AGENDA

TOWN OF NAGS HEAD BOARD OF COMMISSIONERS
NAGS HEAD MUNICIPAL COMPLEX - BOARD ROOM
WEDNESDAY, SEPTEMBER 2, 2020, 9:00 A.M.

*(**PLEASE NOTE:** In accordance with State and County Regulations - Face Coverings must be worn*
in indoor and outdoor public spaces where social distancing cannot be maintained)

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

B. ADOPTION OF AGENDA

C. RECOGNITION

1. FIVE YEARS
   - Stormwater & Streets Technician Bobby Hooper - August 5, 2015

   Documents:

   9 C RECOGNITION SUMMARY.PDF

D. PUBLIC COMMENT

E. CONSENT AGENDA

1. Consideration Of Budget Adjustment #3 To FY 20/21 Budget

   Documents:

   9 E1 BUDGET ADJ TO FY 20-21 SUMMARY.PDF
   9 E1 BUDGET ADJ 3 WORKBOOK.PDF

2. Consideration Of Tax Adjustment Reports
   - Consideration of New Year (FY 20/21) Tax Adjustment Reports
   - Consideration of Monthly Tax Adjustment Reports

   Documents:

   9 E2 TAX ADJUST REPORT SUMMARY.PDF
   9 E2 TAX ADJ MSD TAX ADJ REPORT.PDF
   9 E2 TAX ADJ MSD 2020 REPORT.PDF
   9 E2 TAX ADJ TOWN WIDE TAX ADJ REPORT.PDF
   9 E2 TAX ADJ TOWN WIDE 2020 REPORT.PDF

3. Approval Of Minutes

   Documents:

   9 E3 MINUTES SUMMARY.PDF
   9 E3 MINUTES AUG 2020 MINS.PDF

4. Consideration Of Request From Fraternal Order Of Eagles To Conduct 2020 Bonafide Fishing Tournament

   Documents:

   9 E4 FOE FISH TOURNAMENT REQUEST SUMMARY.PDF
   9 E4 FOE FISH TOURN REQUEST.PDF
   9 E4 FOE FISH TOURNAMENT REQUEST RES.PDF

5. Consideration Of Approval
   of Health Reimbursement Account, Medicare Supplement, and Business Associate agreements for Interim Town Manager

   Documents:

   9 E5 TM HEALTH PLAN SUMMARY.PDF
   9 E5 TM HEALTH PLAN HRA AGREEMENT.PDF
   9 E5 TM HEALTH PLAN BAA CONTRACT.PDF

6. Request For Public Hearing
   to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers

   Documents:

   9 E6 RPH NONCONFORMING HOTELS FISH PIERS SUMMARY.PDF
   9 E6 RPH NONCONFORMING HOTELS FISH PIERS ORD.PDF

7. Request To Modify
   Consolidated Fee Schedule for Post-Season Per Farmers Market Vendor fee

   Documents:

   9 E7 MODIFY CFS TO EXTEND FARMERS SUMMARY.PDF
   9 E7 MODIFY CFS TO EXTEND FARMERS CFS PAGE.PDF

F. PUBLIC HEARINGS

1. Public Hearing To Consider A Text Amendment
   to the UDO that would allow for lots west of NC12 and SR1243 which have a Base Flood Elevation (located in an AE zone) to have fill added up to a height required by the Dare County Health Department for onsite wastewater

   Documents:

   9 F1 PH UDO FILL IN LOTS W NC12-SR1243 SUMMARY.PDF
   9 F1 PH UDO FILL IN LOTS W NC12-SR1243 PN.PDF
   9 F1 PH UDO FILL IN LOTS W NC12-SR1243 MEMO.PDF
   9 F1 PH UDO FILL IN LOTS W NC12-SR1243 ORD.PDF

2. Public Hearing To Consider

numerous minor text amendments to the Unified Development Ordinance for clarification and to correct errors

Documents:

9 F2 PH UDO HOUSEKEEPING SUMMARY.PDF
9 F2 PH UDO HOUSEKEEPING PN.PDF
9 F2 PH UDO HOUSEKEEPING MEMO.PDF
9 F2 PH UDO HOUSEKEEPING ORD.PDF

