of Request:**

Jernigan Oil Company Inc., parent company of Duck Thru Food Stores, owns and operates 56 convenience store locations throughout Northeast North Carolina and Southside Virginia. Duck Thru operates five locations on the Outer Banks: two locations in Manteo, one location in Wanchese and two locations in Nags Head. Of our 56 Duck Thru locations, the two locations in Nags Head are the only remaining locations that do not have an LED price sign. Jernigan Oil Company is requesting a text amendment to The Town of Nags Head to consider amending Section 10.22.6.17 (LED and digital signs are prohibited). For illustrative purposes, I have attached an image of an existing LED price sign at another Duck Thru location as well as the current price sign at one of the Nags Head locations. Please note the request is for LED price signs only, which would include NUMBERS only and not any text, words, or images. The LED price sign would only display the gasoline and diesel prices and would not scroll, roll, or flash in any way. The LED numbers would display our gasoline price in a 16-inch red font block digit and would display our diesel price in an 8-inch green font block digit. Lastly, it's important to note all LED price signs will automatically dim at night, and day/night brightness levels can be adjusted to meet the Town of Nags Head lighting requirements. I have attached the spec sheet from our LED supplier, ABLE.

## **Reason for request**

Jernigan Oil Company Inc. requests this text amendment for many reasons but the safety of our staff and customers is one concern and always our top priority. In June 2023, Jernigan Oil Company made a large investment to automate our gas price change processes across our locations for the safety of our staff and customers. With advancements in technology and LED price signs, we are able remotely change price signs without having an employee out in the parking lot, physically changing signs. As you can see in the attached photo of the current Nags Head price sign, the only way to change our price sign is to have an employee visit the parking lot and manually change the price on the sign with a pole suction cup. Unfortunately, when our employees visit the parking lot during busy times of day, our employees take the risk of being struck by a vehicle. Secondly, with the high winds in the Outer Banks area, digits frequently blow from signs, potentially striking customers, or their vehicle. With this change, we would eliminate both safety risks by keeping employees out of the parking lots and driveways and removing the risk of plastic digits being blown from signs.

## ARTICLE 10. PERFORMANCE STANDARDS

**10.22.6.2.** No sign shall be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER."

**10.22.6.3.** No sign or commercial sign shall be erected which contains, employs or utilizes lights or lighting which rotates, flashes, moves or alternates; except that time and temperature displays, as defined, are permitted but must be included in computing allowable signage. Continuous printout, running or ticker-tape type message panels or signs are prohibited.

**10.22.6.4.** No sign shall be erected which contains rotating sign panels.

**10.22.6.5.** No sign shall obstruct visibility at an intersection or driveway as regulated in Section 10.92.2.2.8, Vision Clearance (C).

**10.22.6.6.** No sign shall be posted on any telegraph, telephone, or electrical light pole or on any tree along any street.

**10.22.6.7.** No sign shall be permitted that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building. Signs shall not be placed in a manner that obstructs architectural building features such as dormers, cupolas, windows, rooflines or other building elements.

**10.22.6.8.** No sign shall be permitted that violates any provision of any law of the state relative to outdoor advertising.

**10.22.6.9** All outdoor advertising signs or structures are prohibited.

**10.22.6.10.** Signs supported in whole or in part by water, air or gas are prohibited.

**10.22.6.11.** No sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.

**10.22.6.12.** All pennants are prohibited.

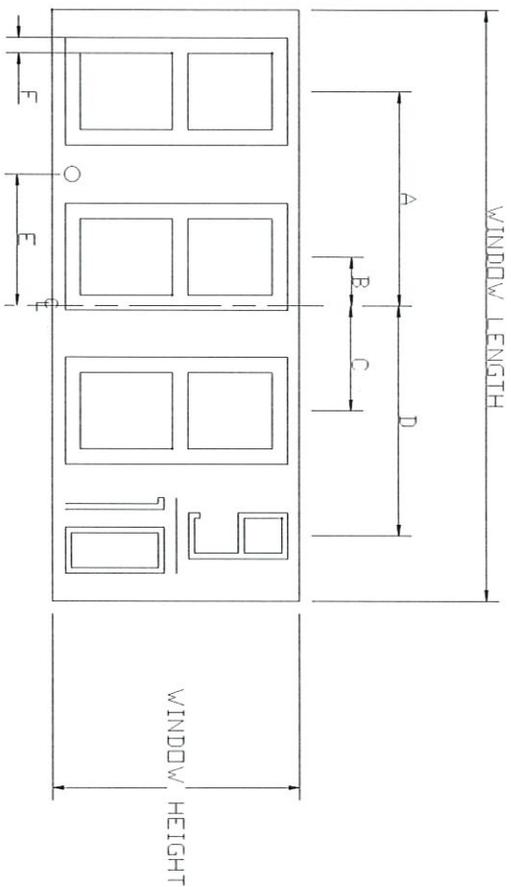
**10.22.6.13.** Use of exposed neon, argon, krypton, or similar gas tube lighting shall be prohibited in all manners except as provided in subsection 10.24.2.5.

**10.22.6.14.** Tourist-oriented directional sign (TODS).

**10.22.6.15.** Three-dimensional sculptured objects and pictorial devices attached to and extending more than twelve (12) inches beyond any wall or roof of a building in business use are prohibited. Attached sculptured objects and pictorial devices extending twelve (12) inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this UDO pertaining to such signs.

**10.22.6.16.** Roof signs within the SPD-C, Village at Nags Head C-1, C-2, hotel and institutional districts are prohibited.

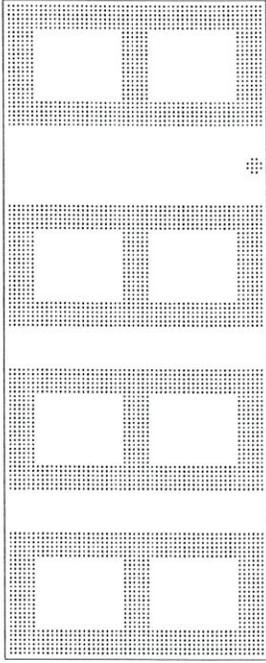
**10.22.6.17.** LED and digital signs are prohibited.



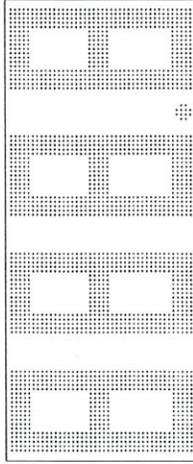
Section	Nominal Rows	LED qty	Pitch	Min Window Width	Min Window Height	Dim A	Dim B	Dim C	Dim D	Dim E	Dim F
6" DIGIT	2	74	0.46"	7.2"	16"	6.10'	1.32'	2.79'	6.41'	3.72'	0.46'
8" DIGIT	1	54	0.39"	8.8"	23.5"	9.06'	1.72'	4.42'	9.72'	5.36'	0.48'
8" %	2	71	0.39"	13.7"	33.1"	12.87'	2.93'	5.97'	13.05'	7.89'	1.15'
12" DIGIT	3	177	0.58"	13.7"	33.1"	12.87'	2.93'	5.97'	13.05'	7.89'	1.15'
12" %	2	137	0.48"	18.5"	41.7"	15.74'	3.57'	7.74'	16.96'	9.65'	1.28'
16" DIGIT	3	219	0.64"	20.4"	45.3"	17.59'	4.15'	8.34'	18.79'	10.91'	1.28'
18" %	2	222	0.48"	25.8"	62.7"	23.33'	6.33'	9.77'	24.07'	14.84'	2.22'
24" DIGIT	4	360	0.75"	31.9"	77.2"	30.12'	7.97'	13.22'	31.66'	19.03'	2.92'
24" %	3	555	0.72"	31.9"	77.2"	30.12'	7.97'	13.22'	31.66'	19.03'	2.92'
30" %	3	3	0.58"	4.4"	10.4"	4.104'	7.51'	19.89'	44.16'	24.27'	3.67'
42" DIGIT	6	3	0.78"	4.4"	10.4"	4.104'	7.51'	19.89'	44.16'	24.27'	3.67'
42" %	3	3	0.62"	4.4"	10.4"	4.104'	7.51'	19.89'	44.16'	24.27'	3.67'
SH DECIMAL	-	4	0.46"								
MD DECIMAL	-	7	0.57"								
LG DECIMAL	-	12	0.75"								

**Diesel** →  
**Gas** →

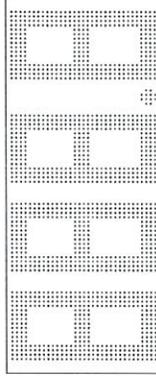
DATE	REV	DESCRIPTION	INITIAL	FOR RANGE UNLESS SPECIFIED	DESCRIPTION	DRAWING NO	DATE	DRAWN BY	REV
				1 FOOTING UNLESS SPECIFIED	HD LED LAYOUTS	ABL8002-L1	1/14/24	EDG	A
				2 DECIMAL PLACES XXXX -0.00					
				3 DECIMAL PLACES XXXX -0.005					
				4 DECIMAL PLACES XXXXX -0.0005					
				ANGLES ±1/2 DEGREE					



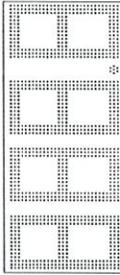
42"  
 HD-420 DIGIT  
 HD-425 SMALL 9  
 HD-425 10 1/2  
 HD-DP03 DECIMAL



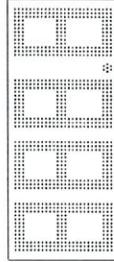
30"  
 HD-300 DIGIT  
 HD-305 3/8  
 HD-DP2 DECIMAL



24"  
 HD-240 DIGIT  
 HD-245 3/8  
 HD-DP2 DECIMAL



18"  
 HD-180 DIGIT  
 HD-185 3/8  
 HD-DP1 DECIMAL



16"  
 HD-160 DIGIT  
 HD-165 3/8  
 HD-DP1 DECIMAL



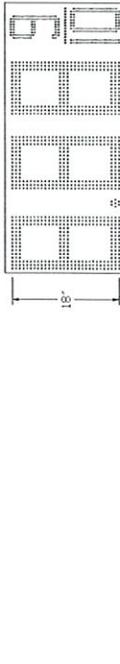
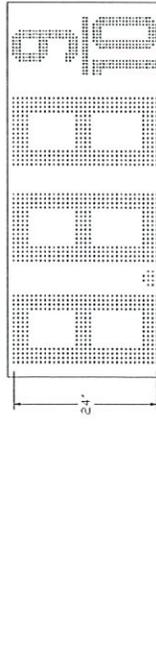
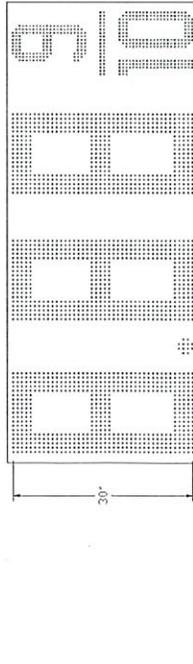
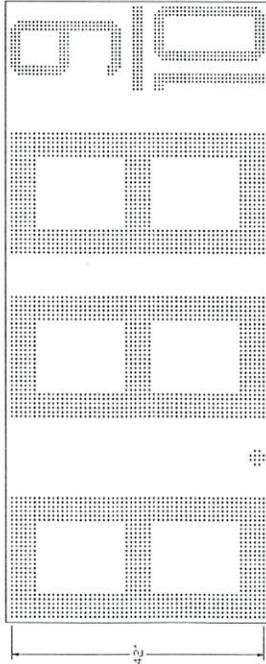
12"  
 HD-120 DIGIT  
 HD-125 3/8  
 HD-DP1 DECIMAL



8"  
 HD-0820 DIGIT, 3/8  
 & DECIMAL  
 HD-0840 DIGIT &  
 DECIMAL



6"  
 HD-0630 DIGIT, 3/8  
 & DECIMAL



Gas →



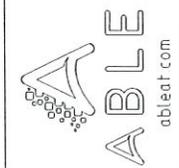
Diesel →



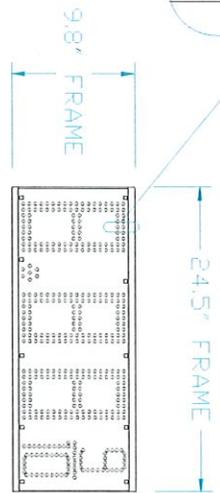
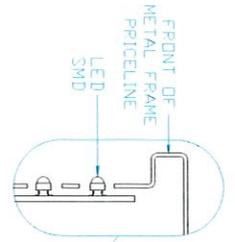
DATE	REV	DESCRIPTION	INITIAL	DESCRIPTION	DRAWING NO.	DATE	DRAWN BY	REV
				HD LED LAYOUTS	ABL8002-L2	1/14/24	EDG	A

TOLERANCE UNLESS SPECIFIED  
 1 FRACTIONAL 1/164  
 2 DECIMAL PLACES X.XX ±0.00  
 3 DECIMAL PLACES X.XXX ±0.005  
 4 DECIMAL PLACES X.XXXX ±0.0005  
 ANGLES 5/16 DEGREE

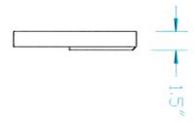
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# Diesel Digits

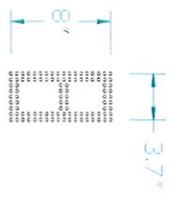


FRONT VIEW



END VIEW

WINDOW



NOTES

**GENERAL**  
DIGITS ARE 8" NOMINAL HEIGHT

**MECHANICAL**  
AAT USA LLC IS NOT RESPONSIBLE FOR THE MOUNTING STRUCTURE OR FOR THE ADEQUACY OF ATTACHMENT TO THE STRUCTURE STRUCTURE AND ATTACHMENT MUST CONFORM TO ALL APPLICABLE BUILDING CODES

**WEIGHT** 5 SLABS

**ELECTRICAL**  
PROVIDE A 90-265V AC, 15 AMP CIRCUIT FOR POWER

EACH PRICELINE CONFORMS TO CLASS 2 AND LIMITED TO LESS THAN 100W AND 15VDC TO 24VDC

LISTED IN UL SAHS MANUAL

SERVICE AND ELECTRICAL HOORUP ACCESS IS THROUGH THE BACK OF THE DISPLAY ONLY

IF THE POWER TO THE DISPLAY IS TEMPORARILY INTERRUPTED, DISPLAY FUNCTIONS WILL BE RETAINED IN MEMORY TO CONTINUE OPERATION WHEN POWER IS RESTORED

PCU DIGITS AND WIRING ARE CONFORMAL COATED FOR USE IN DAMP CONDITIONS

ON BOARD MEMORY FOR PRICE AND SETTINGS

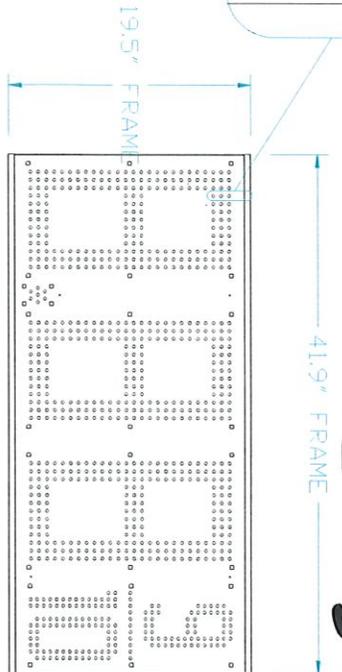
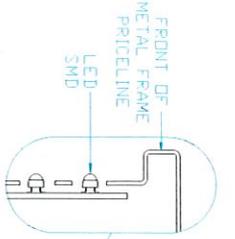
DIMMING, BLINK AND DIAGNOSTIC FUNCTIONS BUILT-IN AND ADJUSTABLE FROM REMOTE CONTROL

**THERMAL**  
PCU TEMPERATURE -40 TO +85°C POWER SUPPLY -20° TO +85°C

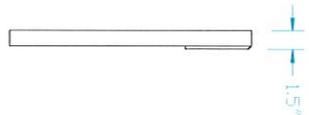
DATE	REV	DESCRIPTION	INITIAL	DESCRIPTION	DRAWING NO.	DATE	DRAWN BY	REV
				TOLERANCE UNLESS SPECIFIED 1. DECIMAL PLACES XXXX -0.005 2. DECIMAL PLACES XXX -0.005 3. DECIMAL PLACES XX -0.05 4. DECIMAL PLACES X XXXX -0.0005 ANGLES 1/2 DEGREE	ABL8002-8A	1/14/24	EDG	A
				©AAT USA LLC THIS DOCUMENT REFLECTS TRADE SECRETS AND CONFIDENTIAL INFORMATION AND MAY NOT BE COPIED, PUBLISHED OR REPRODUCED IN ANY MANNER WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF AAT USA LLC. ALL RIGHTS RESERVED INCLUDING ANY APPLICABLE PATENT AND COPYRIGHT RIGHTS.				



