- DRAFT AGENDA -
Town of Nags Head Planning Board
Tuesday, June 16th, 2020; 9:00 a.m.

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

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A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

D. Approval Of Minutes
May 19, 2020 Planning Board Meeting

Documents:

MAY 19 2020 DRAFT MINUTES.PDF

E. Action Items

1. Reconsideration Of A Revised Preliminary Plat
for a Major Subdivision, known as Coastal Villas, for an approximately 11.17 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel# 006749004; PIN# 989108886987); the revised Preliminary Plat proposes to create 17 building lots, along with an associated street and other required improvements.

2. Consideration Of A Text Amendment
to the Unified Development Ordinance to permit "Real Estate Rental Management Facility" within the C-2, General Commercial Zoning District.

F. Report On Board Of Commissioners Actions
June 3, 2020

Documents:

JUN 3 2020 BOC ACTIONS.PDF

G. Town Updates - As Requested

H. Discussion Items

1. Discuss And Consider Recommendation On Hazard Mitigation Plan.

2. Continued Discussion Of Legacy Establishments/Structures.

3. Continued Discussion Of Residential Stormwater Regulations.

Documents:

MEMO TO PB RE STORMWATER_6-11-2020.PDF

4. Continued Discussion Of Regulation Of Events Within Residential Dwelling Units.

5. Continued Discussion Of Large Occupancy Homes.

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment

Town of Nags Head
Planning Board
May 19, 2020

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

Planning Director Michael Zehner began by explaining that the Town now has some statutory guidance on how to conduct these meetings which is covered under Section 166-19.24 of the North Carolina General Statutes. Mr. Zehner then proceeded to review these for the Board. Included under these guidelines are requirements on meeting notifications and instructing the public on how to access the meeting; making all documents to be considered during the meeting available to each member of the public body and requiring that all votes be done by roll call.

Mr. Zehner also discussed simultaneous communications and instructed members of the public and other audience members how they could participate via the zoom platform, email or by phone.

Mr. Zehner then turned the meeting over to Planning Board Chair Megan Vaughan who called the meeting to order at 9:10 a.m. as a quorum was present.

Members Present

Megan Vaughan, Kristi Wright (Arrived at 10 AM), Molly Harrison, Meade Gwinn, Megan Lambert, Gary Ferguson, David Elder (Left about 10:45 AM)

Members Absent

None

Others Present

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

Approval of Agenda

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

Public Comment/Audience Response

None

Following Public Comment, the Board took a brief recess to resolve some technical issues before proceeding.

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the April 21, 2020 meeting. Meade Gwinn moved to approve as presented, David Elder seconded, and the motion passed unanimously via roll call vote.

Action Items

Mr. Zehner noted that the applicant for Item 1 was delayed so the Board began by hearing Item 2.

Reconsideration of a Text Amendment to The Unified Development Ordinance pertaining to temporary uses or temporary alteration of uses related to declared emergencies.

Mr. Zehner explained that the proposed text amendment was intended to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies.

Mr. Zehner noted that the Town had received communication from the Outer Banks Restaurant Association requesting the towns' consideration of regulatory changes that would allow for flexibility in restaurant operations in response to the COVID-19 Pandemic.

The proposed text amendment was developed in response to that request but was also informed by further discussions between Staff and OBRA as well as Mark Ballog (owner of Lucky 12), and John Harris (owner of Kitty Hawk Kites).

Mr. Zehner further noted that while this proposal was in response to this immediate emergency, Staff believes that this provision will have application during other emergencies.

The proposed text amendment would allow for the issuance of a Temporary Use Permit only during an emergency declared by the Mayor (pursuant to Town and State laws) or due to impacts associated with a declared emergency. In these instances, Temporary Use Permits would be authorized to be issued jointly by the Town Manager and UDO Administrator for temporary uses or the temporary modification of uses; the drafted provisions allow for broad latitude in their application, however, there are limitations on eligible uses and modifications, and ultimately, a Permit could be rejected for any activity or accommodation, in the opinion of the Town Manager and UDO Administrator, that would be contrary to the purposes of the emergency declaration and/or the interests of the public health, safety, and welfare. Mr. Zehner noted that staff did receive input with respect to food services, outdoor dining and food trucks from the Dare County Health Department

Mr. Zehner proceeded to review the proposed changes in more detail for the Board and stated that these permits can be issued for a period not to exceed 90 days and upon expiration all temporary accommodations shall cease or otherwise be considered in violation of the UDO as applicable. Permits may be extended by a request submitted no later than 10 business days prior to the expiration date. Mr. Zehner also explained how these temporary use permits affect non-conforming, permitted and conditional uses.

Mr. Zehner stated that staff wanted to make sure that they are allowing for things they had heard about and received inquiries about from business owners, such as allowing more flexibility for outdoor seating, car service and food trucks. Some of these things are allowed via the conditional use process but during a state of emergency such as this pandemic Staff didn't want to make someone go through a long process to effect a change. From an economic standpoint, the Town wants people to

be safe and practice social distancing and that means allowing businesses more flexibility in servicing their customers.