3. Public Hearing To Consider A Text Amendment
to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use uses

Documents:

9 F3 PH UDO FURNITURE STORES SUMMARY.PDF
9 F3 PH UDO FURNITURE STORES PN.PDF
9 F3 PH UDO FURNITURE STORES APP.PDF
9 F3 PH UDO FURNITURE STORES MEMO.PDF
9 F3 PH UDO FURNITURE STORES ORD.PDF

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

1. Update From Planning Director

Documents:

9 G1 PLANNING DIR REPORT SUMMARY.PDF
9 G1 PLANNING DIR REPORT MEMO.PDF
9 G1 PLANING DIR REPORT MONTHLY RPT.PDF

H. NEW BUSINESS

1. Committee Reports

Documents:

9 H1 COMMITTEE REPORTS SUMMARY.PDF

2. Police Dept - Presentation Of Police Department Progress Report

Documents:

9 H2 POLICE DEPT REPORT SUMMARY.PDF
9 H2 POLICE DEPT PROGRESS REPORT.PDF

I. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

1. Request For Closed Session
to preserve attorney/client privilege in accordance with GS 143-318.11(a)(3) and (6) re: Beach Nourishment Project Condemnations and to discuss confidential personnel matters

Documents:

9 I1 TN ATT RCS FOR BN AND PERS SUMMARY.PDF

J. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

1. Presentation By Dominion Energy
   re: installation of electric transmission line on US 158 - **Time Specific - 10:00 a.m.**

   Documents:

   9 J1 TM DOMINION ENERGY PRES SUMMARY.PDF
   9 J1 TM DOMINION ENERGY PRES.PDF

2. Consideration Of Proposed Town Organizational Chart

   Documents:

   9 J2 TM PROP ORG CHART SUMMARY.PDF
   9 J2 TM PROP ORG CHART SLIDE.PDF

3. Consideration Of Modification To Personnel Policy Re: Approval Of Job Descriptions/Pay Class Plan

   Documents:

   9 J3 TM CHANGE TO PERS POLICY SUMMARY.PDF

4. Discussion Of Authorization To Apply For Dare County Tourism Board Grants

   Documents:

   9 J4 TM DCTB GRANT SUMMARY.PDF
   9 J4 TM DCTB GRANT SKATEPARK CIP FORM.PDF
   9 J4 TM DCTB GRANT SIDEWALK MAP.PDF

K. BOARD OF COMMISSIONERS AGENDA

L. MAYOR'S AGENDA

1. Future Town Envision

   Documents:

   9 L1 MAYOR ENVISION THE TOWN SUMMARY.PDF

M. OTHER BUSINESS

N. ADJOURNMENT

O. FULL AGENDA In .PDF Format With Bookmarks

Agenda Item Summary Sheet

Item No: **C**
Meeting Date: **September 2, 2020**

Item Title: Recognition

Item Summary:

Recognition at the September 2nd Board meeting includes the following:

FIVE YEARS – Public Works - Stormwater & Streets Technician Bobby Hooper - August 5, 2015

Number of Attachments: 0

Specific Action Requested:

Provided for Board recognition.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Greg Sparks Date: August 26, 2020

Agenda Item Summary Sheet

Item No: **E-1**
Meeting Date: **September 2, 2020**

Item Title: Consideration of Budget Adjustment #3 to FY 20/21 Budget

Item Summary:

Attached please find Budget Adjustment #3 to the FY 20/21 Budget which is provided for Board review and approval at the September 2nd Board of Commissioners meeting – and is in accordance with the FY 20/21 Budget Ordinance, adopted at the June 17, 2020 meeting. The worksheets associated with Budget Adjustment #3 are attached.

Number of Attachments: 1

Specific Action Requested:

Request Board approval of attached Budget Amendment #3.

Submitted By: Administrative Services Date: August 26, 2020

Finance Officer Comment:

Request Board approval of attached Budget Amendment #3.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

I concur with staff's request.