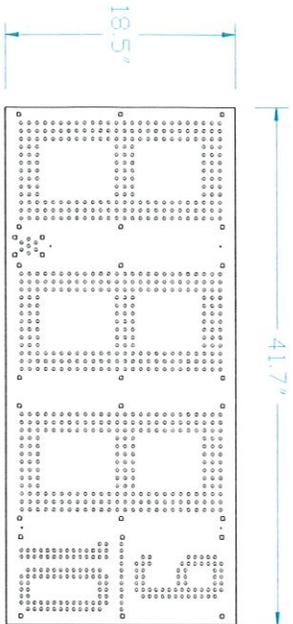
# Gas Digits



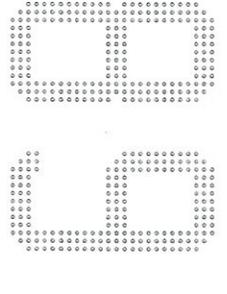
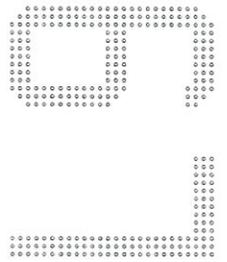
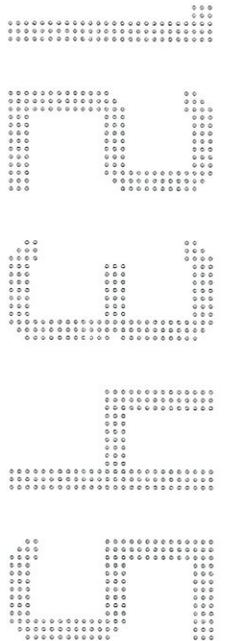
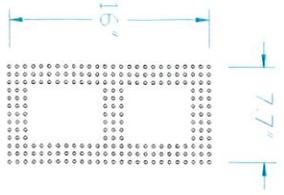
FRONT VIEW



END VIEW



FRONT VIEW



NOTES

GENERAL

DIGITS ARE 16" NOMINAL HEIGHT

MECHANICAL

AAT USA LLC IS NOT RESPONSIBLE FOR THE MOUNTING STRUCTURE OR FOR THE ADEQUACY OF ATTACHMENT TO THE STRUCTURE STRUCTURE AND ATTACHMENT MUST CONFORM TO ALL APPLICABLE BUILDING CODES

WEIGHT 10LBS

ELECTRICAL

PROVIDE A 90-265V AC, 15 AMP CIRCUIT FOR POWER  
EACH PRICELINE CONFORMS TO CLASS 2 AND LIMITED TO LESS THAN 100W AND 15VDC TO 24 VDC

LISTED IN UL SAMS MANUAL

SERVICE AND ELECTRICAL HOORUP ACCESS IS THROUGH THE BACK OF THE DISPLAY ONLY

IF THE POWER TO THE DISPLAY IS TEMPORARILY INTERRUPTED, DISPLAY FUNCTIONS WILL BE RETAINED IN MEMORY TO CONTINUE OPERATION WHEN POWER IS RESTORED

PCU DIGITS AND WIRING ARE CONFORMAL COATED FOR USE IN DAMP CONDITIONS

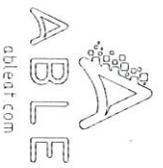
ON BOARD MEMORY FOR PRICE AND SETTINGS

DIMMING, BLINK AND DIAGNOSTIC FUNCTIONS BUILT-IN AND ADJUSTABLE FROM REMOTE CONTROL

THERMAL

PCU TEMPERATURE -40 TO +85°C POWER SUPPLY -20° TO +85°C

DATE	REV	DESCRIPTION	INITIAL	DESCRIPTION	DRAWING NO	DATE	DRAWN BY	REV
				TOLENTANCE UNLESS SPECIFIED 1 DECIMAL PLACES X.XX -1.00 2 DECIMAL PLACES X.XX -1.00 3 DECIMAL PLACES X.XXX -1.005 4 DECIMAL PLACES X.XXXX -1.0005 ANGLES 1/2 DEGREE	ABL8002-16A	1/14/24	EDG	A
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Existing Price Sign



LED Price Sign



## STAFF REPORT

**TO:** Planning Board  
**FROM:** Kim Allen, Code Compliance Officer  
Elizabeth Teague, Planning Director  
**DATE:** November 9, 2011  
**SUBJECT:** Zoning Text Amendment to Prohibit Digital Signs

### **SUBJECT OR MOTION(S):**

1. Motion to recommend adoption of Zoning Ordinance Text Amendment request
2. Motion to recommend adoption of a Statement of Consistency.

**BACKGROUND:** The first digital sign was allowed in 2003. They were all allowed as an alternative to the traditional changeable copy reader boards where letters or numbers are changed by hand. Messages remain for days or weeks at a time. Given the general parameter that digital reader boards mimic changeable copy reader boards, there are currently four digital signs in Town. However, there is nothing in the zoning ordinance that specifically allows them and no regulations to limit the size, color or brightness. Recognizing the increasing interest in digital signs, staff believes they should be prohibited or reasonable conditions be placed on them with a future text amendment. At the September Planning Board meeting, the Board suggested to prohibit them.

### **STAFF RECOMMENDATION:**

Planning staff recommends adoption of the proposed zoning ordinance text amendment as presented in conjunction with the attached Statement of Consistency on the grounds that digital signs detract from the visual integrity of the Town.

### **ATTACHMENTS:**

- A. Draft Text Amendment
- B. Draft Statement of Consistency

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that Chapter 48, Zoning, of the Code of Ordinances shall be amended as follows:

PART I. That **Section 48-282(6) Signs and Outdoor Advertising Structures, Prohibited Signs** be amended as follows:

- (6) Prohibited signs.
  - a. No sign shall be located within a public right-of-way except for street identification signs and official traffic control signs.
  - b. No sign shall be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER."
  - c. No sign, business sign or outdoor advertising structure shall be erected which contains, employs or utilizes lights or lighting which rotates, flashes, moves or alternates; except that time and temperature displays without electronic advertising matter are permitted but must be included in computing allowable signage. Continuous printout, running or ticker-tape type message panels or signs are prohibited.
  - d. No sign shall be erected which contains rotating sign panels.
  - e. No sign shall obstruct visibility at an intersection or driveway as regulated in section 48-79.
  - f. No sign shall be posted on any telegraph, telephone or electrical light pole or on any tree along any street.
  - g. No sign shall be permitted that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building.
  - h. No sign shall be permitted that violates any provision of any law of the state relative to outdoor advertising.
  - i. All outdoor advertising signs or structures are prohibited.
  - j. Signs supported in whole or in part by water, air or gas are prohibited.
  - k. No real estate sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.
  - l. All pennants are prohibited, effective December 6, 1995.
  - m. Use of exposed neon, argon, krypton, or similar gas tube lighting shall be prohibited in all manner except as provided in section 48-284(2) e.
  - n. Tourist-oriented directional sign (TODS).

- o. Three dimensional sculptured objects and pictorial devices attached to and extending more than 12 inches beyond any wall or roof of a building in business use. Attached sculptured objects and pictorial devices extending 12 inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this chapter pertaining to such signs.
- p. Roof signs within the SPD-C, Village at Nags Head C-1, C-2, hotel and institutional districts.

**g. LED and Digital signs. except for monochromatic time temperature displays, maximum ten sq. ft. in area.**

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the \_\_\_ day of \_\_\_\_\_ 2011.

Robert O. Oakes, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Date adopted: \_\_\_\_\_

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS

**TOWN OF NAGS HEAD  
STATEMENT OF CONSISTENCY  
WITH THE LAND USE PLAN FOR A ZONING TEXT AMENDMENT**

**BE IT HEREBY RESOLVED** by the Board of Commissioners for the Town of Nags Head, that in accordance with provisions of North Carolina General Statute 160A-383, the Board of Commissioners hereby finds and determines that the adoption of the requested zoning text amendment to prohibit digital signs.

Is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest because it addresses an emerging concern related to community appearance (p. 104)

**READ, APPROVED AND ADOPTED** by a vote of \_\_\_\_\_ to \_\_\_\_\_, this, the December\_\_\_\_\_, 2011.

\_\_\_\_\_  
Robert O. Oakes Jr., Mayor

**ATTEST:**

\_\_\_\_\_  
Carolyn Morris, Town Clerk

\_\_\_\_\_  
Cliff Ogburn, Town Manager

Mr. Demers pointed out that the Federal Wireless law requires a streamlined process for handling applications for construction of antenna and questioned if the Town was in compliance with this requirement. After some discussion it was agreed that the Town's processes related to conditional use applications meet the intent of the law because it's not different from any other conditional use process used in other situations.

Chairman Edwards moved to recommend adoption of the zoning ordinance text amendment as amended by the Town Attorney. Tom Haddon seconded the motion. The motion carried by unanimous vote.

Marvin Demers amended the motion to revise the wording under part V section 7 to add 360 degree concealment of the antenna instead of 180 degrees. Angelina Lowe seconded the motion. The motion carried by unanimous vote.

*Motion to Adopt Statement of Consistency*

Planning Director Elizabeth Teague presented the Statement of Consistency which reads in part:

"The adoption of the requested zoning text amendments to Town Code... is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest."

Ms. Teague explained that the proposed amendments reflect the heritage of Old Nags Head architecture by requiring that antennas and/or antenna arrays be concealed so that they are not visible by ordinary observation from the ground.

Clyde Futrell moved to recommend adoption of the Statement of Consistency as presented. Susie Walters seconded the motion. The motion carried by unanimous vote

*Motion to recommend adoption of a zoning ordinance text amendment to Town Code Section 48-324, Prohibiting LED Signage.*

Code Compliance Officer Kim Allen presented a zoning text amendment Prohibiting LED Signage. Mr. Allen explained that the first digital sign was allowed in 2003 for Resort Realty and there are three other businesses that currently have these types of signs: the Outer Banks Hospital, East Carolina Bank and most recently the Sunoco gas station. These signs were all allowed as an alternative to the traditional changeable copy reader boards where letters or numbers are changed by hand and messages remain for days or weeks at a time.

Mr. Allen further explained that there is nothing in the zoning ordinance that specifically allows these signs and no regulations to limit the size, color or brightness. Recognizing the increasing interest in digital signs, Staff believes they should be prohibited or reasonable conditions be placed on them with a future text amendment. For the purpose of comparison, Mr. Allen stated that the Town of Kitty Hawk prohibits them in all shapes and sizes while the Town of Kill Devil Hills allows them with conditions.

Planning Staff recommends adoption of the proposed zoning ordinance text amendment as presented in conjunction with the attached Statement of Consistency on the grounds that digital signs detract from the visual integrity of the Town.

Mr. Demers inquired if there was a way to include language that could control the appearance of LED signs such as the brightness and frequency of change, instead of prohibiting them.

Mr. Allen stated that the City of Virginia Beach struggled with finding language that would restrict but still allow the signs and ended up prohibiting them as well. Mr. Allen stated that it would be difficult to measure compliance.

Mr. Futrell expressed concern over possible traffic safety issues that might develop with large, bright and frequently changing digital signs, such as the one in Currituck, which might be distracting to drivers. Mr. Futrell stated he did not have an objection to small digital signs that note temperature, time and changing gas prices.

Mr. Allen confirmed for Ms. Walters that if the text amendment is adopted, any existing signs would become non-conforming.

Ms. Walters stated that she finds these types of signs distracting and not aesthetically pleasing. Mr. Edwards agreed stating that they were not in keeping with the Nags Head style.

Mr. Demers stated that he did not have an objection to LED signs, if they could be controlled in some way. By putting limits in terms of the brightness or intensity of the light, the size of the font, the frequency of change, these signs can provide an advantage to a business not only by drawing attention to the business but also reducing the need to have someone out there manually changing a sign. These types of signs also allow the use of emerging technology while controlling it to an acceptable degree. Mr. Demers felt that by prohibiting these types of signs they would be creating a division between those that already have digital signs and those who don't. He would prefer to see Staff come back with an alternate which would maybe limit but not prohibit LED signs.

Ms. Lowe agreed with Mr. Demers and stated that by allowing this technology they would be aiding small business owners by offering them another option.

Mr. Haddon expressed concern about the light pollution. He believes that crafting an ordinance that addresses limitations to the technology might get too technical and hard to enforce. He also was concerned that by allowing these types of signs, even with limitations, they will proliferate.

Tom Haddon moved to recommend adoption of the zoning ordinance text amendment as presented with the exception that item "q" under Section 6, Prohibited signs, be amended to read: "LED and Digital Signs." Susie Walters seconded the motion. The motion passed with a vote of four to two with Marvin Demers and Angelina Lowe casting the Nay votes.

*Motion to Adopt Statement of Consistency*

Planning Director Elizabeth Teague presented the Statement of Consistency which reads in part:

"Adoption of the requested zoning text amendment to prohibit digital signs is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest.."

Ms. Teague stated that in this particular instance there is a specific goal in the Town's Land Use Plan that talks about keeping up with technology but being mindful of community appearance.

Tom Haddon moved to recommend adoption of the Statement of Consistency as presented. Clyde Futrell seconded the motion. The motion passed by a vote of four to two with Marvin Demers and Angelina Lowe casting the Nay votes.

***Discussion***

*Encouraging use of Solar Power*

Planning Intern Amanda Tucker gave a power point presentation regarding the use of Solar Power Systems and the benefits of encouraging their use within the town.

Ms. Tucker talked about the many advantages of Solar Power both environmental and economic. Ms. Tucker gave as an example a typical beach box, which could see a \$391 saving per year with a solar power system and a lifetime savings of approximately \$10,000.

Ms. Tucker stated that the Town of Nags Head is a great candidate for this type of energy and should invest in "green" energy to preserve its lifeline, the beach. Ms. Tucker suggested that the Town look into the installation of a solar power system on a Municipal building, which could serve as an educational tool for the Town's citizens as well as an economically beneficial investment.

Ms. Lowe noted that the focus on the Outer Banks seemed to be more on wind energy and wondered if vendors were marketing these types of systems more aggressively than solar powered systems. Ms. Tucker explained that a big obstacle for solar energy is the lack of education and stated that while the focus has been on wind power, solar power can work in conjunction and act as a supplement to wind energy. Ms. Tucker agreed with Ms. Lowe that solar arrays might also be more aesthetically pleasing than turbines.

Ms. Walters inquired if Staff had looked at alternative energy systems for Town Hall as part of the repairs to the roof that was recently damaged due to Hurricane Irene. Ms. Teague stated a vendor is currently putting together some cost estimates for both Town Hall and the Harvey site.

Mr. Demers inquired about insurance cost implications related to placing solar panels on roofs. Ms. Teague confirmed that they would not create any additional liability and stated that they would have to meet all building codes including coastal wind loads.

Mr. Futrell stated that this is an area where there is a lot of renewable energy that is currently available but not being used and he could see how the two types of energy, wind and solar, could work well together.

stated that in any case the antennas don't stick out any more than six – eight inches from the building. She thanked staff for their help.

There being no one present who wished to comment, Attorney Leidy closed the Public Hearing at 9:53 a.m.

**MOTION:** Comr. Cahoon made a motion to adopt the ordinance amendment to permit the installation of concealed building mounted antenna as a conditional use in the CR and C-2 Districts, as presented. The motion was seconded by Mayor Pro Tem Remaley.

Comr. Walters asked if Comr. Cahoon's motion included Sprint Com comments and the Planning Board's provision. Comr. Cahoon said that her motion did include comments made by Ms. Teague/Ms. Murphy.

**CONTINUATION OF MOTION:** The motion passed 4 – 0 (Comr. Sadler was not present.).

**MOTION:** Comr. Cahoon made a motion to adopt the Statement of Consistency between the ordinance and the Land Use Plan as presented. The motion was seconded by Comr. Walters which passed 4 – 0 (Comr. Sadler was not present.).

A copy of the ordinance to permit installation of concealed building mounted antenna, as adopted, is attached to and made a part of these minutes as shown in Addendum "D".

Public Hearing to consider adoption of Zoning Ordinance Text Amendments to Town Code Section 48-8, Definitions and Town Code Section 48-324, Prohibiting LED and Digital Signage

Attorney John Leidy introduced the Public Hearing concerning LED and digital signage at 9:56 a.m.

Code Compliance Officer Kim Allen summarized his memo which read in part as follows:

"BACKGROUND: The first digital sign was allowed in Nags Head in 2003 by way of a zoning interpretation: they were allowed only as an alternative to the traditional changeable copy reader boards where letters or numbers are changed by hand. The parameter placed on this allowance was that the digital boards had to effectively mimic non-digital reader boards, and messages were to remain static. There are currently four working digital signs in Town (at the Hospital, Sunoco, Resort Realty, and East Carolina Bank) and one that is not in operation (Taco Bell).

'There is nothing in the zoning ordinance that specifically allows or provides specific guidelines on digital signage (color, brightness, moving vs. static images, etc.). Recognizing the increasing interest in digital signs and the emerging technologies of LED, LCD and plasma screens, staff believes that all digital signage should be prohibited or reasonable parameters for their use be placed on them with a text amendment. At the September Planning Board meeting, the Board initiated a text amendment at staff's request.

**PLANNING BOARD RECOMMENDATION:**

At their November Meeting the Planning Board took up discussion of the staff recommendation to add the following to the "prohibited signs" list:

'LED and Digital signs. except for monochromatic time temperature displays, maximum ten sq. ft. in area.

'Discussion resulted in amendments to the staff text to prohibit *all* forms of digital signage, and to include a definition that covers all types of digital signs being used as reader or message boards or incorporated into commercial signage. The Planning Board also recommended adoption of the Statement of Consistency.

'The Planning Board membership raised concerns that once one business installs one, others will follow resulting in a proliferation of digital imagery that is not in step with the character of Nags Head, as well as that the signs could distract drivers and become a safety issue (minutes attached).

**STAFF RECOMMENDATION:**

Planning staff recommends adoption of the proposed zoning ordinance text amendment which amends the original staff recommendation with Planning Board input. Staff also recommends adoption of the attached Statement of Consistency on the grounds that digital signs detract from the visual integrity of the Town."

Notice of the Public Hearing was published in the *Coastland Times* on Tuesday, November 22, 2011 and on Tuesday, November 29, 2011 as required by law.

Lois Williams, Outer Banks Mall, said that the signage would only be changed once per day; she would like the opportunity to try the digital signage.

Steve Howington, Carolina Signs; he said that digital signs are an effective way for businesses to advertise during this economy; it would be an attractive way for the Outer Banks Mall shopping center to add to the upgrades already done; the signs are programmable. He displayed photographs of digital signs.

Rick Lawrenson; he asked if the Town, if the ordinance is adopted, would do away with its own digital sign; Code Compliance Officer Kim Allen pointed out that the Town's sign is exempt from the ordinance.

John Ratzenberger, resident; he stated that he has never seen an attractive type of digital signage; on a personal note, in his previous position on the Town's Citizens Advisory Committee, they looked at ways to help businesses in the Town and signage was discussed; the Outer Banks Mall has a strip side that cannot be seen until driven by; he feels that the Planning Board and staff need to meet to discuss all signage in the Town to see what can be done to benefit businesses – especially look at those without a lot of visibility.

Mayor Pro Tem Remaley asked Code Compliance Officer Kim Allen how many applications for these types of signage have been received; Mr. Allen stated that applications are received very

infrequently for these types of signs - recently three (3) requests have been received. This type of signage becomes multi-faceted because of its ability to change.

Mayor Oakes confirmed that currently there are four (4) types of digital signs in the Town.

Planning Director Teague stated that the Planning Board wanted to make sure parameters were identified so a traffic issue would not be created.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 10:21 a.m.