Planning Staff recommends adoption of the amendments as proposed but welcomes and will take into consideration the Planning Board's questions and feedback.

Mr. Zehner confirmed for Ms. Lambert that while the proposal offered more flexibility for food trucks they would still now be allowed at beach accesses; however they might be issued a temporary use permit to park a Food Truck at a Shopping Center or Hotel, something that is currently not allowed.

Mr. Zehner also confirmed for Ms. Lambert that under a temporary use permit a business could be allowed additional signage. The Town wants to make sure that customers are aware of a business' limitations on operations, such as limited menus, delivery options and availability of outdoor seating. Staff would take it on a case by case basis and see what's currently allowed by the Ordinance and what may need a Temporary Use permit.

Mr. Zehner noted that Staff would like the flexibility to be able to issue a temporary use permit in cases where there is a condition that is outside the norm, rather than have to hand out a violation; as long as it is not contrary to public health, safety, and welfare.

Mr. Ferguson inquired if this proposal covered non-commercial uses such as churches or other types of organizations. Mr. Zehner confirmed that the proposed amendment does allow for a temporary use permit to be issued in residential districts for uses that are currently allowed in those districts. It would not allow uses that are currently not allowed in those districts. For example, a church located in a residential district could get a 90-day permit to have a food truck after church services.

Mr. Zehner explained for Mr. Gwinn that in the case of a church, they are having to modify their operations due to the restrictions placed by the State of Emergency such as limiting exposure. In other words, Staff are not issuing temporary use permits for an emergency rather than due to the impacts or effects of a State of Emergency.

Ms. Harrison noted that it looked like the Town had really thought it through and what they are presenting looked fair and good.

Mr. Zehner discussed with Chair Vaughan and the Board how capacity might be affected by outdoor seating. Mr. Zehner confirmed that the Temporary Use Permit would not allow a business to increase the allowed occupancy subject to their Dare County wastewater permit. Mr. Zehner also noted that the proposal does not allow an establishment to increase floor area.

Mr. Zehner also confirmed that the proposal adds flexibility to use existing parking area for outdoor seating.

Chair Vaughan stated she agreed with Ms. Harrison in that the proposal is well thought out and it is really important for the Town to do what they can do to respond to the current situation. Her only concern was with the possible safety issues with using parking areas for outside dining.

Mr. Zehner confirmed that each application would be taken on a case by case basis and could be reviewed by the Town Engineer, the Fire Chief and the Police Chief to ensure that all safety issues are being addressed.

Mr. Zehner explained that the proposed ordinance was drafted so that it doesn't allow someone to do something just because they think it's a great idea, there has to be a tie in to the impacts of the state of emergency that would result in them needing or wanting to modify their operations to meet certain requirements.

Mr. Zehner confirmed for Chair Vaughan and the Board that they will work with applicants to ensure a quick turnaround on these permit requests. Depending on the request some may be issued on the spot after meeting with the applicant on-site.

Mr. Zehner confirmed that Staff is scheduled to present the proposed amendments to the Board of Commissioners on May 20, 2020, and if the Planning Board has issued a recommendation, request that the Board of Commissioners consider the scheduling of a public hearing for June 3, 2020. Mr. Zehner noted that in the meantime, some requests might be handled via a crowd gathering permit.

Mr. Ferguson inquired if the Town would require site plan modification to go with the Temporary Use permit. Mr. Zehner explained that staff has administrative discretion in terms of what type of plans would be required and there are certain circumstances or situations that would require more information and vice versa. Mr. Zehner confirmed there would need to be some type of documentation whether it be a site plan, aerial or photos.

Mr. Zehner confirmed for Chair Vaughan that the permit would be good for 90 days with the provision for an extension if needed. Mr. Zehner reminded the Board that staff wanted this proposal to be applicable for other (state of) emergencies not just the current; for instance, the need for temporary storage on-site following a hurricane.

Ms. Lambert suggested excluding menu boards from signage requirements. Mr. Zehner stated that if the Board was supportive, they could look at adding wording to the sign ordinance (outside of the temporary use permit) to exempt certain signage during a state of emergency.

David Elder moved to recommend approval of the proposed text amendment as presented. Meade Gwinn seconded, and the motion passed unanimously via roll call vote with Kristi Wright choosing to abstain as she had just arrived to the meeting.

Mr. Zehner confirmed that the applicant for the first action item (Kate Creef with Outlets Nags Head) was now present electronically, so the Board proceeded to hear Item 1.

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

Mr. Zehner explained that the Planning Board had previously reviewed and made a recommendation before this item when to the Board of Commissioners for a public hearing. At the BOC meeting there were comments from the Board that resulted in the Board voting to have the item come back to the Planning Board for reconsideration; primarily with respect to limitations on signage and where the stands might be located on a site. Of concern were the appearance of the stands and the possibility of multiple stands.

Mr. Zehner stated that he had confirmed for the Commissioners that there were eleven (11) possible sites where these stands could be located and reminded the Board that this proposed amendment is not site-specific.

Mr. Zehner came up with some recommendations to address some of the concerns including: limiting the option for two stands to sites greater than a certain size; limiting signage to a total of fifteen (15) square feet for all outdoor stands; and clarifying where stands may be located on a site.