Comr. Walters, who was on the Planning Board in review of this ordinance, feels that the larger businesses/chains are more likely to have these signs than the smaller businesses; the majority of the Planning Board was not in favor of the proposal.

Comr. Cahoon said that she would not be objectionable to allowing LED's with conditions/parameters; she felt it was not right that the Town exempted itself from the ordinance.

Mayor Pro Tem Remaley feels that the signage ordinance in the Town needs to be completely revisited and looked at more in-depth for ways to help people especially because of the current economy.

Mayor Oakes said that he feels static lights would be okay but he is concerned about the plasma signs; a message that changes more frequently than daily should be prohibited.

Comr. Cahoon confirmed with Code Compliance Officer Allen that currently no one can erect a plasma sign. She feels more work should be done on this proposal – some language could be added concerning brightness, frequency of movement, etc.

**MOTION:** Comr. Cahoon made a motion to table the digital sign proposal for 90 days for additional staff review and for citizen input – for consideration at the March 2012 Board meeting. The motion was seconded by Mayor Oakes.

Comr. Walters asked what takes place if the Town receives applications for digital signage. Ms. Teague stated that the current ordinance will apply. Ms. Teague also stated that she would like to put together a group to include the Planning Board and local businesses that can address new sign technology and prepare a proposal that the Planning Board can support and that will benefit local businesses.

Attorney Leidy explained that the process to adopt a moratorium includes a Public Hearing; he pointed out that the Board would not be able, at today's meeting, to adopt a moratorium.

**WITHDRAW MOTION:** Comr. Cahoon withdrew her motion and Mayor Oakes withdrew his second to that motion.

Board members discussed various types of changes to the ordinance such as striking the "LCD" and "LED" and leaving other definitions of signage intact in order to keep what currently exists but not allow expansion.

Mayor Oakes requested that the ordinance be modified for Board review and consideration later in today's meeting.

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

Review of effects of zoning ordinance text amendment adopted in second reading at May 4, 2011 Board of Commissioners meeting which permitted onsite rental of beach chairs and umbrellas from within the private beach bathhouse located at 4929 S. Virginia Dare Trail

**MOTION:** Comr. Cahoon made a motion to recuse Mayor Oakes from the discussion concerning the Village Beach Club rentals due to conflict of interest (Mayor Oakes is President of Village Realty, Inc.). The motion was seconded by Mayor Pro Tem Remaley which passed 4 – 0 (Comr. Sadler was not present.).

Mayor Oakes left the meeting; Mayor Pro Tem Remaley conducted the discussion.

Planning Director Teague summarized her memo which read in part as follows:

"This zoning ordinance text amendment adopted on May 4, 2011 (attached) added Town Code Sec 48-869, Recreation District to permit the onsite rental of beach chairs and umbrellas at the Village at Nags Head Private Beach Access and Bathhouse. At the time of its adoption, the Board of Commissioners placed a sunset provision on this ordinance requiring that it be revisited and either re-adopted or allowed to lose effect at the December 2011 meeting.

'Though few problems were experienced with the operation at the Village at Nags Head Private Beach Access, numerous concerns arose at the Comfort Inn and Surfside Hotel locations throughout the summer. This ordinance is difficult to enforce with regard to the location and storage of rental equipment and acceptance of money on the public beach.

'Staff Recommendation: Staff recommends allowing the sunset provision on this ordinance to lapse and also recommends that the previously adopted ordinance, adopted on March 2, 2011, (attached) which permitted beach chair and umbrella rentals as an accessory use to Hotels within the CR, Commercial Residential Zoning District – be reconsidered."

**MOTION:** Comr. Cahoon made a motion to allow the sunset provision to lapse (with the Village at Nags Head Beach Club rentals) and to have staff bring back a proposal combining all goals. The motion was seconded by Comr. Walters.

Planning Director Teague said she would like the next 60 – 90 days to prepare a proposal and to return with a revised ordinance; an ordinance that provides clear guidance to potential vendors and to the public. A proposal that would provide an opportunity for a family in Nags



**TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR SESSION  
January 4, 2012**

The Town of Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 South Croatan Highway at 9:00 a.m. on Wednesday, January 4, 2012.

COMRS PRESENT: Mayor Bob Oakes; Comr. Anna Sadler; Comr. Renée Cahoon  
and Comr. Susie Walters

COMRS ABSENT: Mayor Pro Tem Doug Remaley

OTHERS PRESENT: Town Manager Cliff Ogburn; Town Attorney John Leidy; Kevin Brinkley; Steve Kovacs; Dave Clark; Ralph Barile; Kelly Wyatt; Dabni Shelton; Angela Welsh; Roberta Thuman; Justin Kupfer; Ryan Dodson; Chase Tadlock; Bobby Gentry; Meade Gwinn; Michael Reed; Dave Wigginton; Marvin Demers; Elizabeth Demers; Barbara Gernat; Sheila Davies; Brendan Strum; Richard Murphy; Cameron Saville; Mike Kelly; John DeLucia; Ralph Buxton; Bob Muller; Dennis Mabe; Doug Langford; Jim Boyd; and Town Clerk Carolyn Morris

**CALL TO ORDER/PRAAYER/PLEDGE OF ALLEGIANCE**

Mayor Oakes called the meeting to order at 9:00 a.m. Public Works Director Dave Clark provided the prayer which was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

Comr. Sadler asked the Board to amend the agenda and to move the resolution concerning Property Owners Association and taxing benefits to the beginning of the agenda to accommodate those in the audience. It was Board consensus to agree with Comr. Sadler and to move the resolution to just prior to the public hearings.

**MOTION:** Comr. Sadler made a motion to adopt the January 4<sup>th</sup> agenda as amended - to move agenda item # 21 re: property owners association and taxing benefits to just prior to the start of the

public hearings. The motion was seconded by Comr. Walters which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

### **AUDIENCE RESPONSE – MEADE GWINN**

Meade Gwinn, President of the Village Property Owners Association; he addressed the resolution re: non-profit property owners associations; he understands the Town's concern and feels that the resolution may be trying to correct a problem before a problem exists; there is no alien property owners association owning property in the Town as of today; the language may mislead homeowners living in Nags Head but not living in the Village to think Village residents may be receiving a tax benefit others are not allotted; he asked the Board to explore other options instead of making legislative changes; he feels that there are better ways to address this issue and he asked the Board to table action on this resolution.

### **RECOGNITION OF EMPLOYEES**

Police Chief Kevin Brinkley introduced Police Officer First Class Justin Kupfer who was recognized by the Board for obtaining his certification as a National Drug Recognition Expert.

Fire Chief Kevin Zorc introduced Firefighter/EMT Ryan Dodson who was recognized by the Board for five years of service.

Police Chief Kevin Brinkley introduced Police Officer Chase Tadlock who was recognized by the Board for five years of service.

### **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

- Consideration of Budget Adjustment #7 to FY 11/12 Budget Ordinance
- Consideration of Tax Adjustment Report
- Approval of Minutes
- Annual Certification of Firefighters
- Consideration of amendment to Verizon Wireless contract for antenna modification

**MOTION:** Comr. Cahoon made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Budget Adjustment #7, as adopted, is attached to and made a part of these minutes as shown in Addendum "A".

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

The agenda summary sheet for the Annual Certification of Firefighters, as approved, read in part as follows:

"North Carolina General Statute 58-86-25 requires that all certified fire departments submit a complete roster of all eligible firefighters on an annual basis – the certified list determines eligibility for the \$50,000 line-of-duty death benefit as well as eligibility for Pension Fund Credit.

'Attached please find a roster of Town firefighters eligible for certification for Board reconsideration at the January 4<sup>th</sup> Board of Commissioners meeting."

The roster of Town firefighters eligible for certification, as approved, is attached to and made a part of these minutes as shown in Addendum "C".

The amendment to the Verizon Wireless contract as described in the agenda summary sheet, as approved, read in part as follows:

"Verizon Wireless is requesting to amend their lease in order to supplement their antenna array on the Town Monopole. This request will add three (3) Antel BXA-70063/8CF antennas and six (6) one and five-eighths (1-5/8") inch coaxial cable lines to its existing equipment and increase their rent to \$2,900.00 per month. A structural study confirming that the tower can sustain additional load has been submitted and approved by the chief building inspector. No other mechanical equipment will be installed on the ground and no additional zoning requirements will apply in this case. Attorney Brock Mitchell has reviewed the lease and the "PAL" letter and concurs that the Town manager may sign both upon approval by the Board.

'From the Finance Officer: The current lease calls for monthly rental income of \$2,600. With the proposed contract change, annual rental income from this lease will increase by \$3,600."

### **Mayor Pro Tem Remaley – Out of Town**

Mayor Oakes noted that Mayor Pro Tem Remaley was currently on a two-week vacation celebrating his recent retirement from Dare County as Fire Marshal.

### **Comr. Sadler - Consideration of resolution requesting legislative changes re: property tax exemptions for certain homeowner association property – moved from end of agenda**

The agenda summary sheet concerning property tax exemptions for certain property owner associations read in part as follows:

"At the January 4, 2012 Board of Commissioners meeting, Comr. Sadler will present for Board discussion and consideration the attached proposed resolution concerning taxation of property of non-profit homeowners associations.

'The proposed resolution was patterned after a similar one adopted by the Town of Holden Beach which is also attached.'

Comr. Sadler stated that she learned of the issue while at the most recent NCBIWA conference - coastal towns share some of the same problems. She stated that she would rather the Town be proactive rather than re-active.

Town Attorney Leidy added the following at the end of the last WHEREAS statement: "So long as legislative change does not result in the double taxation of any property owned by a non-profit homeowners association".

In response to Mayor Oakes, Town Manager Ogburn stated that he will make sure the NCLM is aware of the issue and aware of the proposed resolution – since it affects all municipalities.

Mr. Meade Gwinn who spoke during Audience Response expressed his concern that the intent of the resolution is not the problem – if changed, it could conceivably migrate to other types of non-profits and not just property owned by Property Owners Associations.

**MOTION:** Comr. Sadler made a motion to adopt the resolution concerning the taxation of property of non-profit homeowners associations as amended by Attorney Leidy. The motion was seconded by Comr. Walters.

It was noted that Town Manager Ogburn is to forward the resolution to the League of Municipalities and to NCBIWA officials as well.

**CONTINUATION OF MOTION:** The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

The resolution concerning taxation of property of non-profit homeowners associations, as adopted, read in part as follows:

'WHEREAS, it has come to the attention of the Town of Nags Head that North Carolina General Statute 105-277.8 concerning property taxation of property of non-profit homeowners associations creates inequities and unfairness in the assessment and administration of the local property tax system; AND

'WHEREAS, certain property could be located in the Town of Nags Head, but owned by nonprofit homeowners' associations outside the jurisdiction of the Town of Nags Head and escapes taxation by the entity due to the strict application of NCGS 105-277.8; AND

'WHEREAS, the Town of Nags Head seeks remedies to the unfairness brought about by NCGS 105-277.8 when applied to nonprofit homeowners associations located outside the taxing jurisdiction.

'NOW, THEREFORE, BE IT RESOLVED by the Town of Nags Head Board of Commissioners that they seek changes to NCGS 105-277.8 for property owned by nonprofit homeowners' associations where the association membership's property is outside the Town of Nags Head's taxing jurisdiction so as to apply the local property tax system equally and fairly so long as legislative change does not result in

the double taxation of any property owned by a non-profit homeowners association; and that the Town of Nags Head requests its member representatives to the North Carolina General Assembly introduce legislation correcting this inequity and unfairness in the property tax system; and that other local governments and agencies take similar action in support of the Town of Nags Head concerning this issue of fairness.”

## **PUBLIC HEARINGS**

### Public Hearing to consider comments related to the Town of Nags Head Parks and Recreation Plan

Attorney John Leidy introduced the Public Hearing concerning the Town of Nags Head Parks and Recreation Plan at 9:35 a.m.

Planning Director Elizabeth Teague recognized those present that served on the Committee; she summarized her report which read in part as follows:

#### “BACKGROUND:

In March of 2011 the Board of Commissioners appointed 11 citizens of Nags Head to serve on the Town’s Parks and Recreation Committee to create a Parks and Recreation Plan for the purpose of providing guidance in developing the Town’s recreational opportunities. The Plan was presented to the Board at the October 2011 Meeting and has been available on the Town Website and through the Planning and Development Department since then. Planning Board members were also given copies of the Plan and asked for their input.

‘Adoption by the Board of Commissioners will assure that goals and recommendations in the Plan will be considered in future decision-making, including those related to capital improvements and grant applications. Adoption of the Plan at this meeting will also help the Town in qualifying for additional points in the scoring criteria for the Parks and Recreation Trust Fund in the current call for grant proposals.

#### ‘STAFF RECOMMENDATION:

Staff recommends adoption of the Draft Parks and Recreation Plan.”

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011, as required by law.

Ralph Buxton, Nags Head resident and Chair of the Committee; he said that the Plan is the culmination of efforts by the Committee that was appointed by the Board of Commissioners in February 2010; it represents a variety of interests as represented by nine meetings in eight months; there has been considerable resident and visitor input; several subcommittees focused on specific areas and their comments are included in the final Plan.

Mr. Buxton identified the items that it is requested that the Board take action on as soon as possible:

- Develop communication system with Dare County to inform Nags Head citizens of programs and resources

- Coordinate a community calendar
- Provide maps to indicate where beach/sound accesses are located
- Partner with the YMCA on a skate park task force
- Provide illuminated tennis courts and update Kelly's tennis courts agreement
- Apply to NCDOT for comprehensive pedestrian plan grants
- Apply to Safe Routes to School grant for multi-use trails
- Adopt the Recreation Plan

Mr. Buxton said that he assumes that the repair of existing facilities is already being addressed by the Town.

Comr. Cahoon asked Mr. Buxton if he felt that the Recreation Committee would approve private carnival endeavors – Mr. Buxton agreed as he felt the committee would be in favor of “amusements”.

John Ratzenberger, Nags Head resident; he felt that an excellent job was done on the Plan and he hopes the Land Use Plan will be formatted similarly to reflect where to go and how to get there; he commended the skate park appendix; he recommended the Plan be adopted as soon as possible to assist with grant applications; he would like the following to be reviewed: “moral class”; there was difficulty in finding South Nags Head and he never knew that NC12 and the Beach Road went all the way to the last milepost; he suggested that the Town get with Dare County and the other Towns and do an assessment of all things available such as ball fields, etc.; he suggested adding this endeavor to the “immediate” list of things to be done; he urged to NOT include the amendment on page 17 re: Dare County Tourism Board rejection of a carnival.

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

Comr. Walters thanked the Committee for their work on the document which she feels is a very comprehensive document and she appreciates staff’s work and the comments received.

**MOTION:** Comr. Walters made a motion to adopt the Recreation Plan with the recommended changes as it is a living document that will change. The motion failed for lack of a second.

Comr. Sadler thanked everyone who participated in the making of the document; she feels that a Workshop should be scheduled to discuss the Plan as she has a number of concerns – she noted that she did not see many activities for older children/adults.

Comr. Cahoon thanked everyone who participated in the making of the document; she said that she wants to make sure others can come in and do things - it should be nebulous as to private vs government; she feels that the document is too specific; she stated that she would support a workshop concept to include the Recreation Committee.

It was Board consensus that a Recreation Plan Workshop be scheduled for Wednesday, January 18, 2012 at 5:00 p.m. with Board of Commissioners and Recreation Plan Committee members; in addition, that the Board’s mid-month meeting be held on January 25, 2012.

Comr. Walters asked if Board members would be interested in approving just the “immediate” portion of the Recreation Plan at this time.

It was Board consensus to approve the "immediate" section of the Plan as presented in order for staff to move forward. The "immediate" section of the Recreation Plan read in part as follows:

- To develop communication system with Dare Co to inform NH citizens of programs / resources;
- Coordinate a community calendar with local partners such as DCTB, YMCA, Dare County
- Provide maps using Google that identify where parks and water accesses are located
- Partner with YMCA on a skate park task force
- Research feasibility, cost, site for illuminated tennis courts or work with Kelly's to update agreement
- Apply to NCDOT for comprehensive pedestrian plan grant
- Apply to Safe Routes to School Program for multi-use trail grant
- To adopt the Parks and Recreation Plan

Public Hearing to consider application to Parks and Recreation Trust Fund for grant for playground at Whalebone Park site

Planner Angela Welsh summarized her memo concerning a Parks and Recreation Trust Fund grant which read in part as follows:

"PARTF has opened the 2011-2012 grant cycle and applications are due by January 31, 2012. The North Carolina General Assembly established the Parks and Recreation Trust Fund (PARTF) in 1994 to fund improvements in the state's park system, to fund grants for local governments and to increase the public's access to the state's beaches. Grants are provided on a dollar for dollar local match. Staff recommends application for a PARTF grant to add recreational elements into Whalebone Park by using funding allocated to Whalebone Park by the Board of Commissioners and the Tourism Board as match (\$325,000).

'As a result of input from the Parks and Recreation Committee and discussions that went into the Parks and Recreation Plan, staff is requesting the Board's authorization to pursue additional funding through PARTF to provide a children's playground and additional benches and picnic tables. The Playground will replace/be located within the area designated as volley ball courts. The children's playground area will target needs and goals identified in the Parks and Recreation Plan by providing an area for shade and play for children and families off of the beach. The capacity of the playground area will be approximately 42 children and will serve ages of 2 to 12. It will incorporate features which meet ADA guidelines and allow inclusive play children regardless of physical, mental or sensory abilities. Features of the playground will include slides, ramps, steps and small "rock" climbing walls. Various panels for imaginative play will help children develop fine motor and social skills as well as provide visual and sensory stimulation. A multi-sensory area with sound and physical stimulation equipment will also be located in the play area. The surface area will be installed to maximize accessibility.

'Once installed, this facility will be used by school groups and families parking and/or staging visits to the beach and Jeanette's Pier; use by families with special needs children such as those served by the annual "Surfing for Autism" event, and by the general public using the parking, picnic and trail facilities already planned for the park.

'The play area facilities include (subject to pricing at time of purchase):

- Play structures, border, mulch, surface and weed liner, at estimated cost of \$42,000.00.
- Shade structures designed to withstand 150 mph winds, provide UV protection, resist fading, mildew and rot and to be taken down easily, estimated cost of \$8,000.
- Park and Picnic benches, estimated cost of \$4,000
- Installation of the playground facilities including play equipment, benches, picnic tables and surfacing is approximately \$17,500.00.