Mr. Zehner noted that in conversations with the applicant, Ms. Creef seemed amenable to these recommendations. Ms. Creef agreed saying they were willing to work within the requirements of the Town.

Mr. Zehner and Mr. Ferguson discussed the appearance and look of a stand with Mr. Zehner explaining that they could have a situation today with a stand that was fully allowed, and it was not to everyone's liking in terms of its appearance. Mr. Zehner noted that addressing the appearance of a stand was a broader issue than what is currently before the Board.

Mr. Zehner also discussed what is currently allowed vs. what is being proposed and addressed the concern why an outdoor stand is necessary when there are already retail shops and restaurants that offer this type of service.

Ms. Creef confirmed for Chair Vaughan that the intent of the stand was to enhance the property and the shopping experience for their customers, not to meet an unfulfilled need.

Chair Vaughan noted that she personally did not have a problem with the stands and didn't feel like they would ruin the appearance of the Town. Chair Vaughan noted that booking a charter fishing trip is no less inherent to Nags Head than buying fudge. Chair Vaughan stated her only concern would be the placement of the stand and making sure that there are no safety issues, such as being too close to the road.

After some discussion the Board agreed that the appearance of the stand is something that would be hard to legislate. The Board then discussed the number of stands and the location of the stands noting that the number of stands could depend on the size of property; maybe allowing two stands only on properties larger than a certain size. As far as location, having the stands no further than a certain distance from the building with the goal being to keep them away from the road.

Ms. Creef confirmed that their goal is not to draw people to the shopping center rather than offer an amenity to existing shoppers. In their case, their idea was to locate it in the breezeway rather than the parking lot.

Ms. Harrison noted that it seemed that they were all in agreement that they approved the proposal and that they don't want to see them too close to the road. Ms. Harrison noted that the item needed to move forward before the summer was over.

Ms. Creef noted that signage seemed to be an issue for the Commissioners, and she discussed reducing the total proposed square footage for signs which in turn might alleviate the "carnival" look concern.

Ms. Wyatt suggested adding language that would keep reservation stands integrated within the retail shopping center or group development within common areas such as walkways and not allowing them to be located within any part of the parking area.

Chair Vaughan stated she liked Ms. Wyatt's suggestion and stated that she did not have a problem with the Outlets having two stands because of the size of the location but that might not apply to other locations.

Mr. Zehner suggested adding language to base the number of stands on the size of the location; ie. two stands for locations larger than 10 acres.

Ms. Harrison stated that basing it on size seemed reasonable; larger sites can have two stands; smaller sites would have one.

Chair Vaughan moved to recommend approval of the proposed text amendment to expand principal sale items from outdoor stands to include reservations and tickets for events and activities, as previously recommended and with the following additional modifications: two stands shall only be allowed on sites with an area of 10 acres or greater; that stands used for reservations or ticket sales shall be located within shopping centers or group developments, such as within common area or walkways, and shall not be located within any parking area; and, that signage be limited to 15 square feet total regardless of the number of stands. Meade Gwinn seconded the motion. The motion passed 6-0, with Mr. Elder having left the meeting prior to the vote.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the May 6, 2020 Board of Commissioner Meetings. Of note was a request for Public Hearing on the Consent Agenda for the Tutoring/Learning Facility which will be heard on June 3rd; the Public Hearing on the outdoor stands was held and that was remanded back to the Planning Board; the Public Hearing on corrections to the UDO was held and adopted without any changes; the Major Site Plan for Gone Coastal Villas was continued again to June 3rd; David Elder was reappointed for another three year term to the Planning Board; and the Preliminary Plat for Coastal Villas was also continued to June 3rd. ; Mr. Zehner anticipates that it will come back to the Planning Board at their June meeting.

Town Updates

None

Discussion Items

Continued Discussion of Legacy Establishments/Structures

Mr. Zehner stated that the Planning Board first discussed this item at their February meeting. He has since given the Board some more information and thoughts. The intent of this item is to address non-conforming uses or non-conforming structures that are seen as legacy or that define the character of the Town because of the use or because of the characteristics of the structure. The Town would like to see those continued and preserved and create some ability for that to happen. A lot of these places are non-conforming in terms of their use or in terms of setbacks or other zoning issues.

Does the Town want to create a mechanism that removes that non-conforming status or that allows the use to continue and allows someone to re-invest in the operation or expand that use or expand a building or continue reasonable repairs to a building? Mr. Zehner noted that one way to do this would be to categorize or look at the uses like they had previously done with non-conforming cottage courts. In that case, they would need to define the uses that they want to afford this protection to, and define the criteria that need to be met, in order to be eligible for those protections.

Mr. Zehner noted that another, maybe easier way would be through the creation of an overlay zoning district established for the purpose of protecting and preserving and allowing for expansion and evolution of legacy businesses and structures. They would need to define what those are, and then through some legislative action could rezone those properties that meet that definition, into that overlay district. Each rezoning request could come before the Planning Board and Board of Commissioners who would decide if that specific property or building met the requisite policy requirements.