'Staff also recommends budgeting a \$3,500 contingency (or 5% in accordance with PARTF guidelines), which would total \$75,000.

'Application to the PARTF requires a public hearing on the grant request. This grant request is in support of recommendations within the Parks and Recreation Plan, and the 2010 Land Use Plan speaks in support of this application. It states, "The Town shall actively plan and seek funds for the development of traditional recreation uses, to meet the needs of Town residents of all ages, as the needs are identified and shall consider acquiring and developing small neighborhood recreation areas as funds become available."

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011 as required by law.

Attorney Leidy asked if any present were interested in commenting. The time was 10:18 a.m.

Comr. Sadler asked about restrooms and expressed her concern about the lack of restrooms; she also suggested moving some equipment around so that toddler activities will not be so close to adult activities.

Comr. Cahoon clarified with Ms. Welsh but felt more information was needed concerning the grant – which is for children's equipment but still includes elements for horse-shores, etc.

Comr. Sadler said that when the Plan became finalized, it should be submitted to the Tourism Board because at the time the Tourism Board approved the Plan, they wanted to clarify the site plan; Planning Director Teague stated that the new grant application will allow for more playground items - a lot depends on the amount of funding received – the hibachi courts can be moved around for a buffer between different age groups; she spoke of the lack of a restroom facility and stated that initially porta-johns will probably be utilized. Ms. Teague said further that the PARTF Grant staff recommended that the Town stay with a small grant in order to have a better chance of procuring the grant.

Richard Murphy, Nags Head resident; he spoke of the 13 – 18 year age group; he has learned of the peer pressure to do things not normally do because they are idle – he was concerning that there was not as many things for this age group; he would be willing to work on a committee to make this work for the older age groups of children; he feels that this should be reviewed for the benefit of the Outer Banks.

Ralph Buxton, Nags Head resident; he supported the playground grant application to PARTF; playgrounds came up very high on the list for the Recreation Plan Committee; he encouraged the Board to move forward on the grant application as presented.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 10:41 a.m.

**MOTION:** Comr. Cahoon made a motion to adopt the resolution to apply for the PARTF grant for Whalebone Park as requested. The motion was seconded by Mayor Oakes which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

The PARTF grant application resolution, as adopted, read in part as follows:

“WHEREAS, the 2010 Land Use Plan states that the “Town shall actively plan and seek funds for the development of recreational uses to meet the needs of Town residents of all ages,” and shall form a recreation committee to assist in identifying recreational needs and opportunities; and

‘WHEREAS, in March of 2011the Town’s Board of Commissioners appointed Parks and Recreation Committee to give the Town guidance in developing the Town’s recreational opportunities for its citizens; and

‘WHEREAS, from the early spring until the fall of 2011, the appointed Parks and Recreation Committee drafted a Parks and Recreation Plan with information obtained from public meetings and surveys developed to gather input from Town residents; and

‘WHEREAS, at a duly advertised Regular Meeting on January 4, 2012 the Board of Commissioners held a public hearing on the draft Parks and Recreation Plan; and

‘WHEREAS, the Board of Commissioners of Nags Head, North Carolina find the goals and objectives of the draft Parks and Recreation Plan Plan to be consistent with the Town’s 2010 Land Use Plan and desired vision for the future,

‘NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Town of Nags Head, North Carolina, adopt the draft Parks and Recreation Plan document as the Town’s Parks and Recreation Plan to provide the vision, goals, and objectives for future decision-making regarding parks and recreation planning within the Town.”

Public Hearing to consider adoption of a Zoning Ordinance Text Amendment submitted by Mr. Robert Hornik of the Brough Law Firm on behalf of Overrun I, LLC (Nicholas Nuzzi) to amend Town Code Section 48-328(d), Architectural and Interior Lighting

Mayor Oakes noted that the Public Hearing will take place at today’s meeting but the applicant has requested that action taken be delayed until the January 2012 mid-month meeting when all Board members are expected to be present.

Attorney John Leidy introduced the Public Hearing concerning a text amendment for lighting at 11:02 a.m.

Code Compliance Officer Kim Allen summarized his memo which read in part as follows:

“SUBJECT OR MOTION(S):

1. Motion to Open/Close the Public Hearing
2. Motion to recommend adoption of Zoning Ordinance Text Amendment request by Nick Nuzzi, to amend Town Code Section 48-328(d), Outdoor Lighting, to increase architectural light levels and allow up-lighting walls by fixtures on roofs.
3. Motion to recommend adoption of a Statement of Consistency.

‘BACKGROUND:

Last winter, Nick Nuzzi of Overrun I, LLC renovated the interior and exterior of Dairy Queen. Exterior improvements included removing the neon lighting along the edge of the roof, covering the metal sided building with EIFS (synthetic stucco), and replacing the canvas awning with Nags Head style porches. His improvements made the building more conforming to Town Ordinances.

‘He is now requesting a zoning ordinance text amendment for two aspects of Town Code Section 48-328(d) Outdoor Lighting, specific lighting application standards. The first is to increase architectural light levels from 1 averaged footcandle level to 10. The second is to allow up-lighting walls by fixtures along the roofline which would point back at the parapet walls. The purpose behind Mr. Nuzzi’s request is to address his concern that the visibility of his business has decreased, and he would like to better illuminate his business from the US 158 roadway.

‘Currently, walls may be illuminated by fixtures mounted on the building and directed to the wall surface. Up-lighting wall surfaces may only be achieved by ground mounted fixtures to eliminate the potential of entire roofs, becoming the structure highlighting feature. Roof sign lighting is not permitted for this reason. Maximum allowable light level for walls at building entrances is currently 5 averaged footcandles. Light level for other walls is 1 averaged footcandle. Light level for porch areas is 12 averaged footcandles.

‘At the Planning Board Meeting, the Planning Board membership discussed with Mr. Nuzzi and his attorney, Mr. Hornick, their willingness to support his request for improved visibility through more lighting. However, they also wanted to support the Town’s goals of maintaining a “dark sky” to the greatest extent possible and suggested a compromise (see below).

‘STAFF RECOMMENDATION:

Staff recommends denial of the requested text amendment as presented originally by Mr. Nuzzi because the intent of the outdoor lighting ordinance is to eliminate sources of glare, minimize light levels and limit sources of light that contribute to sky glow. Some allowances for up-lighting, such as architectural lighting, are already included in the ordinance but only at minimum light levels. Increasing light levels and adding more sources of up-lighting detracts from the nighttime environment and conflicts with the definition of structural highlighting.

However, staff would be amenable to maintaining the footcandle level allowed for an entrance (5 footcandle) to also apply for parapet walls that may exist on all sides of a building to improve visibility for this type of structure. This is a compromise to Mr. Nuzzi’s original request for an increase from 1 averaged footcandle, to 10 averaged footcandle for each of the parapet walls. Staff feels that this is too high of a footcandle level and would create glare and skyglow. However, a 5 footcandle level

would mitigate that concern, but still allow Mr. Nuzzi additional illumination. Adoption of this ordinance is estimated to impact 16 other structures in Town which also have parapet walls.

**'PLANNING BOARD RECOMMENDATION:**

At their December 13, 2011 meeting the Planning Board voted unanimously to recommend adoption of a text amendment with revisions from the Planning Board. Mr. Nuzzi's original request and the version recommended by the Planning Board are provided separately for your review."

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011, as required by law.

Planning Board member Marvin Demers spoke; he stated that the Planning Board felt that the ordinance as written was restricting the owner from illuminating that part of the wall above the porch roof and it SHOULD be illuminated.

Mayor Oakes confirmed with Mr. Allen that driveway lighting is allowable.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 11:19 a.m.

**MOTION:** Comr. Cahoon made a motion to table discussion/action on the architectural and interior lighting text amendment submitted by Nick Nuzzi until the January 25, 2012 mid-month meeting when all Board members are expected to be present. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Public Hearing to consider approval of a Site Plan/Conditional Use Application submitted by James and Wendy Lewis of the Ark International Church to operate a Child Day Care Facility within the existing religious complex. The property is zoned SPD-20 and is located at 113 W. Villa Dunes Drive, Nags Head

Attorney John Leidy introduced the Public Hearing – a quasi judicial public hearing – concerning a site plan/conditional use application for a child day care facility in the Ark International Church at 11:21 a.m.

Town Clerk Carolyn Morris swore in Planning Director Elizabeth Teague, Zoning Administrator Kelly Wyatt, applicant Wendy Lewis, and Ms. Cameron, operator of the facility.

Zoning Administrator Kelly Wyatt summarized her report which read in part as follows:

**'GENERAL INFORMATION**

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**Applicant:** James & Wendy Lewis of the Ark International Church

**Application Request:** Site Plan/Conditional Use.

**Purpose:** Location of a child care facility within an existing religious complex.

Property Location: 113 W. Villa Dunes Drive, Nags Head.

Existing Land Use: Religious Complex

Zoning Classification of Property: SPD-20, Special Environmental District

'Zoning Classification of Surrounding Properties: Property immediately north of the site is zoned SPD-20, Special Planned Development, additional property north directly across W. Villa Dunes Drive is zoned C-2, General Commercial (Nags Head Professional Center). Property west and south of the site is zoned SPD-20 and is vacant and developed residentially. Property to the east and directly across South Croatan Highway is zoned R-3 High Density Residential and developed as such.

'Land Use Plan Map/Policies: Land Use Plan classification for this property is Institutional/Religious. This proposal is consistent with this land use classification and additionally consistent with stated land use policies.

#### 'SPECIFIC INFORMATION

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##### Applicable Zoning Regulations:

- Use Regulations: Child Day Care Center as an Accessory use to Religious Complex is a conditional use within the SPD-20, Special Planned Development District (Section 48-441(c)(1)(f) attached).
- Lot Coverage- The existing facility and existing site improvements are adequate for this use, no additional lot coverage is necessary.
- Building Height- The maximum allowable height is 35 ft. from grade. The height of the existing building is compliant with this building height.
- Architecture Design Standards: Religious Complex is exempt from architectural design and there will be no changes to the exterior of the structure.
- Parking: The parking standard for child day care center is one parking space per employee, plus one parking space for each six children of licensed capacity. The hours of operation for the day care use (Monday – Friday; 7:30am – 5:30pm) will not conflict with regular church operational hours therefore, existing onsite parking will accommodate the proposed use. A condition noted in 48-441(c)(1)(f) states that pick-up and drop-off areas shall be provided separate from the drive aisles and designed so that no child is required to cross the parking lot or any other traffic areas. As shown on the attached site plan the applicant has designated the area directly in front of the building as the pick-up and drop-off area which satisfies this condition. Parking is compliant.
- Buffering/Landscaping: A condition of approval is that all outdoor recreation areas shall be buffered from adjacent residential uses and districts with a Buffer Yard C. Furthermore, the buffer shall be placed on the exterior side of any required fencing. Adequate landscaping currently exists on-site and the above condition has been met.

- Lighting: The lighting standard for religious complex is low level lighting standards. Child care facility requires medium level lighting. Planning staff will conduct a light audit at this location to determine if existing lighting is compliant.

Water and Sewage Disposal: The Dare County Health Department has reviewed and issued tentative approval this request (memo attached).

Stormwater Management: The Stormwater Management plans for this building have been previously approved and will not be affected by this request.

Traffic Circulation: Traffic circulation has been previously approved and this request should have no adverse impact on the traffic circulation.

Fire: Project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance, this includes exit doors and age appropriate restroom facilities.

Public Works: The Public Works Department has reviewed and approved the proposed plan.

#### ANALYSIS

The proposed use is compliant with lot coverage, building height, parking, landscaping and lighting. The Town Engineer, Fire Department and Public Works Department have reviewed and approved the proposed plan.

#### STAFF RECOMMENDATION

Staff recommends approval of the site plan/conditional use application as presented."

#### PLANNING BOARD RECOMMENDATION

At their December 13, 2011 meeting the Planning Board voted unanimously to recommend approval of the site plan/conditional use application as presented.

The Board of Commissioners is required to make the following affirmative findings of fact for this and all conditional use applications. Staff feels the following findings can be determined:

1. The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.
2. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
3. The use as proposed will not overburden the fire fighting capabilities and the municipal water supply capacity of the Town."

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011, as required by law.

Ms. Wyatt noted that Wendy Lewis and Ms. Cameron were present. Ms. Wyatt also noted that Sheila Davies was present earlier today but had to leave and passed on that she was in support of the request.

Wendy Lewis, pastor's wife at the Ark International Church; she indicated that the recreational area for the children was fenced in and the pick up and drop off areas are under a canopy.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 11:27 a.m. Attorney Leidy noted that specific findings of fact are required to be made for this application.

**MOTION:** Comr. Cahoon made a motion to approve the site plan/conditional use application for a child day care facility in the Ark International Church and to make the following required findings of fact:

- That the applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances,
- That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted,
- That the use as proposed will not overburden the fire fighting capabilities and the municipal water supply capacity of the Town.

The motion was seconded by Comr. Walters which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

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

Consideration of preliminary minor subdivision application submitted by John DeLucia of Albemarle & Associates on behalf of Michael Kelly for a two-lot subdivision within Nags Head Woods

Zoning Administrator Kelly Wyatt summarized her report which read in part as follows:

“Mr. John Delucia of Albemarle & Associates, Ltd. has submitted this Minor Subdivision Plat Approval on behalf of Michael Kelly. The lot is located at 436 W. Villa Dunes Drive within Nags Head Woods and is located within the SED-80 and SPD-20 Zoning Districts. The applicant has proposed to divide this existing 3.98 acre lot into two (2) lots, both meeting the minimum lot area of 80,000 square feet and 20,000 square feet for single family dwelling development respectively.

‘The Public Works Department has reviewed and approved the proposed subdivision.

‘The Fire Department has reviewed and approved the proposed subdivision; please see attached e-mail correspondence from Chief Steve Kovacs with clarifying information from the Department Of Insurance.

‘Staff Recommendation

Staff has conferred with the Town Attorney and has concluded that being there are no required site improvements (i.e.: roads, water connection, lights, etc.) and no improvements required for dedication to the Town for the creation of these two lots, that there is no need to require that the applicant re-appear before the Planning and Board of Commissioners to receive Final Subdivision Plat

Approval. Staff would therefore recommend approval of both the Preliminary and Final Subdivision Plat as presented."

Ms. Wyatt noted that Michael Kelly and John DeLucia were present.

In response to Comr. Sadler, Ms. Wyatt said that road was separate and not a requirement of the subdivision request; Mr. DeLucia stated that the driveway was being relocated, a recombination plat is being prepared.

Attorney Leidy stated that since there are no changes between the pre and the final plat, that the recombination plat should be conditioned upon approval by the Planning Director – instead of having to come back to the Board of Commissioners.

**MOTION:** Comr. Sadler made a motion to approve both the preliminary and final plats for the two-lot subdivision in Nags Head Woods requested by Michael Kelly with the condition that the recombination plat be approved by the Planning Director. The motion was seconded by Comr. Walters which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

## **OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS**

### Update on December 7, 2011 Public Hearing actions – Beach chair/umbrella rentals

The agenda summary sheet concerning the Public Hearing actions from the December 7, 2011 Board of Commissioners meeting read in part as follows:

"At the January 4, 2012 Board of Commissioners meeting, Planning Director Elizabeth Teague will provide a verbal update on staff actions following the December 7<sup>th</sup> Public Hearings.

'Ms. Teague has indicated that the Planning Board has assigned volunteers to work on two adhoc committees regarding digital signage and Beach and Umbrella Chair rentals. It is expected that the Planning Board and Planning and Development Department staff will be having round table discussions on these items at the January 2012 Planning Board meeting and staff expects to bring back recommendations to the Board of Commissioners in March 2012 at the latest."

### Update on December 7, 2011 Public Hearing actions – Beach chair/umbrella rentals

Planning Director Teague updated the Board that stakeholders Village at Nags Head, the Planning Board (Marvin Demers and the new Planning Board member to be appointed); and Thomas Musica and Courtney Fowler are to serve on this sub-committee; Ocean Atlantic has been contacted – for a meeting within the next two weeks. A meeting has been set for this week with Village staff to address their specific concerns related to this issue. Formal appointments and public notice of all meetings will be required; Thomas Musica, Courtney Fowler and Marvin Demers are to be formally appointed by the Board with any additional names to be added at the January mid-month meeting.

**MOTION:** Comr. Cahoon made a motion, seconded by Comr. Sadler, to appoint Marvin Demers, Courtney Fowler, and Thomas Musica to the Beach Chair/Umbrella rentals sub-committee.

Ms. Teague stated that it is hoped that the new member of the Planning Board (when appointed) and a representative from Ocean Atlantic Rentals will also be interested in participating. She asked if anyone was interested in serving in this capacity to please contact the Planning Department.

**CONTINUATION OF MOTION:** The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Update on December 7, 2011 Public Hearing actions – Digital signage

Planning Director Elizabeth Teague updated the Board that new technology has emerged in the digital signage arena; the Planning Board appointed Pogie Worsley and Tom Haddon and she would like to include a representative from the Outer Banks Mall (Betty Blanchard or Lois Williams) but she has not yet heard back from them. Ms. Teague asked if anyone was interested in serving in this capacity to please contact the Planning Department.

Mayor Oakes suggested waiting until after the next agenda item re: second reading of the proposed digital signage ordinance before appointing a Digital Signage sub-committee.

Second Reading - to consider adoption of Zoning Ordinance Text Amendments to Town Code Section 48-8, Definitions and Town Code Section 48-324, Prohibiting LED and Digital Signage – from December 7, 2011 Board meeting

Attorney Leidy explained that this second reading came forward because the original vote on the text amendment concerning digital signage did not include the four (4) positive votes required for first-time ordinance adoption – at this time, just a simple majority is needed to adopt the ordinance.

The agenda summary sheet read in part as follows:

“At the December 7, 2011 Board of Commissioners meeting, a Public Hearing was held to consider adoption of amendments to the Town Code concerning LCD, LED and other digital signage – After discussion, the Board requested that staff prepare an ordinance combining their ideas.

‘Later in the Board meeting, Planning Director Elizabeth Teague presented a revised ordinance for Board review. The Board passed a motion 3 – 0 (Mayor Pro Tem Remaley cast the NO vote and Comr. Sadler was not present) to adopt the ordinance which prohibits LED, LCD or plasma signs that project imagery or moving imagery.

‘A positive four (4) votes are required for first-time adoption of an ordinance, therefore, the attached ordinance is being brought back for a Second Reading at the January 4, 2012 Board meeting.’”

Ms. Teague explained that the Planning Board had brought forward an ordinance with a complete prohibition of all digital signage; after Board discussion the ordinance was modified at the end of the December 2011 Board meeting and adopted – clarification was added so that banks with their alternative date/temperature signage would be allowed.

**MOTION:** Comr. Cahoon made a motion to deny the second reading of the ordinance. The motion was seconded by Comr. Sadler.

Comr. Cahoon explained that she wants the second reading of the digital sign ordinance denied because no specific size limits were included in the ordinance.

**CONTINUATION OF MOTION:** The motion to deny the second reading of the digital signage ordinance passed 3 – 1 (with Mayor Oakes casting the NO vote; Mayor Pro Tem Remaley was not present.).

**MOTION:** Comr. Cahoon made a motion to adopt the Planning Board recommended ordinance as presented at the December 7, 2011 Board of Commissioners meeting and to adopt the Statement of Consistency. The motion was seconded by Comr. Sadler.

Ms. Teague summarized that the Planning Board's ordinance with a complete prohibition of digital signage was just adopted; the sub-committee is to research and bring back a revised proposal for Board review/consideration at a later date.

**CONTINUATION OF MOTION:** The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

## **NEW BUSINESS**

### Committee Reports

Comr. Sadler – Dare County Tourism Board: Comr. Sadler stated that she missed the December 2011 meeting of the DCTB but she understood that the news media reported adequately.

Comr. Walters – Seafood Festival Committee: Comr. Walters said that she has been on the Seafood Festival Committee for some time and they are preparing for a festival this fall to take place on the former Windmill Point restaurant site.

Mayor Oakes – Colony Ridge/Britthaven Committee: Mayor Oakes stated that an informal meeting of the Town's half of the Colony Ridge Committee has met; a formal meeting of all members has been scheduled for January 30<sup>th</sup>; the lease agreement and the first year's rent has been received by the Town.

### Consideration of Board/Committee appointments

The agenda summary sheet read in part as follows:

#### "Appointments to Planning Board

The Board will consider an appointment to the Planning Board at the January 4, 2012 Board of Commissioners meeting to replace former member Susie Walters who was elected to serve as Nags Head Commissioner in the November 8, 2011 election. In addition, Tom Haddon's term expired in

November 2011 – he would like to be considered for reappointment if the Board is willing. Current alternate, Barbara Gernat would like to be considered for regular appointment. Attached please find a current Planning Board roster, and a listing / application from those interested in serving.

Local Firemen's Relief Fund Board of Trustees

Jo Fessler's term as a member of the Local Firemen's Relief Fund Board of Trustees expires January 2012; Ms. Fessler has indicated that she is willing to be reappointed - if no one else is found to be interested.

Annual appointment of Board of Adjustment Chair/Vice-Chair

Reappointment of Jack Cooper and Margaret Suppler as Chair/Vice-Chair, respectively, of the Board of Adjustment. Both are willing to continue in these capacities."

Appointments to Planning Board

Comr. Sadler – she would like to postpone the appointments to the Planning Board to a future Board meeting – when all Board members are present.

Comr. Walters said that she would like to see the action for appointment to the Planning Board move forward.

**MOTION:** Comr. Walters made a motion to appoint alternate Barbara Gernat to the regular position on the Planning Board. The motion was seconded by Mayor Oakes.

Comr. Sadler nominated Toni Parker to the regular position on the Planning Board. Comr. Cahoon seconded Comr. Sadler's nomination.

There being no further nominations, Mayor Oakes called for the vote which was:  
Barbara Gernat – 2 votes; Toni Parker – 2 votes

Comr. Sadler requested an updated list of those interested in serving for the next Board of Commissioners meeting – she noted that resident Richard Murphy would like to submit an application. She stated that she would prefer to address the appointments when all Board members are present.

Comr. Walters pointed out that the current Planning Board alternate, Barbara Gernat, has served the Planning Board well over the years.

Local Firemen's Relief Fund Board of Trustees

**MOTION:** Comr. Cahoon made a motion to appoint Jo Fessler to another term on the Local Firemen's Relief Fund Board of Trustees. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Annual appointment of Board of Adjustment Chair/Vice-Chair

**MOTION:** Comr. Cahoon made a motion, seconded by Comr. Walters, to appoint Jack Cooper and Margaret Suppler as Board of Adjustment Chair and Vice-Chair respectively. The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

**ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**

Town Attorney – Cherry Inc. litigation

The Cherry Inc. litigation is a nuisance structure enforcement case. Town Attorney Leidy stated that next week, January 12, 2012, the case is to be considered by the Court of Appeals; an oral argument will be heard at that time in Raleigh.

Town Attorney – Fisher et al litigation

The case against the Town by the Fishers et al was originally dismissed by the court and subsequently appealed by the Fishers; Attorney Leidy stated that Town response is due next Friday, January 13, 2012.

Town Attorney Leidy - Request for Closed Session

Town Attorney Leidy requested a Closed Session to preserve the attorney/client privilege with a discussion of the Sansotta litigation and condemnation actions to include the Fisher et al and Margaret Burch litigation cases.

**ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**

Town Manager – Request for Closed Session

Town Manager Ogburn requested a Closed Session to discuss the possible acquisition of real property (Dowdy Go-Cart track) located at 3006 S Virginia Dare Trail – Lots 8, 9, 16, and 17 – next to Tortuga's Lie Restaurant.

Town Manager - Consideration of replacement trash cart policy

Town Manager Ogburn reviewed with Board members the proposed ordinance re: replacement/repair of automated trash carts. The agenda summary sheet read in part as follows:

"Pursuant to several questions and concerns raised regarding rollout carts, Town staff has prepared updates to the Town Ordinance and the Sanitation Policy. Staff recommends that the Town replace carts within 10 years of purchase if the cart should fail through wear and tear and not as a result of damage. Carts older than 10 years however, must be replaced at the owner's expense.

'Changes to the Town Code will require Board action. Updates to the Sanitation Policy are administrative changes to ensure that policies and procedures are up to date.'

Comr. Sadler confirmed with staff that the price of a rollout cart is currently \$66; Town Manager Ogburn said that the cost may go up for a higher quality cart. Comr. Sadler confirmed with Dep Public Works Director Ralph Barile that the automated carts under warranty are under ten (10) years old.

Dennis Mabe, Northridge Subdivision resident; he said that when hydraulic lift of the refuse truck picks up the cart, there is too much pressure put on the carts which is why they crack.

Doug Langford, Northridge Subdivision resident; his cart has been damaged and he feels that the carts in the Town are of sub-standard quality.

Jim Boyd, Northridge Subdivision resident; he questioned the Town's policy because he purchased a cart for \$65 recently and he has been at his address for less than 10 years.

Mayor Oakes pointed out that everyone had the same goals.

Richard Murphy, South Nags Head resident; he agrees with Mr. Barile that the amount of weight in the carts is related to the refuse truck crushing the carts; he waits until his carts are full before placing them out for pick-up.

Jim Boyd, Northridge Subdivision resident; he wanted to point out that the Public Works sanitation staff does a great job.

**MOTION:** Comr. Walters made a motion to adopt the ordinance concerning the replacement automated cart policy as presented. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

The ordinance concerning the replacement of automated refuse carts, as adopted, is attached to and made a part of these minutes as shown in Addendum "D".

#### Town Manager Ogburn - Approval of contract

Public Works Director Dave Clark summarized the process for the bids received to repair the Hurricane Irene-damaged Sound access sites; the contract presented detailed the request.

**MOTION:** Comr. Cahoon made a motion to award the contract to Earth Savers in an amount not to exceed \$56,500 as requested/presented in the contract. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

**CLOSED SESSION**

**MOTION:** Mayor Oakes made a motion to enter Closed Session to confer with the Board's attorney to preserve the attorney/client privilege, and to discuss the acquisition of real property – the Dowdy Go-Cart track property - located at 3006 S Virginia Dare Trail (lots 8, 9, 16, and 17) in accordance with GS 143-318.11(a)(3) and (5) respectively. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.). The time was 12:36 p.m.

**OPEN SESSION**

The Board re-entered Open Session at 2:32 p.m. Town Attorney Leidy reported that during Closed Session the Board discussed with the Town Attorney the Cherry, Inc., Sansotta, Margaret Burch, and Fisher et al litigation and did give some direction to the Town Attorney; the Board also discussed with the Town Attorney potential but not pending litigation as well as the potential acquisition of the Dowdy Go-Cart track property located at 3006 S Virginia Dare Trail (lots 8, 9, 16, and 17) but no further action was taken.

**ADJOURNMENT**

Mayor Oakes stated that the Board of Commissioners was in recess until the Board Retreat on Thursday, January 12, 2012 at 9:00 a.m. in the rental house located at 4801 Engagement Hill Loop on S Virginia Dare Trail. The time was 2:35 p.m.

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

Approved: February 1, 2012

Mayor: \_\_\_\_\_  
Robert O. Oakes, Jr.



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that Chapter 48, Zoning, of the Code of Ordinances shall be amended as follows:

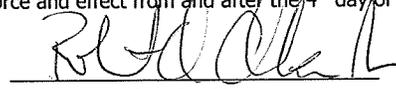
PART I. That **Section 48-282(6) Signs and Outdoor Advertising Structures, Prohibited Signs** be amended as follows:

- (6) Prohibited signs.
- a. No sign shall be located within a public right-of-way except for street identification signs and official traffic control signs.
  - b. No sign shall be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER."
  - c. No sign, business sign or outdoor advertising structure shall be erected which contains, employs or utilizes lights or lighting which rotates, flashes, moves or alternates; except that time and temperature displays without electronic advertising matter are permitted but must be included in computing allowable signage. Continuous printout, running or ticker-tape type message panels or signs are prohibited.
  - d. No sign shall be erected which contains rotating sign panels.
  - e. No sign shall obstruct visibility at an intersection or driveway as regulated in section 48-79.
  - f. No sign shall be posted on any telegraph, telephone or electrical light pole or on any tree along any street.
  - g. No sign shall be permitted that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building.
  - h. No sign shall be permitted that violates any provision of any law of the state relative to outdoor advertising.
  - i. All outdoor advertising signs or structures are prohibited.
  - j. Signs supported in whole or in part by water, air or gas are prohibited.
  - k. No real estate sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.
  - l. All pennants are prohibited, effective December 6, 1995.
  - m. Use of exposed neon, argon, krypton, or similar gas tube lighting shall be prohibited in all manner except as provided in section 48-284(2) e.
  - n. Tourist-oriented directional sign (TODS).
  - o. Three dimensional sculptured objects and pictorial devices attached to and extending more than 12 inches beyond any wall or roof of a building in business use. Attached sculptured objects and pictorial devices extending 12 inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this chapter pertaining to such signs.
  - p. Roof signs within the SPD-C, Village at Nags Head C-1, C-2, hotel and institutional districts.
  - q. **LED and Digital signs.**

PART II. That **Section 48-7 Definitions** be amended as follows:

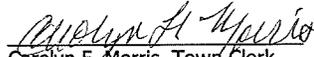
Digital sign means any sign featuring electronic display or moving images created by incandescent, LCD, Plasma, LED or projected images for any purposes other than traffic control devices. This definition is intended to include any sign containing incandescent lights or exposed light bulbs used as a message or reader board, or to project images. This definition does not include LED technology used only for the purpose of illuminating a structural sign face.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 4<sup>th</sup> day of January 2012.



Robert O. Oakes, Jr., Mayor  
Town of Nags Head

ATTEST:

  
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Leidy, Town Attorney



Date adopted: January 4, 2012

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS

**TOWN OF NAGS HEAD  
STATEMENT OF CONSISTENCY  
WITH THE LAND USE PLAN FOR A ZONING TEXT AMENDMENT**

**BE IT HEREBY RESOLVED** by the Board of Commissioners for the Town of Nags Head, that in accordance with provisions of North Carolina General Statute 160A-383, the Board of Commissioners hereby finds and determines that the adoption of the requested zoning text amendment to prohibit digital signs.

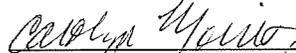
Is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest because it addresses an emerging concern related to community appearance (p. 104)

**READ, APPROVED AND ADOPTED** by a vote of 4 – 0 (Mayor Pro Tem Remaley was not present.), this the 4<sup>th</sup> day of January 2012.



Robert O. Oakes Jr., Mayor

**ATTEST:**

  
Carolyn Morris, Town Clerk  
Cliff Ogburn, Town Manager

**DIGITAL BILLBOARD OR SIGN:** A computerized display that may be changed or updated remotely and utilize video or other changing images. Also known as "electronic variable message signs" or video advertising.

## APPENDIX A

### SECTION 3.5.4. ACTION BY THE BOARD OF COMMISSIONERS

Pursuant to Section 3.5.4.2. of the UDO, 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.

Pursuant to Section 3.5.4.5. of the UDO, prior to voting to adopt or reject the proposed text amendment, the Board should adopt a statement approving the amendment and describing the amendment's consistency with the Town's adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest, 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, or a statement approving the amendment and containing at least all of the following:

- 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.
- 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.
- Why the action was reasonable and in the public interest.



# Agenda Item Summary Sheet

Item No: **G-1**  
Meeting Date: **June 5, 2024**

**Item Title:** Update from Planning Director

**Item Summary:**

Please find attached a monthly update, with attachments, from Planning Director Kelly Wyatt.

Number of Attachments: 1

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**Specific Action Requested:**

Provided for Board information and update.

Submitted By: Planning and Development

Date: May 30, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 30, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 30, 2024

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**Town Manager Comment and/or Recommendation:**

I will participate in the discussion as necessary.

Signature: Andy Garman

Date: May 30, 2024



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# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Board of Commissioners  
Planning Board

From: Kelly Wyatt, Planning Director  
Joe Costello, Deputy Planning Director

Date: May 30, 2024

Subject: Planning and Development Director's Report (G-1)

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This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on June 5<sup>th</sup>, 2024.

#### Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for March 2024*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Wednesday, May 1<sup>st</sup> - Board of Commissioners Meeting
- Tuesday, May 7<sup>th</sup> – Technical Review Committee Meeting
- Wednesday, May 8<sup>th</sup> – Committee for Art and Culture Meeting
- Thursday, May 9<sup>th</sup> – Board of Adjustment Meeting (no hearings)
- Saturday, May 11<sup>th</sup> – Artrageous Kids Art Festival 10am – 2pm @ Dowdy Park
- Wednesday, May 15<sup>th</sup> – Board of Commissioners mid-month meeting
- Tuesday, May 21<sup>st</sup> – Planning Board Meeting
- Friday, May 24<sup>th</sup> – Multi-Family Housing Working Group Meeting

#### Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, May 21, 2024. There were no action items for consideration. As previously requested by the Planning Board, staff provided a brief presentation on the lighting associated with LED, digital displays, and mechanisms to measure the illuminance of digital characters while taking into consideration ambient light (lighting from other nearby sources). Additionally, staff provided information on the Community Rating System (CRS) Program and discussion of the upcoming verification visit.

The Planning Board's next meeting is scheduled for Tuesday, June 18<sup>th</sup>, 2024. Currently, the agenda is expected to include consideration of a Site Plan Amendment (3<sup>rd</sup> Submittal) for Inn at Whalebone, 87-unit Hotel on Lakeside Street for major deviations to the site plan as well as a request to consider amending or eliminating a condition imposed on the previous Site Plan Approval as it pertains to the expansion of W. Lakeside Street.

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## Board of Adjustment – Recent and Pending Applications

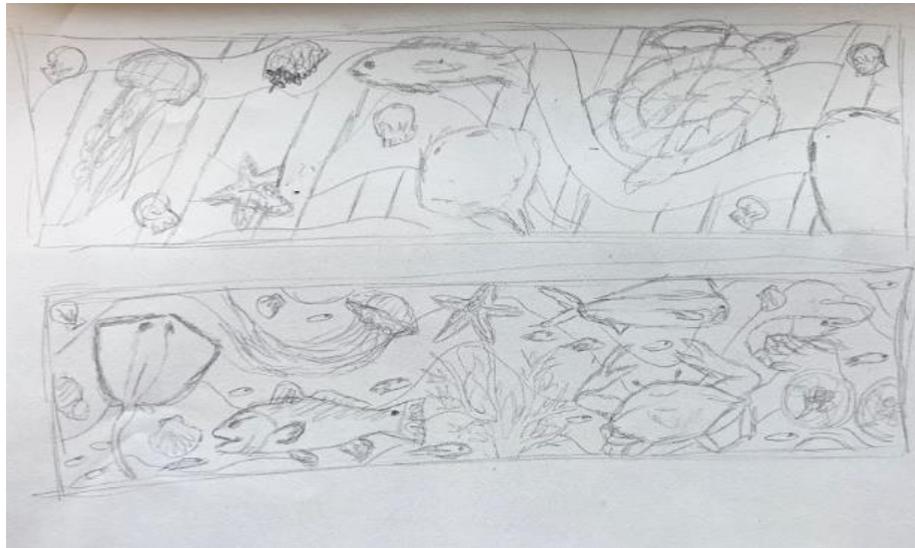
There were no items for the Board of Adjustments consideration in May 2024.