Mr. Zehner stated they could start to maybe narrow down what are the types of uses that are more commonly going to be considered legacy businesses. Mr. Zehner gave the example of a restaurant that is non-conforming, and it's considered to be a legacy restaurant, defining to the character of the Town, and they want to make some modifications to it but are limited by their non-conforming status. They could request to be rezoned into this overlay district, where the non-confirming status would go away either because the use is permitted or there is more flexibility in the zoning requirements.

Mr. Zehner noted that doing it that way, through an overlay district allows for more discretion on the front end because you don't have to be as specific in terms of what criteria triggers that tool. Staff would like to start developing some type of overlay district and advance Comprehensive Plan policies valuing the preservation of legacy business, establishments, and structures.

Mr. Gwinn noted that there may be a scenario where multiple legacy businesses are concentrated such as at Whalebone Junction as well as some that are spread out throughout the town.

Mr. Zehner confirmed for Mr. Gwinn that an overlay district could hypothetically cover the entire town and stated that they could make it so that properties are rezoned via request or the Town could proactively identify those properties and rezone them.

Mr. Ferguson agreed with Mr. Gwinn and raised the concern of spot zoning in cases where there might only be one or two legacy properties within a particular district; could this become a legal issue?

Mr. Zehner stated that for him spot zoning is more of a zoning action that results in the application of a zoning district in a singular way, devoid of any policy considerations. What staff is proposing is to develop a district and write a policy with the intent to protect and preserve legacy businesses and structures. Mr. Zehner noted that as long as they are meeting that intent and purpose spot zoning is not a question or concern.

Mr. Ferguson suggested looking at the non-conforming section of the zoning ordinance, not unlike what Staff did with non-conforming cottage courts and modifying that section and identifying what they consider legacy buildings and then developing some rules and regulations, that allow them to expand and improve.

Mr. Zehner stated that it was certainly an option but asked if they could come up with objective criteria to decide which businesses were considered legacy and which weren't. Mr. Zehner also noted that with this option those properties would retain their non-conforming status while if they were to create an overlay district, they would no longer be considered non-conforming. Mr. Zehner reminded the Board that a non-conforming status comes with limitations and restrictions and businesses could be negatively impacted by the status.

Mr. Zehner confirmed for Chair Vaughan that it's possible that somebody could be conforming and still want to be delineated in that way (legacy business/overlay district) because it allows them to do something that they can't currently.

Mr. Ferguson suggested that if they identify a building that is considered to be of historical significance, then what they need to do is make efforts to try and preserve that building not necessarily making it conforming. They could have a section in the non-conforming ordinance that identifies each building in town that has a legacy status because it meets certain criteria. Mr. Ferguson believes that it would be simpler to do than create another overlay district.

The Board discussed whether it was the building or the use which made them a legacy property. Mr. Ferguson and Ms. Lambert both agreed that it is the structures more so than the use.

Principal Planner Holly White confirmed for Ms. Harrison that during Focus Nags Head the committee did develop a list of potential legacy properties based on criteria that they felt were important.

Mr. Zehner reiterated that it could be complicated to define what those characteristics are and what those standards are. In addition, there are implications if they continue to call those buildings non-conforming. If they have all of these properties that they are concerned about losing because of their non-conforming status, then why not just make them conforming especially if the non-conforming status is affecting the longevity and continued operation of those uses.

Ms. Harrison believes that the Town should make it easier for businesses to operate in Nags Head. If a business can't get loans because they are non-conforming, and they can't make improvements; Ms. Harrison would prefer to see a solution to that.

Mr. Zehner agreed stating they could deal with it in one or two ways, if they were no longer non-conforming it wouldn't apply or if they were still non-conforming but considered a legacy business, they could be exempt from certain limitations, which is what the Town currently does for non-conforming cottage courts.

Mr. Zehner confirmed for Ms. Lambert that this would not remove FEMA non-conformities however some of those may no longer be an issue with the new flood maps.

Mr. Zehner confirmed for Ms. Harrison that the list that was developed as of part of the Focus Nags Head project listed between 30 and 40 businesses that could be considered legacy businesses or structures. Mr. Zehner would need to review the list to determine which are conforming and which are not.

Mr. Zehner reminded the Board that the impetus for this discussion was the Blue Heron. It is both a non-conforming structure and a non-conforming use. And the original question was should the Town come up a provision in the ordinance that somehow allows for that property to be re–invested in, to evolve or to be expanded when currently all of those things are limited by zoning regulations? Could they create some zoning flexibility for that type of condition? Based on past experience if they can't, that structure may be lost.

The Board agreed that it is a complicated issue and if possible, they should keep it simple.

Mr. Zehner stated based on what he's heard from the Board today he could come back to them and present both options and go from there.

Continued Discussion of Residential Stormwater Regulations

Mr. Zehner explained that this was a continued discussion also from the February meeting which came out of the Board of Commissioners retreat. The Commissioners directed Staff to present their perspectives and the options identified by Staff to the Planning Board for review and consideration of any recommended actions.

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

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

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

In their review, the Board of Commissioners also asked that the Planning Board consider the following options identified by Staff, to determine whether related actions may be necessary so that the regulations are more consistent with the aforementioned principles.