### Additional Updates

- **DWMP/Septic Health Advisory Committee** – The proposed amendments to the Unified Development Ordinance prohibiting parking on septic areas, which was generated by discussions held by the SHAC, will be on the Board of Commissioners agenda for Public Hearing at their June 5, 2024 meeting. Continuing the implementation of the recommendations of the Decentralized Wastewater Management Plan, staff are in the process of purchasing four (4) additional water quality monitoring loggers and a GPS unit to begin recording and mapping locations of existing septic systems within the town. The next meeting of the Septic Health Advisory Committee will be held in July 2024.
- **Estuarine Shoreline Management Plan** – Staff has prepared a pre-proposal for a grant from the National Fish and Wildlife Foundations National Coastal Resilience Fund. This grant is for the design of the Villa Dunes and Soundside Road pilot sites. We are waiting to find out if we will be invited to submit a full proposal. Additionally, staff recently submitted a grant request for NC Resilient Coastal Communities Program (RCCP) 2024-25 application, Phase 3 for a living shoreline project.
- **Electric Vehicle Action Plan** – Public Services staff were able to locate and mark the outer periphery of the geothermal lines and wells along the southern portion of the parking area at Town Hall. Staff met with Daniel Parsons of LoWire Technologies and will move forward with verifying the depth of the geothermal lines before continuing with the installation of the two-level II EV Chargers.
- **Sand Relocation and Dune Management Cost Share Program** – Following the close of the Sand Relocation program on April 30, 2024, we issued a total of 131 relocation authorization letters. As of May 29, 2024, \$385,000 of the \$400,000 allocated to the Dune Management Cost Share Program has been used. Environmental Planner Conner Twiddy and Code Enforcement Officer Ed Snyder have conducted final inspections of all sand relocation projects this season, identifying only a few sites that require further attention. We are currently awaiting the necessary paperwork from 55 citizens, who were approved for the Dune Management Cost Share funds, to process their reimbursements before the end of June.
- **Public Beach and Coastal Waterfront Access Grant Program** – Staff has been informed that the pre-application to the NC Public Beach and Coastal Waterfront Access Program has been selected to submit a Final Application for improvements to the June Street Beach Access. The deadline for final application submission is August 2<sup>nd</sup>, 2024. Item E-8 on Board of Commissioners June 5<sup>th</sup> meeting Consent Agenda is a Request for Public Hearing to consider the Final Grant Application.
- **Outer Banks Regional Hazard Mitigation Plan Update** – The Hazard Mitigation Planning Committee, comprised of representatives from Dare County EM, Dare County staff, staff from each town and members of the public from each community are in the process of updating the Outer Banks Regional Hazard Mitigation Plan.

As part of the Town's continued participation in the Community Rating System ("CRS") Program, the Town is required to provide updates on the actions contained in the Hazard Mitigation Plan. Staff has provided a memo and spreadsheet outlining updates to the action plan for the Board of Commissioners review. Staff is providing this to the Board of Commissioners and the community for informational purposes.

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- **Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture –**  
Summertime events are starting up. For the month of June, the Town will be hosting the following:
    - Yoga on the Lawn, Tuesday mornings 7:30 – 8:30am all month long.
    - Fitness Fridays, Friday mornings 7:30 – 8:15am, beginning June 21<sup>st</sup>.
    - Summer Concert Series, Wednesday evenings 6:30 – 8:00pm.
      - Black Pearl on June 19<sup>th</sup> – local band
      - Uphill on June 26<sup>th</sup> – local band
    - Dowdy Park Farmers Markets, Thursdays 9am – 1pm: June 13<sup>th</sup>, 20<sup>th</sup> & 27<sup>th</sup>.
    - Movie at the Park, Friday June 7<sup>th</sup> at 8:00pm at Dowdy Park.
 Event Coordinator Paige Griffin will be releasing the vendor map for the upcoming Dowdy Park Farmers Markets soon, and notes that there has been a great response to Tuesday morning Yoga. Art & Culture Committee Member Molly Vaughan is coordinating with the Manteo High School Honors Art students for a crosswalk art project after the summer season. Below are two sketches of potential designs:



### Upcoming Meetings and Other Dates

- Tuesday, June 4<sup>th</sup> – Technical Review Committee Meeting (Inn at Whalebone)
- Wednesday, June 5<sup>th</sup> - Board of Commissioners Meeting
- Thursday, June 6<sup>th</sup> – CRS Users Group Meeting, Elevation Certificate Training
- Wednesday, June 12<sup>th</sup> – Committee for Art and Culture Meeting
- Wednesday, June 12<sup>th</sup> – Eastern Carolina Council Resource Roundtable
- Thursday, June 13<sup>th</sup> – Board of Adjustment Meeting (no hearings)
- Tuesday, June 18<sup>th</sup> – Planning Board Meeting
- Wednesday, June 19<sup>th</sup> – Board of Commissioners mid-month meeting
- Dowdy Park Farmers Market – Thursday, June 13<sup>th</sup>, 20<sup>th</sup>, and 27<sup>th</sup>.
- Dowdy Park Summer Concert Series – Wednesday, June 19<sup>th</sup> and June 26<sup>th</sup>

**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT  
MONTHLY REPORT  
APRIL 2024**

DATE SUBMITTED: May 7, 2024

	Apr-24	Apr-23	Mar-24	2023-2024 FISCAL YTD	2022-2023 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
<b>BUILDING PERMITS ISSUED - RESIDENTIAL</b>						
New Single Family	1	1	2	14	13	1
New Single Family, 3000 sf or >	0	0	0	4	7	(3)
Duplex - New	0	0	0	1	0	1
Sub Total - New Residential	1	1	2	19	20	(1)
Miscellaneous (Total)	48	46	49	420	459	(39)
<i>Accessory Structure</i>	7	8	3	37	42	(5)
<i>Addition</i>	1	2	3	26	23	3
<i>Demolition</i>	0	0	0	5	1	4
<i>Move</i>	0	0	0	0	0	0
<i>Remodel</i>	16	8	18	108	113	(5)
<i>Repair</i>	24	28	25	244	280	(36)
<b>Total Residential</b>	<b>49</b>	<b>47</b>	<b>51</b>	<b>439</b>	<b>479</b>	<b>(40)</b>
<b>BUILDING PERMITS ISSUED - COMMERCIAL</b>						
Multi-Family - New	0	0	0	0	0	0
Motel/Hotel - New	0	0	0	0	0	0
Business/Govt/Other - New	0	0	0	0	2	(2)
Subtotal - New Commercial	0	0	0	0	2	(2)
Miscellaneous (Total)	18	12	9	81	73	8
<i>Accessory Structure</i>	7	2	3	31	24	7
<i>Addition</i>	0	0	0	0	0	0
<i>Demolition</i>	0	0	0	1	1	0
<i>Move</i>	0	0	0	0	0	0
<i>Remodel</i>	5	2	5	24	22	2
<i>Repair</i>	6	8	1	25	26	(1)
<b>Total Commercial</b>	<b>18</b>	<b>12</b>	<b>9</b>	<b>81</b>	<b>75</b>	<b>6</b>
<b>Grand Total</b>	<b>67</b>	<b>59</b>	<b>60</b>	<b>520</b>	<b>554</b>	<b>(34)</b>
<b>SUB-CONTRACTOR PERMITS</b>						
Electrical	80	77	62	504	482	22
Gas	3	5	2	32	30	2
Mechanical	54	39	40	318	333	(15)
Plumbing	16	25	14	116	96	20
Fire Sprinkler	1	0	0	4	3	1
<b>VALUE</b>						
New Single Family	\$560,000	\$575,000	\$1,915,500	\$8,152,995	\$7,034,026	\$1,118,969
New Single Family, 3000 sf or >	\$0	\$0	\$0	\$2,642,945	\$7,233,733	(\$4,590,788)
Duplex - New	\$0	\$0	\$0	\$711,000	\$0	\$711,000
Misc (Total Residential)	\$1,262,571	\$1,626,964	\$1,726,871	\$15,409,727	\$15,500,935	(\$91,208)
<b>Sub Total Residential</b>	<b>\$1,822,571</b>	<b>\$2,201,964</b>	<b>\$3,642,371</b>	<b>\$26,916,667</b>	<b>\$29,768,694</b>	<b>(\$2,852,027)</b>
Multi-Family - New	\$0	\$0	\$0	\$0	\$0	\$0
Motel/Hotel - New	\$0	\$0	\$0	\$0	\$0	\$0
Business/Govt/Other - New	\$0	\$0	\$0	\$0	\$17,988,350	(\$17,988,350)
Misc (Total Commercial)	\$648,577	\$178,702	\$829,926	\$4,690,140	\$2,430,831	\$2,259,309
<b>Sub Total Commercial</b>	<b>\$648,577</b>	<b>\$178,702</b>	<b>\$829,926</b>	<b>\$4,690,140</b>	<b>\$20,419,181</b>	<b>(\$15,729,041)</b>
<b>Grand Total</b>	<b>\$2,471,148</b>	<b>\$2,380,666</b>	<b>\$4,472,297</b>	<b>\$31,606,807</b>	<b>\$50,187,875</b>	<b>(\$18,581,068)</b>

**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT  
MONTHLY REPORT  
APRIL 2024**

DATE SUBMITTED: May 7, 2024

	Apr-24	Apr-23	Mar-24	2023-2024 FISCAL YTD	2022-2023 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
<b>ZONING</b>						
Zoning Permits	69	64	64	563	557	6
Soil & Erosion	0	N/A	1	16	N/A	N/A
Stormwater Plans	1	N/A	6	29	N/A	N/A
<b>CAMA</b>						
CAMA LPO Permits	3	8	5	33	31	2
CAMA LPO Exemptions	7	10	13	57	61	0
Sand Relocations	31	115	67	281	279	N/A
<b>CODE COMPLIANCE</b>						
Cases Investigated	19	116	25	267	659	(392)
Warnings	3	20	4	31	98	(67)
NOVs Issued	15	18	20	231	144	87
Civil Citations (#)	0	0	0	1	10	(9)
Civil Citations (\$)	\$0	\$0	\$0	\$0	\$23,150	(\$23,150)
<b>SEPTIC HEALTH</b>						
Tanks inspected	8	15	10	94	115	(21)
Tanks pumped	5	8	10	100	76	24
Water quality sites tested	2	36	2	71	202	(131)
Personnel Hours in Training/School	52	6	44	371	206	165

  
 Kelly Wyatt, Planning Director



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Board of Commissioners  
From: Kelly Wyatt, Planning Director  
Joe Costello, Deputy Planning Director  
Date: June 5, 2024  
Subject: Hazard Mitigation Plan Update

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As part of our continued participation in the Community Rating System (“CRS”) program, the Town is required to provide updates on the actions contained in our Hazard Mitigation Plan. The requirement for preparation of a Hazard Mitigation Plan was developed in response to NC Senate Bill 300 and the Federal Hazard Mitigation Act of 2000. The plan not only addresses natural hazards like hurricanes and nor’easters but other hazards such as terrorism, pandemics, and public health events. A plan must be adopted by the local governing board every five (5) years. A FEMA-approved hazard mitigation plan is a condition for receiving certain types of non-emergency disaster assistance, including funding for mitigation projects. Ultimately, hazard mitigation planning enables action to reduce loss of life and property, lessening the impact of disasters.

Dare County and Currituck County, and the towns of Manteo, Nags Head, Kitty Hawk, Kill Devil Hills, Southern Shores, and Duck, joined efforts on updating their Hazard Mitigation Plans. This effort was referred to as the *Outer Banks Regional Hazard Mitigation Plan*. The most recent Outer Banks Regional Hazard Mitigation plan was adopted by the Town of Nags Head on July 1, 2020<sup>1</sup>. Dare County Emergency Management is currently preparing for the update of the Outer Banks Regional Hazard Mitigation.

As part of the Town's annual recertification for the CRS program, staff must review the plan and actions on an annual basis. Continued participation in the CRS program ensures that the Town is able to maintain a Class 5 CRS Rating and residents are able to receive a twenty percent (25%) discount on flood insurance. Attached is a spreadsheet outlining updates to the action plan. No action by the board is necessary. Town staff is providing this to the Board and the community for informational purposes. The entire Plan is available on the Town’s website.

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<sup>1</sup> The OBX Regional Hazard Mitigation Plan can be found here:  
<https://www.nagsheadnc.gov/DocumentCenter/View/3164/Outer-Banks-Regional-Hazard-Mitigation-Plan-FEMA-Review-Draft>

Community: Nags Head									
Action Details									
Action #	Action Description	Hazard(s) Addressed	Goal Addressed	Priority	Lead Agency / Department	Potential Funding Source	Implementation Timeline	2024 Implementation Status (Completed, Deleted, Carried Forward, New)	2024 Implementation Status Comments
NGH1	Petition FEMA through the Town's state and regional NFIP representatives to consider adopting realistic regulations regarding the determination of destroyed structures. Specifically, this would apply to structures which are located on the public beach that are not eligible for flood insurance until they collapse.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	3.1	Low	Planning/Town Manager	General Fund	5+ years	Carry Forward	<b>Revised.</b> The Town Manager participated in the threatened structures working group. A report is being written which details a multi-prong approach with actionable items to solve this goal.
NGH2	Explore seeking authority and adopting regulations which would allow qualified Town staff to inspect sewer treatment facilities and on-site septic systems after a storm. These regulations should also allow staff to request the corrective actions necessary to ensure proper operation of these systems.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	2.2	Low	Planning, Septic Health	General Fund	5+ years	Carry Forward	<b>Revised.</b> Carry forward damage information to the health department so they can take action for any repairs that are required. Use Crisis Track to report damages after storm events. No need to seek independent authority.
NGH3	Lobby the State for a state policy and strategy on beach nourishment and beach re-nourishment through joint efforts with other local governments and organizations such as the North Carolina Beach and Inlet Waterways Association. This includes an annually funded state program to support local nourishment activities.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	4.1	High	Board of Commissioners	General Fund	3-5 years	Carry Forward	<b>Revised.</b> Beach and inlet management plan developed by the NC beach and waterways association we participate in. We collectively pursue with other localities.
NGH4	Develop a long-term plan for shoreline management which includes the oceanfront and estuarine shoreline. This may include financing, permitting, ongoing project implementation (in coordination with Dare County and other Dare County municipalities), and monitoring of changing shoreline conditions.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	4.1	High	Planning, Town Engineer	General Fund, Dare County Shoreline Fund	2-3 Years	Completed	<b>Revised.</b> The Town completed the Estuarine Shoreline Management Plan, and it was adopted by the Board of Commissioners in February 2023.
NGH5	Develop contingency plans for infrastructure or services that may be lost as a result of exposure to hazards. Potential infrastructure includes roads/streets, waterlines, wastewater, stormwater, and other key utilities.	All Hazards	2.2	Medium	Planning, Public Works	Grant Funding	2-3 years	Carry forward	<b>Revised.</b> The Town has developed a comprehensive Infrastructure Plan where stormwater, waterlines, streets, and paving work are reviewed at the same time during our CIP process. Upgrading drainage system with larger drainage pipes funded through Golden Leaf Grant.
NGH6	Evaluate the Nags Head Woods Fire Plan annually and coordinate information with Nature Conservancy	Wildfire	3.3	Medium	Town Manager/Fire/Police	General Fund, Grant Funds	1 Year	Carry Forward	Staff discusses and reviews the Nags Head Woods Fire Plan annually for update and to discuss areas for fuel reduction. Staff seeks grant opportunities as needed.
NGH7	Plan and participate with partners to evaluate the need and maintenance of wild land urban interface areas including removal of dead wood in critically fire prone areas and controlled burn activities.	Wildfire	1.2	Medium	Board of Commissioners/Public Works	General Fund	1 Year	Carry Forward	<b>Revised.</b> Continue to work with the NPS, Dominion and the Nature Conservancy to maintain reduction of fuel loads in wildland-urban interface areas and to seek opportunities for grant funding to reduce vegetation in wildland-urban interface areas of the Town.
NGH8	Explore the feasibility of becoming a Firewise Community.	Wildfire	3.3	Medium	Fire	General Fund	2-3 Years	Carry Forward	No action taken as of this date.
NGH9	Purchase and install weather stations to track rainfall and weather in the Town that will be helpful in identifying changing weather patterns and future stormwater planning and modeling needs. Explore partnerships with agencies where this weather information would be relevant (i.e. NC Climate Center).	Coastal Hazards, Drought, Flood, Hurricane and Tropical Storm, Severe Weather	3.3	High	Planning/Town Engineer	General Fund, Grant Funds	2-3 Years	Completed	<b>Revised.</b> The town partnered with NC State Parks to install a weather station, funded through NC State Climate Office, in Jockey's Ridge State Park. Town has 3 other weather stations at Station 21, Town Hall, Water Plant
NGH10	Work with Dare County to expand Town representation on the Local Emergency Planning Committee.	All Hazards	4.2	Low	Fire	General Fund	1 Year	Carry Forward	Town staff continue to participate on the committee.
NGH11	Acquire equipment and materials and retrofit critical facilities to ensure critical facilities and infrastructure remain operational during events.	All Hazards	2.1	High	Town Manager/Fire/Police/Public Works/Planning	Grant Funding	2-3 Years	Carry Forward	<b>Revised.</b> The public works and water distribution facilities were redesigned and are currently under construction for more efficiency in operations and with contingency plans for hazards. Expectation of Public Services master plan completion September 2024. Currently developing a master plan for Fire station and Town Hall facilities.
NGH12	Purchase property, utilizing grants, when possible, to acquire property for the purpose of mitigating damage and co-locating (dual use) Town facilities.	Coastal Hazards, Drought, Flood, Hurricane and Tropical Storm, Severe Weather	1.2	High	Planning/Town Engineer/Town Manager	General Fund/Stormwater	2-3 Years	Carry Forward	Staff seeks any viable opportunity, on a case by case as needed basis, for funds to acquire properties for the purpose of mitigating damage, improvement water quality, preserving open space, protecting natural resources, and collocating Town facilities.