Mr. Zehner reviewed for the Planning Board the options that Staff presented to the Commissioners:

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

Staff would recommend that the Planning Board discuss the residential Stormwater regulations, identifying their own perspectives regarding the intent of the regulations and whether the regulations achieve their intended purpose, align with the Commissioners' principles, and/or require adjustment.

Mr. Zehner stated that part of the concern is that there are outcomes or unintended consequences of these regulations and part of the issue is that over the last six months they may have been seeing some projects completed that were under the old ordinance vs. the new ordinance that didn't come into effect until November of 2019. It's important to be clear about what outcomes they can see from the new ordinance.

Generally, Mr. Zehner believes that positive results would be generated by pursuing those identified options to improve education and availability of resources and to enhance ordinance incentives for preferred outcomes.

Mr. Zehner noted that this may generate more discussion than they have time for today but was willing to answer any questions the Board may have. Mr. Zehner suggested that the Board may want to recommend that Staff continue to see how the new ordinance plays out and noted that one of the items that is on Staff's work plan is a low impact development demonstration project that they want to try to accomplish some place in town; for example showing what a rain garden looks like.

Mr. Zehner stated that Staff could focus on the education piece and come up with the steps they need to take to incentivize the preferred outcomes. Staff could then come back to the Planning Board and they can decide if it's something they want to recommend to the Commissioners. Mr. Zehner then discussed what incentives might look like.

The Board then discussed how Stormwater can affect not only the property owner but also their neighbors and even the Town. Even if the property owner does not have issues themselves, if the conditions continue, they could eventually be impacted so it's important to educate them and make them aware of correct Stormwater management practices. The Board agreed that education and awareness were critical.

Ms. Harrison suggested that they may want to get the schools involved in the educational piece.

Chair Vaughan also agreed that incentives were important and might help in maintaining landscapes, noting that there is too much lot clearing.

Mr. Gwinn noted that educating the homebuilders is important as well.

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

As noted in his Staff memo dated May 15, 2020, Mr. Zehner explained that in discussions with members of the Planning Board at their retreat in January 2020, the Board of Commissioners encouraged the Planning Board and Staff to work jointly on the development of a Work Plan for the next fiscal year in conjunction with the development of the budget, to establish priorities relating to planning and land use; in short, this Work Plan would be a collection of prioritized actions and activities serving as a strategic plan to implement various initiatives and plans.

Staff presented the concept of this Work Plan at the Planning Board's February meeting; the Board indicated their support for the effort.

Following that meeting, Staff developed an initial *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, and then subsequent revisions, the most recent of which was included in Staff's memo for the Board's review and input. This initial draft *Strategic Work Plan* was developed based upon certain considerations and identified activity categories intended to highlight as well as focus the implementation of specific plans, the Vision, Goals, Key Concerns, and Guiding Themes.

In addition to the *Strategic Work Plan*, a *Budget Overview* was also developed for the Department as part of the development of the FY20-21 Budget; this *Budget Overview* was also included in the staff report and was been prepared to align with the *Strategic Work Plan*.

Staff would suggest that activities included in the Work Plan focus on implementing the following four (4) plans:
o *Town of Nags Head Comprehensive Plan,*

o *Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report*,
o *Town of Nags Head Parks and Recreation Plan*, and
o *Nags Head Pedestrian Plan*

Additional consideration should be given to activities contained in the Town's *Decentralized Wastewater Management Plan* and *Hazard Mitigation Plan*.

Mr. Zehner noted that the Work Plan should serve as a strategic plan to implement various initiatives and plans, but activities in the Work Plan should also work towards achieving the accepted vision and goals for the Town.

Mr. Zehner noted that in the process to develop the Comprehensive Plan, both *Key Concerns* and *Guiding Themes* were identified. For the purpose of the Work Plan these activities were categorized in at least one of five categories:
o Community Character
o Sustainability & Resiliency
o Economic & Cultural Development
o Hazard & Emergency Planning
o Responsive & Transparent Government

These categories have been incorporated into the *Budget Overview* for the Department and serve as the basis for the Department's objectives for the next Fiscal Year.

Despite the above and previous work to establish this Work Plan, Staff is cognizant that this Plan will be affected by the Corona virus Pandemic and impacts to the Town's budget. Operating or CIP funds were anticipated to be used or sought for several projects, but the Town will not be considering CIPs at this time. Staff is actively exploring and applying for grants to offset budget shortfalls.

Staff would recommend that the Planning Board review the information outlined above, and specifically the implementation matrixes from the four (4) plans, as well as the initial *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, and provide feedback as to whether the Plan sufficiently implements and advances specific plans, the Vision, Goals, Key Concerns, and Guiding Themes in a strategic manner.

Chair Vaughn noted that it was nice to have the plans laid out like this because it gives it a structure and will help keep them focused.

The Board then discussed Electric Vehicle (EV) Charging Stations and the Town's recycling program and how they might tie into the theme of Sustainability and Resiliency.