NGH13	Identify and evaluate solutions to mitigate areas of repetitive flooding.	Coastal Hazards, Flood, Hurricane and Tropical Storm	1.2	High	Planning/Town Engineer/Town Manager	General Fund/Stormwater	2-3 years	Carry Forward	Revised. The Town received over 3 million dollars in grant funding to implement stormwater control projects in areas of repetitive loss. Two of these projects have been designed and will begin construction in 2024.
NGH14	Pursue the installation of flood gauges, through partnership with Dare County and the State, that will notify citizens and Town officials of changing water levels.	Coastal Hazards, Flood, Hurricane and Tropical Storm	1.1	High	Planning/Town Engineer/Town Manager	General Fund/Grants	1 Year	Completed	The town partnered with the Coastal Studies Institute to install two new Honohu flood gauges in the Town of Nags Head. 13 water level data loggers installed in town.
NGH15	Support public and private mitigation projects that reduce the potential damaging effects of hazards on the town. Homes that are pre-firm and repetitive loss structures should be prioritized.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	1.2	High	Planning/Town Engineer/Town Manager	General Fund/Grants	2-3 years	Carry Forward	No action taken as of this date.
NGH16	Seek methods to remove structures located on the public beach which degrade the recreational and natural quality of the environment, create public health and safety hazards, and impede the ability of life safety personnel to move along the shoreline.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	3.2	High	Planning/Town Engineer/Town Manager	General Fund	5+ years	Carry Forward	Revised. The Town successfully removed a structure from the public beach in April 2023. The former structure was located at 10211 Sea Gull Drive.
NGH17	The town will identify, acquire, and seek grant funding of property for the purposes of open space, improving water quality, protecting natural resources, and recreational purposes.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	1.2	High	Planning/Town Engineer/Town Manager	General Fund, Grant Funds	2-3 years	Carry Forward	Revised. The Town acquired five parcels of vacant land located at 8504, 8506, 8508, 8510 and 8512 SOOIR. These properties will be kept as open space in perpetuity.
NGH18	Consider incentives rewarding developers, property owners, and builders that set aside additional open space in perpetuity.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	3.3	Low	Planning	General Fund	3-5 years	Deleted	No action taken as of this date.
NGH19	Nourish the Town's beaches as a means to mitigate damage to oceanfront properties and infrastructure. This includes the pursuit of potential funding sources to supplement Town funds and programmatic permitting to assist with future nourishment projects.	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	3.2	High	Town Manager/Town Engineer	Dare County Shoreline Fund, Town Municipal Service Districts	3-5 years	Carry Forward	The Town's third beach nourishment project occurred in 2022. Beach Nourishment master plan will dictate timing of future nourishment projects.
NGH20	Investigate innovative solutions to unconventional drainage problems. This may include the implementation of groundwater management techniques and low impact development practices which address stormwater runoff at or near its source. Possible solutions will consider improvements to address both water quality and water quantity. Continue to evaluate and assess existing infrastructure for replacement and improvement to include drainage systems maintained by NCDOT that may be impacted by other Town initiatives (i.e. beach nourishment).	Coastal Hazards, Flood, Hurricane and Tropical Storm, Severe Weather	3.3	High	Town Engineer, Planning	Grant Funding/General Fund/Stormwater	3-5 years	Carry Forward	Revised. The Town of Nags Head received grant funding for the construction of stormwater projects areas #12 and #11. These projects will address roadway flooding through a french drain system and pump to a natural dune infiltration area.
NGH21	Improve fire protection and access in Nags Head Woods with the installation of 'dry hydrants' and maintenance and improvements to Nags Head Woods Road.	Wildfire	3.3	Medium	Fire, Public Works	General Fund/Water Fund	3-5 years	Completed	The Nags Head Woods Road is maintained by Nags Head Public Works and roadway material is added as needed to maintain an acceptable driving surface.
NGH22	Adhere to the Incident Command Structure to maintain and improve emergency operations and communications. This includes the annual update of the critical facilities list in the Emergency Operations Plan (EOP) and purchase of additional emergency operations communication equipment.	All Hazards	2.2	Medium	Fire/Police/Town Manager	General Fund	5+ years	Carry Forward	Staff recently completed a new EOP. Staff continues to adhere to the ICS, update the critical facilities list and participate in the EOP with Dare County.
NGH23	Continue to educate property owners to maintain fire safe landscaping and vegetation adjacent to structures.	Wildfire	1.1	Low	Fire	General Fund	5+ years	Carry Forward	This is accomplished on a case-by-case basis as needed. In addition, during fuel reduction burns staff meets with the community to explain the need for reduction of fuel loads.
NGH24	Develop outreach materials to educate the public and increase awareness on hazards, how to develop and retrofit their properties against hazards, and individual tasks that can help them better prepare and respond to hazards. Staff should explore alternative options to traditional on-site meetings. This may include increased use of social media, the public access channel and short videos and handouts.	All Hazards	1.1	High	Planning, Town Manager, Town Engineer, Fire/Ocean Rescue	General Fund	2-3 years	Carry Forward	The Town continues to utilize social media, videos, the website, and mailed information to inform residents about the new flood maps, flooding, stormwater, hurricane preparedness, and other coastal hazards.
NGH25	Educate and assist vulnerable populations in preparing for and recovering from impacts by hazards. This may include hazard awareness, evacuation planning, or disaster relief.	All Hazards	1.1	Low	Planning/Public Works/Town Engineer	Grant Funding	2-3 years	Carry Forward	Revised. Continue communicating with stakeholders regarding at-risk populations who may require special assistance during disasters.



# Agenda Item Summary Sheet

Item No: **H-1**  
Meeting Date: **June 5, 2024**

**Item Title:** From March 6<sup>th</sup> Board Meeting – Report on Multi-Family Ordinance Working Group

**Item Summary:** At the Board’s March regular meeting, the Board requested that the Town establish a working group to review and make recommendations on a draft Multi-Family Housing Ordinance. This ordinance was originally drafted by the Planning Board and a public hearing was held in February.

The charge for the working group is as follows:

- To consider the draft multi-family ordinance written by the Planning Board.
- To preserve the intent of the ordinance, to protect the character of Nags Head, and to provide new alternatives for workforce/long-term housing without increasing the stock of short-term rentals.
- To evaluate conditions/standards which would render such projects unfeasible due to financing, construction, configuration, or management.
- To suggest additional measures that would achieve the aforementioned goals.

Over the course of four meetings, the working group has now developed a recommendation for review by the Board of Commissioners. This includes changes to the ordinance drafted by the Planning Board as well as several other suggestions. Information about the working group including agendas and minutes from its meetings can be found here: <https://www.nagsheadnc.gov/1108/Multi-Family-Working-Group>.

At the upcoming meeting, staff will present the recommendations from the working group. Attached is a copy of a draft multi-family housing ordinance which includes the original Planning Board recommendation as well as modifications proposed by the working group. Where the Multi-Family Housing Working Group recommended different ordinance language than the Planning Board, staff has color coded the language as follows:

- Multi-Family Housing Working Group Recommended language is shown in RED.
- Planning Board Recommended language is shown in BLUE.
- Proposed language that is unchanged is shown in regular black type.

It should be noted that the ordinance will need to be reviewed by the Planning Board before it comes back to the Board of Commissioners for a public hearing and adoption.

Number of Attachments: 1

**Specific Action Requested:** Discussion/feedback on the working group’s recommendation.

Submitted By: Town Manager’s Office

Date: May 29, 2024

**Finance Officer Comment:** No unbudgeted fiscal impact.

Signature: Amy Miller

Date: May 29, 2024

**Town Attorney Comment:** N/A

Signature: John Leidy

Date: May 29, 2024

**Town Manager Comment and/or Recommendation:**

I appreciate the efforts of the multi-family working group and staff. I will await the Board’s direction.

Signature: Andy Garman

Date: May 29, 2024

Where the Multi-Family Housing Working Group recommended different ordinance language than that recommended by the Planning Board, staff has color coded the language as follows:

Multi-Family Housing Working Group Recommended language is shown in RED.

Planning Board Recommended language is shown in BLUE.

Proposed language that is unchanged is shown in regular black type.

## **PART I. Appendix A – Definitions**

**Dwelling, Multi-Family or Dwelling Unit, Multi-Family** means a single-family dwelling unit located within a multi-family development.

**Apartment or Apartment Style Design** means a residential architectural and planning design characterized by single-family attached dwelling units constructed on multiple floors and separated by shared vertical walls and shared horizontal ceilings, floors, planes, or surfaces. For the purposes of this chapter, a series or group of **Apartment** units shall be considered a multi-family development.

**Floor Area Ratio (FAR)** means the quotient resulting from division of the gross floor area of all buildings on a lot by the area of the lot.

**Townhouse or Townhouse Style Design** means a residential architectural and planning design characterized by single-family attached dwelling units constructed in a series or group of units and separated by shared vertical walls. For the purposes of this chapter, a series or group of **Townhouse** units shall be considered a multi-family development.

**Multi-Family Development** means a development containing no less than three multi-family dwelling units and shall be characterized as either a large multi-family development or a small multi-family development.

**Large Multi-Family Development** means a development containing more than six multi-family dwelling units.

**Large Multi-Family Development** means a development containing more than six multi-family dwelling units and less than sixty-one multi-family dwelling units.

**Small Multi-Family Development** means a development containing no less than three multi-family dwelling units and no more than six multi-family dwelling units.

**Long-term occupancy/tenancy** means the occupancy of a single-family dwelling by an owner, tenant, or other lawful occupant for a period of ninety (90) consecutive calendar days or more.

**Principal Place of Residence** means the home or place in which one’s habitation is fixed, and to which one has present intention of returning after a departure or absence therefrom.

**Qualified Person** means a person working/employed in Dare County, NC. A qualified person includes but is not limited to any person who has an internship with an employer if the employer’s place of business is physically located in Dare County, NC, or a person who works remotely for an employer if the person’s principal place of residence and the employer’s place of business are both physically located in Dare County, NC.

**Workforce Housing** or **workforce housing unit** means the following:

- a. A dwelling unit which is occupied by at least one qualified person under a long- term occupancy/tenancy, and
- b. A dwelling unit which is the principal place of residence for at least one qualified person, and
- c. A dwelling unit which has been encumbered by the owner of the dwelling unit with recorded restriction covenants to ensure compliance with this definition and Section 7.5 of the Town Code. The recorded restrictive covenant shall expressly identify the Town as the sole beneficiary of the recorded restrictive covenant, which shall include the express power and authority of the Town to enforce the recorded restrictive both in law and in equity, including the use of judicial injunctive relief. The Town staff shall provide the owner with the exact wording of the restrictive covenant to be recorded by the owner with the Dare County Register of Deeds in order to satisfy this requirement, and Town staff shall verify such recordation. The recorded restrictive covenant shall appear in the recorded chain of title of the dwelling unit and in the case of a multi-family development, the recorded restrictive covenant shall also be contained in the multi-family development’s recorded declaration of covenants establishing the multi-family development.

Nothing in this definition shall preclude employers from purchasing workforce housing units to provide accommodation for their employees, provided the employees are qualified persons who occupy such workforce housing units within Dare County and the workforce housing unit is the employee’s principal place of residence, even if owned by the employer.

**PART III. Section 7.5 Dwellings, Multi-Family shall be replaced in its entirety by the following:**

Multi-family dwelling units are permitted in accordance with Section 6.6, Table of Uses and Activities, provided that the following additional requirements and conditions are met:

<b>TABLE 7-1: REQUIREMENTS FOR MULTI-FAMILY DWELLINGS</b>		
	<b>Large Multi-Family C-2</b>	<b>Small Multi-Family C-2</b>
Min. Lot Width for Multi-Family Site	150 feet	No minimum
Min. Site Area in Uplands	26,000 square feet	15,000 square feet 16,000 square feet
Location of Multi-Family Site	Properties with frontage on US Hwy 158 only.	On any lot meeting the minimum site area requirements. Properties with frontage on US Hwy 158 only.
Setbacks	All buildings shall be setback a minimum 35 feet to all property lines.	All buildings shall meet the minimum setbacks: Front: 30 feet Side: 12 feet or 15 feet for corner lots Rear: 20% lot depth not to exceed 30 feet.
Townhome orientation	No townhome structure established as part of a multi-family development shall be situated on a site so as to face/front the rear of another townhome structure within the development or on an adjoining property.	
Density/ Building Size	Floor Area Ratio: 0.32 square feet of gross floor area for each 1 square foot of lot area.  Maximum gross floor area for a single building is 10,000 square feet. More than one building may be permitted on a site.  Minimum 26,000 square feet for first three units; 4,500 square feet of additional lot size for each additional unit.	One (1) unit per every 4,000 square feet of lot area.  Maximum building gross floor area is 5,000 square feet.  Minimum 16,000 square feet for the first three units; 3,500 square feet of additional lot size for each additional unit.

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Multi-Family Housing Working Group – Draft Multi-Family Ordinance – 5/29/2024*

<b>TABLE 7-1: REQUIREMENTS FOR MULTI-FAMILY DWELLINGS</b>		
	<b>Large Multi-Family C-2</b>	<b>Small Multi-Family C-2</b>
Maximum number of units	75 dwelling units 60 dwelling units	6 dwelling units.
Number of dwelling units per townhome structure	Maximum 6 dwelling units per structure.	No maximum.
Height	Maximum of 35 feet, may be increased to 42 feet with the use of an 8:12 roof pitch or greater. Additionally, no building shall exceed three (3) habitable floors.	Maximum of 35 feet, may be increased to 42 feet with the use of an 8:12 roof pitch or greater. Additionally, no building shall exceed three (3) habitable floors.
Open Space	50% of side yards to remain as open space.	50% of side yards to remain as open space.
Lot Coverage	55%	55%
Deed Restrictions	All multi-family dwelling units within a multi-family development shall be deed restricted for long-term occupancy/tenancy. No less than 60% of all units shall be deed restricted for workforce housing.	All multi-family dwelling units in a multi-family development shall be deed restricted for long term occupancy/tenancy and workforce housing.
Unit Sizes/ Categories	<p><b>Minimum Unit Sizes/Size Categories:</b></p> <ul style="list-style-type: none"> <li>• Studio/One Bedroom 500 sq. ft.</li> <li>• Two Bedroom 700 sq. ft.</li> <li>• Three Bedroom 1,000 sq. ft.</li> </ul> <p>Maximum unit size 1,750 sq. ft.</p> <p>Minimum 800 square feet; Maximum 1,750 square feet for both small and large multi-family designations.</p>	
Mixture of Units	<p>No more than 60% of the units shall be from any unit size category.</p> <p>All multi-family dwelling buildings shall incorporate building design variations such as varying stories</p>	<p>No requirement</p> <p>All multi-family dwelling buildings shall incorporate building design variations such as varying stories and habitable area.</p>

TABLE 7-1: REQUIREMENTS FOR MULTI-FAMILY DWELLINGS		
	Large Multi-Family C-2	Small Multi-Family C-2
	and habitable area.	
Buffer	In addition to the buffering requirements included in the Commercial Design Standards, a minimum 10-foot-wide commercial transitional protective yard shall be provided consistent with Section 10.93.3.2 and 10.93.3.3 of the UDO.	In addition to the buffering requirements included in the Commercial Design Standards, a 10-foot-wide commercial transitional protective yard shall be provided consistent with Section 10.93.3.2 of the UDO.
Architectural Design Requirements	<p>All multi-family dwelling buildings, regardless of size, shall go through the Sketch Plan process as outlined in Section 10.84 of the UDO.</p> <p>Multi-family dwelling buildings shall meet the requirements of Article 10, Part VI, Commercial Design Standards.</p>	<p>Buildings shall meet the design requirements for a large residential dwelling.</p> <p>Small multi-family structures shall be approved administratively.</p> <p>All multi-family dwelling buildings, regardless of size, shall go through the Sketch Plan process as outlined in Section 10.84 of the UDO.</p> <p>Multi-family dwelling buildings shall meet the requirements of Article 10, Part VI, Commercial Design Standards.</p>
Building Separation	20 40 feet; a sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.	Buildings shall be separated from one another by a minimum of ten feet, including projections. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.

<b>TABLE 7-1: REQUIREMENTS FOR MULTI-FAMILY DWELLINGS</b>		
	<b>Large Multi-Family C-2</b>	<b>Small Multi-Family C-2</b>
Accessory Uses	<p>Management/sales office, not including a trailer, provided that the management office shall be included as a permanent structure in the project's design or may occupy one of the dwelling units.</p> <p>A management/sales office may include, within the particular project, spaces for maintaining supplies, service products and amenities to be used in connection with the units within the project. There shall be sanitary facilities available for customers and employees.</p> <p>Shed.</p> <p>Pool (only one pool per development),</p> <p>Walls and Fences.</p> <p>Private Park/Playgrounds.</p>	<p>Shed.</p> <p>Pool (only one pool per development).</p> <p>Walls and Fences. Private Park/Playgrounds</p>
Outdoor Amenity Area/Common Area	<p>An area designated on the site plan for multi-family development as "common area" or as an area to be held in separate ownership for the use and benefit of residents occupying the dwelling units shown on such plan provided that it is conveniently accessible to all residents of the development.</p>	

7.5.1. The multi-family development shall have a mandatory homeowners' association, with one of its duties expressed in a recorded declaration of covenants being to ensure compliance with Section [7.5]. This includes a required annual certification to the town of the multi-family development's compliance with the restrictive covenant and workforce housing occupancy requirements, using a required certificate of compliance form provided to the association by town staff upon request.

7.5.2 Any site improvements, including construction of additions of any size, accessory structures of any size, and landscaping and buffering projects, that occur following the original Board of Commissioners Special Use Approval of a Large Multi-family dwelling development or Administrative Approval of a Small Multi-family dwelling development shall be submitted for consideration by the UDO Administrator to determine whether additional stormwater management measures are necessary.

**PART IV. That Section 10.93.3.3, High Impact Uses, be amended as follows:**

10.93.3.3. High Impact Uses. High impact uses are particular uses of land, which are considered as a whole because of their peculiar or operational and physical characteristics are expected to have an adverse effect on adjoining or adjacent properties. High impact uses include, but are not limited to:

10.93.3.3.27. Large Multi-Family Dwelling Development.

**Options to Allow Multi-Family as Accessory to Commercial Development**

Option 1:

Multi-family development may be permitted as an accessory use on any commercially developed property with the following conditions:

- Any new multi-family dwelling development shall meet the setback requirements of the principal use.
- Lot coverage shall not exceed the maximum allowable coverage within the district in which it is permitted.
- Density shall be determined by applying the standard currently set for small multi-family. One (1) unit per every 4,000 square feet of lot area with a cap of 6 units.
- 2 non-deed restricted residential units are still allowed by right under current ordinance (and can use them for workforce housing).

Option 2:

Multi-family development may be permitted as an accessory use on any commercially developed property with the following conditions:

- Any new multi-family dwelling development shall meet the setback requirements of the principal use.
- Lot coverage shall not exceed the maximum allowable coverage within the district in which it is permitted.
- Density shall be determined by applying a floor area ratio of .32 to the site in its entirety, including the gross floor area of all existing buildings.
- All requirements of Section 7.5 of the UDO, Dwellings, Multi=Family must be met, including supplemental requirements noted in Table 7-1.
- Optional: No more than 20 multi-family units can be constructed as an accessory use to commercial development.

Scenario for Option 2:

**Shoppes @ 10.5**

Parcel A Only (North Lot)

Lot Area: 283,635 square feet.

Building Area (Food Lion, Shops, Bank) = 48,895 square feet

FAR of 0.32 would allow 90,763 square feet of building area.

41,868 square feet of building area could be devoted to multi-family development.

20% of 41,868 = 8,373

1 bedroom = 16 units

2 bedroom (seems to be most desirable/ 25,122sf) = 35 units

3 bedroom = 8 units

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This is worst case scenario but with a FAR of .32 Shoppes at 10.5 could have 59 units. The optional provision with a maximum of 20 units would likely dictate density in this circumstance.

Based upon the As-Built Survey they are at 40.4% coverage so, ample lot coverage if needed. Parking and Septic would be the prohibiting factors on this one.

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**Section 6.6, Table of Permitted Uses and Activities:**

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					Special Districts				Overlay Districts			
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO
1	Residential	Dwelling, Large Residential	PR	PR	PR	PR		PR			PR	PR	PR		PR			PR
<u>1</u>	<u>Residential</u>	<u>Dwelling, Multi-Family (Small)</u> <u>Townhouse &amp; Apartment Style Design</u>						<u>PR</u> <u>SR</u>										
<u>1</u>	<u>Residential</u>	<u>Dwelling, Multi-Family (Large)</u> <u>Townhouse Style Design Only</u>						<u>SR</u>										
1	Residential	Dwelling, Single-Family (detached)	P	P	P	P	P	P		P	P	P	P		P			P
1	Residential	Dwelling, Two-Family		P	P	P	P	P		P	P							
<u>1</u>	<u>Residential</u>	<u>Townhouse</u>						<u>SR</u>				<u>SR</u>						



# Agenda Item Summary Sheet

Item No: **I-1**  
Meeting Date: **June 5, 2024**

**Item Title:** Presentation – Recess to Ribbon Cutting at New Public Services Complex  
**- Time Specific 12:30 p.m.**

**Item Summary:**

At the June 5<sup>th</sup> Board of Commissioners meeting, the Board will recess to the new Public Services Complex for a Ribbon Cutting and lunch. This item is time specific for 12:30 p.m.

Number of Attachments: 0

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**Specific Action Requested:**

Provided for Board information and update.

Submitted By: Administration

Date: May 23, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 23, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 23, 2024

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**Town Manager Comment and/or Recommendation:**

N/A

Signature: Andy Garman

Date: May 23, 2024



# Agenda Item Summary Sheet

Item No: **I-2**  
Meeting Date: **June 5, 2024**

**Item Title:** Committee Reports

**Item Summary:**

At the June 5<sup>th</sup> Board of Commissioners meeting, Board members will provide reports from meetings they have attended on behalf of the Town.

Number of Attachments: 0

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**Specific Action Requested:**

Provided for Board information and update.

Submitted By: Administration

Date: May 23, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 23, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 23, 2024

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**Town Manager Comment and/or Recommendation:**

N/A

Signature: Andy Garman

Date: May 23, 2024



# Agenda Item Summary Sheet

Item No: **I-3**  
Meeting Date: **June 5, 2024**

**Item Title:** Consideration Disaster Debris Removal and Debris Monitoring Vendor Contract Renewal

**Item Summary:**

Annually, the Town enters into pre-positioned agreements for Disaster Debris Removal Services in addition to Debris Monitoring Services. Existing agreements are active for DRC Emergency Services for debris removal services and with DebrisTech, LLC for debris monitoring services. Each of the agreements is for an initial one-year term with the option to extend the agreement annually for up to a three-year period. The DRC Emergency Services agreement has been providing services for the past 2 years with the DebrisTech, LLC completing its first year of services.

Services by each of the providers have been found to be satisfactory.

Staff recommends renewal of the DRC Emergency Services and DebrisTech, LLC agreements for FY 24/25. No changes in the terms of the agreement are proposed. If the Board of Commissioners is in agreement with the staff recommendation, a motion will be in order to authorize the Town Manager to execute the renewal agreement with DRC Emergency Services for debris removal services and with DebrisTech, LLC for debris monitoring services.

Attachments: DRC Emergency Services Renewal Agreement for Disaster Debris Removal Services

Number of Attachments: 2

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**Specific Action Requested:**

Provided for Board information and discussion.

Submitted By: Town Engineer David Ryan

Date: May 28, 2024

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**Finance Officer Comment:**

Signature: Amy Miller

Date: May 28, 2024

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**Town Attorney Comment:**

Attorney Leidy will participate in the discussion as necessary.

Signature: John Leidy

Date: May 28, 2024

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**Town Manager Comment and/or Recommendation:**

I will participate in the discussion.

Signature: Andy Garman

Date: May 28, 2024

**Benjamin Cahoon**  
Mayor

**Michael Siers**  
Mayor Pro Tem

**Andy Garman**  
Town Manager



**Town of Nags Head**  
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**Kevin Brinkley**  
Commissioner

**Bob Sanders**  
Commissioner

**Megan Lambert**  
Commissioner

**AGREEMENT RENEWAL**

TO: DRC Emergency Services  
FROM: The Town of Nags Head, North Carolina  
DATE: May 21, 2024  
SUBJECT: **Town of Nags Head Contract Renewal for Disaster Debris Management and Removal Services**

.....

DRC Emergency Services. is currently providing Disaster Debris Management and Removal Services to the Town of Nags Head per the annual agreement which became effective on July 27, 2022. The terms of the agreement indicated an initial one (1) year period and may be extended annually under its existing terms, conditions, and rates, in the Town’s sole discretion, for up to three (3) additional one (1) year periods. The Town would like to extend your firm’s services under this agreement.

If your firm is interested in continuing services under the existing agreement, please sign and date the renewal acceptance below and return three (3) original copies to the Town of Nags Head promptly. Upon execution of this acknowledgement, the agreement will continue under the terms, conditions and rates for approximately one (1) year in duration from July 1, 2024 to June 30, 2025. A copy of the executed agreement will be forwarded to you for your records.

**Agreement Renewal Acceptance**

**DRC Emergency Services**

**Town of Nags Head**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Benjamin Cahoon**  
Mayor

**Michael Siers**  
Mayor Pro Tem

**Andy Garman**  
Town Manager



**Town of Nags Head**  
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**Kevin Brinkley**  
Commissioner

**Bob Sanders**  
Commissioner

**Megan Lambert**  
Commissioner

**AGREEMENT RENEWAL**

TO: DebrisTech, LLC  
FROM: The Town of Nags Head, North Carolina  
DATE: May 21, 2024  
SUBJECT: **Town of Nags Head Contract Renewal for Disaster Debris Monitoring Services**

.....

DebrisTech, LLC is currently providing Disaster Debris Monitoring Services to the Town of Nags Head per the annual agreement which became effective on August 11, 2024. The terms of the agreement indicated an initial one (1) year period and may be extended annually under its existing terms, conditions, and rates, in the Town's sole discretion, for up to three (3) additional one (1) year periods. The Town would like to extend your firm's services under this agreement.

If your firm is interested in continuing services under the existing agreement, please sign and date the renewal acceptance below and return three (3) original copies to the Town of Nags Head promptly. Upon execution of this acknowledgement, the agreement will continue under the terms, conditions and rates for approximately one (1) year in duration from July 1, 2024 to June 30, 2025. A copy of the executed agreement will be forwarded to you for your records.

**Agreement Renewal Acceptance**

**DebrisTech, LLC**

**Town of Nags Head**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



# Agenda Item Summary Sheet

Item No: **K-1**  
Meeting Date: **June 5, 2024**

**Item Title:** Town Manager Garman – Update on construction of the Public Services Facility

**Item Summary:**

Town Manager Andy Garman, along with Town Engineer David Ryan, will present an update on the construction progress of the new Public Services Facility at the June 5<sup>th</sup> Board of Commissioners meeting.

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Number of Attachments: 0

**Specific Action Requested:**

Provided for Board information and update.

Submitted By: Administration

Date: May 23, 2024

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**Finance Officer Comment:**

I will respond to questions as necessary.

Signature: Amy Miller

Date: May 23, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 23, 2024

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**Town Manager Comment and/or Recommendation:**

Update provided for Board information.

Signature: Andy Garman

Date: May 23, 2024



# Agenda Item Summary Sheet

Item No: **K-2**  
Meeting Date: **June 5, 2024**

**Item Title:** Town Manager Garman - Discussion of process for neighborhoods to request traffic calming devices

**Item Summary:**

Over the recent months, Town staff has received numerous requests for the implementation of traffic calming devices in several of the west side neighborhoods. The traffic calming measures placed on Soundside Rd. are often cited as the preferred measure to be adapted for the requested locations.

Prior to the implementation of the Soundside Rd., several different actions were taken to include meetings with neighborhood stakeholders in conjunction with an engineering traffic study to determine the speed and volume of vehicular traffic along the area of concern and the appropriateness of traffic calming measures. Considering the steps taken in the process, it may be beneficial to adapt a similar strategy for current and future requests.

For discussion purposes, staff has prepared a conceptual level flowchart of a traffic calming process that combines past practices with strategies employed by other North Carolina communities.

Staff will provide supplemental information related to managing traffic calming requests and welcomes Board of Commissioners feedback for the development of a more formalized process.

Attachment: Flowchart - Town of Nags Head Process for Requesting Installation of Traffic Calming Devices on Public Residential Streets

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Number of Attachments: 1

**Specific Action Requested:**

Provided for Board information and discussion.

Submitted By: Town Engineer David Ryan

Date: May 28, 2024

**Finance Officer Comment:**

Insufficient information to determine fiscal impact.

Signature: Amy Miller

Date: May 28, 2024

**Town Attorney Comment:**

Attorney Leidy will participate in the discussion as necessary.

Signature: John Leidy

Date: May 28, 2024

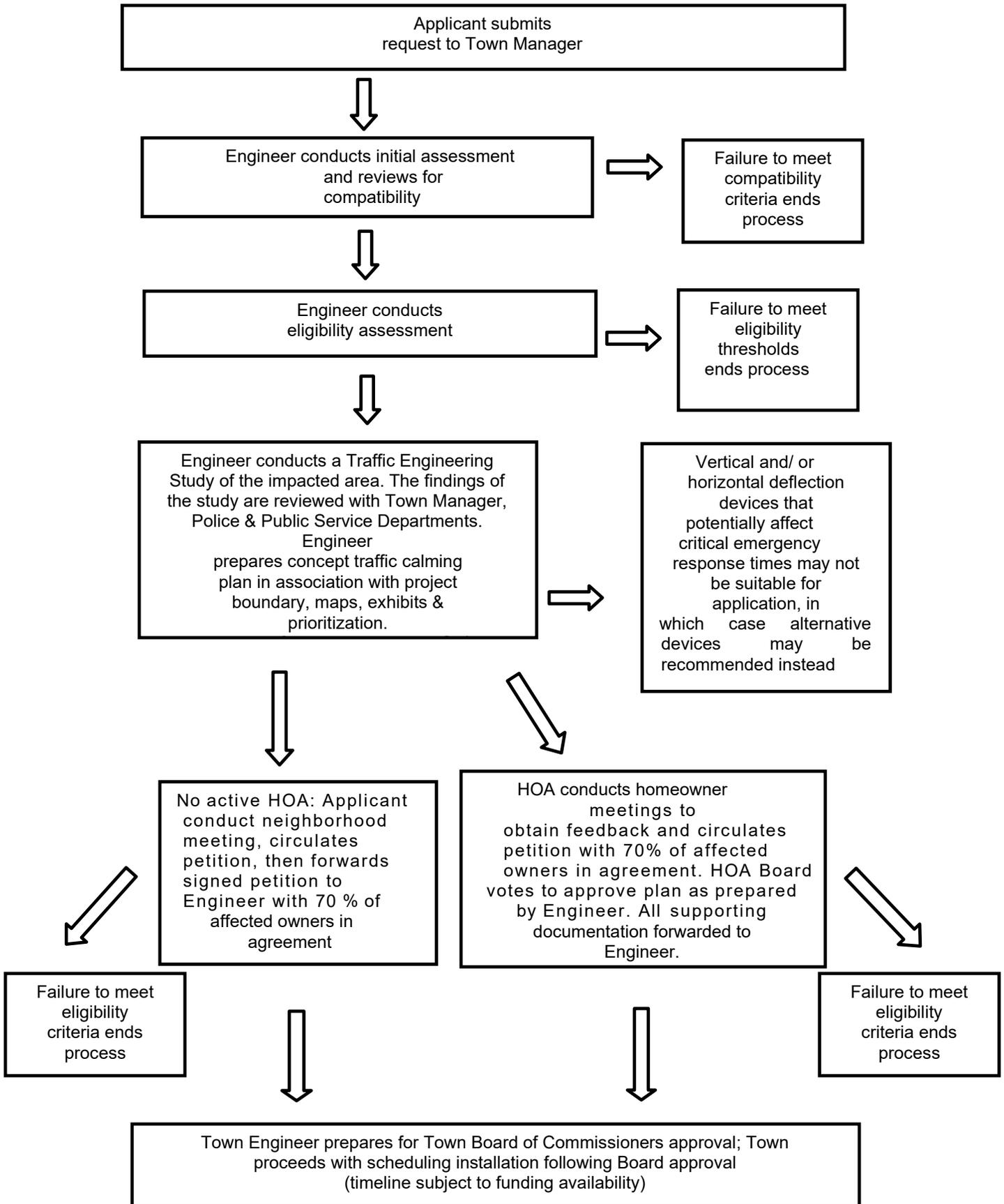
**Town Manager Comment and/or Recommendation:**

Provided for Board discussion.

Signature: Andy Garman

Date: May 28, 2024

# Town of Nags Head Process for Requesting Installation of Traffic Calming Devices on Public Residential Streets





## Agenda Item Summary Sheet

Item No: **K-3**  
Meeting Date: **June 5, 2024**

**Item Title:** Town Manager Garman – Update on 2024 Town Fireworks display

**Item Summary:**

At the June 5<sup>th</sup> Board of Commissioners meeting, Town Manager Garman will provide a brief update on the 2024 Town Fireworks display, scheduled for July 4<sup>th</sup> at 9:25 p.m. at the Nags Head Fishing Pier.

Number of Attachments: 0

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**Specific Action Requested:**

Provided for Board information and update.

Submitted By: Administration

Date: May 31, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 31, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 31, 2024

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**Town Manager Comment and/or Recommendation:**

Update provided for the Board's information.

Signature: Andy Garman

Date: May 31, 2024



## Agenda Item Summary Sheet

Item No: **L-1**  
Meeting Date: **June 5, 2024**

**Item Title:** Comr. Bob Sanders – Consideration of donation to Jockey’s Ridge State Park 50<sup>th</sup> Anniversary Celebration

### Item Summary:

At the June 5<sup>th</sup> Board of Commissioners meeting, Comr. Bob Sanders will discuss with Board members a donation to the upcoming Jockey’s Ridge State Park 50<sup>th</sup> Anniversary Celebration.

A proposed Budget Amendment is attached if the request is approved.

Number of Attachments: 1

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### Specific Action Requested:

Provided for Board discussion.

Submitted By: Administration

Date: May 31, 2024

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### Finance Officer Comment:

N/A

Signature: Amy Miller

Date: May 31, 2024

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### Town Attorney Comment:

N/A

Signature: John Leidy

Date: May 31, 2024

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### Town Manager Comment and/or Recommendation:

N/A

Signature: Andy Garman

Date: May 31, 2024



**BUDGET AMENDMENT REQUEST  
FY 2023-2024**

**BUDGET AMENDMENT NO. 12  
Amendment 12A  
USE OF FUNDS**

SOURCE OF FUNDS

CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
900-599900	<b>General Fund Manager's Contingency</b> Contingency	13,531.00		410-559300	<b>General Fund Governing Body</b> Contributions Misc.	13,531.00
<b>TOTAL CHARGES</b>		\$ 13,531.00		<b>TOTAL CREDITS</b>		\$ 13,531.00

**JUSTIFICATION**

Request from Friends of Jockey's Ridge for 50th Anniversary Celebration.

ADMINISTRATIVE SERVICES 5/29/2024  
RECOMMENDED BY \_\_\_\_\_ DATE

APPROVED BY BOC: \_\_\_\_\_ DATE

POSTED TO GENERAL LEDGER:

INITIALS \_\_\_\_\_



# Agenda Item Summary Sheet

Item No: **L-2**  
Meeting Date: **June 5, 2024**

**Item Title:** Comr. Kevin Brinkley – Discussion of Jockey’s Ridge State Park Soundside Access

**Item Summary:**

At the June 5<sup>th</sup> Board of Commissioners meeting, Comr. Kevin Brinkley will discuss with Board members the Jockey’s Ridge State Park Soundside Access.

Number of Attachments: 0

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**Specific Action Requested:**

Provided for Board discussion.

Submitted By: Administration

Date: May 31, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 31, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 31, 2024

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**Town Manager Comment and/or Recommendation:**

N/A

Signature: Andy Garman

Date: May 31, 2024



# Agenda Item Summary Sheet

Item No: **N-1**  
Meeting Date: **June 5, 2024**

**Item Title:** Request for Closed Session

**Item Summary:**

At the June 5<sup>th</sup> Board of Commissioners meeting, a Closed Session will be requested to consider a personnel matter pursuant to GS 143-318.11(a)(6).

Number of Attachments: 0

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**Specific Action Requested:**

Provided for Board discussion.

Submitted By: Administration

Date: May 31, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 31, 2024

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**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: May 31, 2024

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**Town Manager Comment and/or Recommendation:**

N/A

Signature: Andy Garman

Date: May 31, 2024



## Agenda Item Summary Sheet

Item No: **N-2**  
Meeting Date: **June 5, 2024**

**Item Title:** Request for Closed Session

**Item Summary:**

A Closed Session will be requested at the June 5<sup>th</sup> Board of Commissioners meeting to discuss the possible acquisition of real property located at 4222 S Croatan Hwy, pursuant to GS 143-318.11(a)(5).

Number of Attachments: 0

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**Specific Action Requested:**

Provided for Board discussion.

Submitted By: Administration

Date: May 24, 2024

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**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: May 24, 2024

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**Town Attorney Comment:**

Attorney Leidy will participate in the discussion as necessary.

Signature: John Leidy

Date: May 24, 2024

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**Town Manager Comment and/or Recommendation:**

I will participate in the discussion as necessary.

Signature: Andy Garman

Date: May 24, 2024