Mr. Zehner noted that the intent of the work plan was to recognize Staff's bandwidth and limited resources and to focus priorities. If the Board feels like projects on this strategic work plan are not priorities vs. something else, it's good to know that. Are there things that we want to discuss but we know that we have limited ability to do that or do they rise to the level of superseding other items on the plan? Is Recycling a Planning Board issue or is it a Board of Commissioners or Administration issue?

After some further discussion Mr. Zehner suggested putting Recycling as an agenda item for their next meeting and Staff may be able to research some practices that other communities have in place.

Mr. Gwinn noted that the Board of Commissioners is working on this issue and maybe they need to wait and see what the Commissioners are doing about it. It is a big issue on a much larger scale than just the Town. Before they try to tackle this issue, they should see what the Commissioners think.

Mr. Zehner agreed saying that he can present it back to the Board of Commissioners and let them know that the Planning Board is interested in how the Town moves forward with respect to recycling and that they are available to assist and investigate solutions.

Planning Board Member's Agenda

Mr. Ferguson suggested that the Board members take a ride through Nags Head Acres to look at a house that was recently built on Bridge Lane as a sample of what they don't want to see as far as Stormwater Management. This was an option that a builder/developer decided to take advantage of. Mr. Zehner clarified that the house was built under the old ordinance and the rock that is associated with that project is in the right of way and is not a result of the Stormwater regulations but rather the Streets regulations. Mr. Zehner will email the Board Members some other addresses that are more representative of what's being done under the new ordinance.

Mr. Ferguson and the Board also discussed Board member compensation.

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by Megan Lambert. The time was 12:24 AM.

Respectfully submitted,

Lily Campos Nieberding

DRAFT

TOWN OF NAGS HEAD
BOC ACTIONS
WEDNESDAY, JUNE 3, 2020

1. Call to order - Mayor Cahoon called the meeting to order at 9:00 a.m.

2. Agenda - The Board approved the June 3rd agenda as presented.

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

4. Consent Agenda - The Consent agenda consisted of the following items:

- Consideration of Tax Adjustment Report
- Approval of minutes
- Consideration of resolution authorizing water payment plans
- Request for Public Hearing to consider UDO amendments re: outdoor stands

The Consent Agenda was approved as presented with the amendment to the resolution re: water payment plans per the Governor's Executive Order #142.

5. Public Hearing - to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021 and the updated Consolidated Fee Schedule - Town Manager Ogburn provided an update to the proposed budget per last week's budget workshop; highlights of the proposed budget include the following: No tax rate increase, No water rate increase, No use of Fund Balance, Add back to the proposed budget Part-time bath house cleaner, Part-time Office Assistant, Employee COLA, among other items.

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

7. Public Hearing - to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies - the Board adopted the ordinance amendment as presented. In addition, the Board waived associated fees for the next 45 days.

8. Update from Planning Director - Director Zehner's report was well received by the Board.

9. Flood Damage Prevention Ordinance - The Board modified the Flood Damage Prevention Ordinance by removing "by 25%" from Section 11.44.2.7.9.2. The Board then adopted the Flood Damage Prevention Ordinance with the Local Elevation Standard (LES) modified from 10' to 9' for areas west of NC 12 and SR 1243.

10. Beach Nourishment - The Board authorized the Town Manager to enter into professional service contracts with Moffat & Nichol for Tasks 1 (Beach Monitoring/Analysis), 2 (Master Plan), and 3 (Coastal Storm Damage Mitigation Grant application support) at a cost not to exceed $279,499; and with McKim & Creed for the Annual Beach Condition Survey in accordance with the Town's Beach Monitoring and Maintenance Plan at a cost not to exceed $63,100 - upon review by the Town Attorney.

11. Continuances - The following continuances were noted by Mayor Cahoon:

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

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

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

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

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

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

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

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

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

18. Closed Session - The Board entered Closed Session to discuss a personnel matter and to consult with the Town Attorney to protect attorney/client privilege (re: Blackburn litigation). The time was 11:48 a.m.

19. Open Session/Adjournment - The Board re-entered Open Session and recessed to a Budget Workshop on Tuesday, June 9th at 10 am in the Board Room.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

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

Date: February 14, 2020; updated March 13, 2020**; updated June 11, 2020**

Subject: Discussion of Residential Stormwater Regulations

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

OVERVIEW

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

The Board discussed this item at their meeting on February 18, 2020, however, only brief questions and perspectives were considered, with the Board committing to discussing further at their March meeting. **Due to the Pandemic, the Planning Board was not able to revisit consideration of the regulations until their meeting on May 19, 2020. The Board provided feedback to Staff, supporting further consideration of steps intended to improve education and the availability of resources and the enhancement of ordinance incentives for preferred outcomes, and asked Staff to return with some more concrete actions related to these focus areas. Staff also indicated that they would provide a list of projects permitted under the Ordinance so that the Board could see examples of the results of the regulations; the attached list of *Residential Stormwater Projects* was previously emailed to the Board on June 9.**

HOW DOES THE ORDINANCE WORK?

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

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

When triggered, a stormwater management plan meeting the standards required by the ordinance must be submitted. In general, the standards of the ordinance require stormwater control measures (SCMs) to be provided, with storage volume equal to 15 cubic feet for every 100 square feet of built-upon area. For example, 1,000 square feet of built-upon area would require SCMs with 150 cubic feet of storage volume. The regulations do provide options to reduce the calculated built-upon area, incentivizing preferred outcomes, and thereby reducing the necessary sizing (storage volume) of SCMs.

CONSIDERATIONS

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

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

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

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

- **Improve education and availability of resources**
    - Education:
        - In the near term, publish social media and website news flashes related to the benefits of stormwater management at the lot level.
        - Publish a brochure, similar to materials for the Septic Health Initiative, can be mailed out to homeowners focusing on the benefits of stormwater management.
        - Engage with stakeholders and focused groups (Green Drinks, contractors, homeowners) on Town stormwater efforts, stormwater management, and Low-Impact Development (LID) techniques.
        - Coordinate with CSI, North Carolina Coastal Federation, and others to share resources and increase capacity.
    - LID Pilot Project: Look for opportunities on Town property to install pilot projects highlighting LID stormwater control measures; incorporate signage and coordinate public education opportunities.
    - Availability of Resources:
        - Is there a way to cost share or subsidize costs of required improvements? This would require a budget allocation or grants.
        - There are existing grants that could be used, such as the Dare Soil and Water grant, which can provide $5,000 per homeowner, but there is a cap on total funding.
        - Could the stormwater ad valorem tax be expanded to include residential stormwater management funding?
        - Consider a water bill credit for installing LID stormwater measures such as cisterns and rain barrels.
- **Enhance ordinance incentives for preferred outcomes**
    - Expand available credits to reduce built upon area.
    - Do not cap tree and open space preservation credits to a maximum of 30% reduction of built upon area; provide the option to eliminate the need for stormwater management if you have enough open space and sizable trees to retain.
    - Provide a credit for reducing site disturbance, lot clearing, or filling.
    - Offer additional credit for not filling Army Corp of Engineers wetland areas.
    - Offer an incentive for the use of native plants in the SCMs.
    - Reduce the number of required SCMs (from 3 to 2) for a built upon area credit.
- **Provide an administrative option for engineering analysis to exempt or reduce requirements**
    - This may be an option, but conditions or standards allowing for exemption would need to be identified.

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

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

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

- **Standardize dimensions and volume of BMP's**
  - Perhaps a standard set would relate to lot size, and the lot coverage allowed by zoning.
  - May result in more predictability, but less relation to actual impacts and existing conditions.

- **Create a points-type program for BMP's and/or preferred outcomes, similar to design guidelines**
  - Needs further thought, but could be designed such that points are received for various LID components. This would open up predevelopment LID concepts for points such as siting development in lower impact portions of the site, choosing greater setbacks and smaller building footprint, retaining natural hydrological features (i.e. wetlands).
  - SCMs with greater impacts would receive more points. The BUA would determine the amount of points needed; for example, SCMs with native plants would receive more points than infiltration trenches and French drains, large cisterns would receive more points than standard rain barrels, etc.
  - Signing a maintenance agreement could also generate points.
  - May be an *overcorrection*, significantly revising a regulatory program that has been in place for only 14 months.

POLICY CONSIDERATIONS

As noted in the previously attached PowerPoint, the Town's Comprehensive Plan includes the following policies and actions related to stormwater:

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

STAFF RECOMMENDATION

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

Based upon the Board's input at the May 19 meeting, Staff would suggest that the Board consider support for the following actions and activities in any recommendation to the Board of Commissioners:

- **Improve education and availability of resources**
    - **Develop focused educational opportunities**
        - **In conjunction with Septic Health, develop educational videos on stormwater and water quality, to include interviews with staff, information on resources, and demonstrations.**
        - **Publish a brochure to be mailed to property owners discussing the importance of installing and maintaining stormwater measures, such as rain gardens, vegetative swales, and cisterns. Also focus on practices to implement at home, with or without a stormwater plan in place, such as ways to reduce irrigation with rain sensors, reduction of water consumption, rerouting downspouts to vegetated areas, vegetation of bare areas, and the use of permeable pavements.**
        - **Engage with stakeholders and focused groups (Green Drinks, contractors, homeowners) on Town stormwater efforts, stormwater management, and Low-Impact Development (LID) techniques.**
        - **Hold workshops for contractors, landscapers, and homeowners on Low Impact Development ("LID") practices**

and the installation and maintenance of Stormwater Control Measures.

- **Create visible projects in the community**
  - **Incorporate LID improvements within beach accesses, such as the Huron Street Beach Access**
  - **Incorporate plantings in the current retention area at the June Street Beach Access, along with educational signage.**
  - **Develop a plan for LID improvements at Town Hall, to possibly include permeable paving in the circle with signage, gutters and cistern, and rain garden.**
- **Establish financial resources to support the installation of stormwater measures:**
  - **Develop a program to off-set the cost of SCM installation, supported by expansion of the existing stormwater ad valorem tax.**
  - **Establish a water bill credit for installing SCMs that allow for water reuse, such as cisterns and rain barrels.**
  - **Pursue grant funding (such as the Dare Soil and Water Grant) to provide funds to homeowners for the installation of SCMs.**

- **Enhance ordinance incentives for preferred outcomes**
  - **Expand available credits to reduce built upon area by:**
    - **Eliminating the cap for tree and open space preservation credits at a maximum of 30% reduction of built upon area; provide the option to eliminate the need for stormwater management if you have enough open space and sizable trees to retain;**
    - **Offer additional credit for not filling Army Corp of Engineers wetland areas; and**
    - **Reduce the number of required SCMs (from 3 to 2) for the multiple stormwater measure built upon area credit.**
  - **Establish storage volume methodology to count preserved trees as an SCM.**
  - **Consider amending the engineering calculation/storage volume basis for the regulations and develop a performance/points-based system. Potential options could include:**
    - **Establishing a system of pre-development site planning points that could exempt a project from the requirement of a stormwater plan; perhaps a minimum of 12 points could be**

required for the exemption, with the following qualifying for points:

- **Lot coverage is less than the maximum (how much less?) - 3 points**
- **Minimal elevation changes to development area (less than 1' elevation change, exempt footprint of septic area?) - 3 points**
- **Retain mature vegetation (trees over 6" caliper, open space equal to 30% of lot size, combination of both) - 3 points**
- **Retain 100% ACOE wetlands on site - 3 points**
- **75%-100% use of permeable/pervious hardscaping - 3 points**

▪ **Establishing a system of post-development site planning points; perhaps a minimum of 12 points could be required, with the following qualifying for points:**

- **Permeable Paving**
  - **4 points for 100% composition of hardscape**
  - **3 points for 75%**
  - **2 points for 50%**
  - **1 point 1-50%**
- **Vegetated Swale**
  - **3 points per 40' swale, 1' depth**
  - **2 points per 40' swale, 6" depth**
- **Rain Garden**
  - **2 points per garden (at least 25 SF, 6" depth)**
- **Gutters with cistern of rain barrel - 2 points**
- **Infiltration Trench**
  - **2 points per 40' trench, 1' depth**
  - **1 point per 40' trench, 6" depth**

- **Use native plants in stormwater measures - 1 additional point per measure**
- **Signed Maintenance Agreement - 2 points**

Previously Distributed Attachments:

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

Attachments:

1. Residential Stormwater Projects, updated June 9, 2020

Residential Stormwater Projects (Updated 6.9.20)

Project	Old Ordinance	New Ordinance	In Progress	Complete
511 Soundside Rd (Surles)	X E			X
112 Lone Cedar (Colson)	X E			X
4207 S. Roanoke Way (ACS Contracting)	X E			X
204 W Lost Colony (Aria)	X E			X
2517 S Bridge Ln (Aria)	X E			X
405 Bridge Ln (James)	X E	X		X
323 Ridgeview Way (Maione)	X E	X		X
4207 SVDT (Jackson)		X		X
6205 SVDT (Fulcher)		X		X
103 Sound Breeze Ln (Michiels)		X	X	
8530/8528 (CAM Realty)		X		X
9918 Sandy Ct (Soundside Pools)		X		X
203 W Outlook Ct (Caribbean Pools)		X		X
9906 SOOIR (Caribbean Pools)		X		X
3208 Salada Ln (C'ville Ventures)	X E	X		X
Marina Dr (Overton)		X E		X
209 Carolinian Circle (All County Bldrs.)		X		X
305 Soundside Rd (Amini)		X	X	
417 Ridgeview Way (Hunter Homes)		X		X
4107 S Thirteenth St (NH Construction)		X	X	
Lot 11 Ridgeview Way (NH Construction)		X		X
425 Ridgeview Way (Sandy Bottom/Soles)		X		X

Old Ordinance

New Ordinance

Submitted under old ordinance, reworked under new ordinance

Project	Old Ordinance	New Ordinance	In Progress	Complete
2607 SVDT (SAGA)		X	X	X
W Seawatch Ct (Overton/Haddon)		X E	X	
0 S Linda Lane (Croatan Custom Homes)		X	X	
2702 S Lost Colony Dr (Reliant Construction)		X		X
4129 Duppies Ct (Southernscape Pools)		X	X	X
6201 Baymeadow (MK Construction)		X		X
8400 SOOIR (Bluewater Construction)		X E	X	
2517 SVDT (SAGA Pool Addition)		X	X	
217 Woodhill Dr (Esnbach driveway)		X	X	
2508 S Memorial (Victor Pugh)		X	X	
8120 SOOIR (Carolina Pools)		X	X	
107 E Morningview Pl (Godfrey)		X	X	
2115 S Memorial (Downs)		X	X	
6812 SVDT (McVearry)		X	X	
0 13th St (Seal)		X	X	
Lot 13 Ridgeview Way (NH Construction)		X	X	
Danube St (Kane)		X	X	
2912 S Memorial Ave (J Duboy Cons)			X	
Lot 17 Ridgeview Way (NH Construction)		X	X	
Lot 12 Ridgeview Way (NH Construction)		X	X	

"E" = Submitted Engineered SW Plan

Old Ordinance

New Ordinance

Submitted under old ordinance, reworked under new ordinance