Signature: Greg Sparks Date: August 26, 2020

BUDGET AMENDMENT REQUEST
FY 2020-2021

BUDGET AMENDMENT NO. 3
AMENDMENT 3.1

SOURCE OF FUNDS				USE OF FUNDS		
CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
	General Fund				**General Fund**	
	Expenditure Contingency				**Expenditure Sanitation**	
900-599900	Contingency	7,650.00		580-544500	Contracted Services	7,650.00
TOTAL CHARGES		$ 7,650.00		TOTAL CREDITS		$ 7,650.00

JUSTIFICATION

Extend cart roll back entire length of multi-use path on Highways 12 and 1243 through November 16, 2020.

ADMINISTRATIVE SERVICES 8/25/2020
RECOMMENDED BY DATE

APPROVED BY BOC: DATE

POSTED TO GENERAL LEDGER:

INITIALS

BUDGET AMENDMENT REQUEST
FY 2020-2021

BUDGET AMENDMENT NO. 3
AMENDMENT 3.2

SOURCE OF FUNDS				USE OF FUNDS		
CODE	ACCOUNT	AMOUNT		CODE	ACCOUNT	AMOUNT
	General Fund Expenditure Fire				**General Fund Revenue**	
730-577400	Capital outlay equipment	8,666.00		10-430201	FEMA Fire grant	8,666.00
TOTAL CHARGES		$ 8,666.00		TOTAL CREDITS		$ 8,666.00

JUSTIFICATION

The Fire Department respirator fit testing machine grant submission was not approved.
The budget amendment will reduce the 95% Federal funding.

ADMINISTRATIVE SERVICES 8/25/2020
RECOMMENDED BY DATE

APPROVED BY BOC: DATE

POSTED TO GENERAL LEDGER:

INITIALS

Agenda Item Summary Sheet

Item No: **E-2**
Meeting Date: **September 2, 2020**

Item Title: Consideration of Tax Adjustment Reports
- Consideration of New Year (FY 20/21) Tax Adjustment Reports
- Consideration of Monthly Tax Adjustment Reports

Item Summary:

Attached please find the New Year (FY 20/21) Tax Adjustment Reports for Property and MSD valuations.

Also attached please find the list of adjustments to the 2020 Tax Levy (per information received from Dare County) for the monthly Property and for MSD valuations.

These reports are submitted for your approval at the September 2nd Board of Commissioners meeting.

Number of Attachments: 2

Specific Action Requested:

Tax reports provided for Board review and approval.

Submitted By: Linda Bittner, Tax Collector Date: August 27, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 27, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 27, 2020

Town Manager Comment and/or Recommendation:

I concur with staff.

Signature: Greg Sparks Date: August 27, 2020

Town of Nags Head, North Carolina
ANALYSIS OF CURRENT 2019 MSD TAX LEVY
2020 New Year As of August 26, 2020 for the Sept. 2, 2020 BOC Mtg

	BEACH NOURISHMENT DISTRICT				
	MSD Valuation	Rate	Total Levy	MSD Excluding Registered Motor Vehicles	Registered Motor Vehicles
Original MSD Levy:					
MSD Beach Nourishment at current year's rate	1,043,698,667	0.00143	1,492,489.68	1,492,489.68	
Registered Motor Vehicles at current year's rate	75,199	0.00143	67.43		67.43
Registered Motor Vehicles at 2019 year's rate	250,091	0.00175	437.66		437.66
Registered Motor Vehicles at 2018 year's rate	0	0.00175	0.00		0.00
Penalties			0.00	0.00	
Total	**1,044,023,957**		**1,492,994.77**	**1,492,489.68**	**505.09**
Discoveries & Adjustments:					
Current year discoveries & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Discoveries			0.00	0.00	
Total			**0.00**	**0.00**	
Releases & Adjustments:					
Current year releases & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Releases			0.00	0.00	
Total			**0.00**	**0.00**	
Write-offs or Adjustments:			0.00	0.00	
Total MSD Valuation	**1,044,023,957**				
Net levy		**1,492,994.77**		**1,492,489.68**	**505.09**
TOTAL UNCOLLECTED MSD AS OF 08/26/20:		**(1,421,471.05)**		**(1,421,471.05)**	**0.00**
CURRENT YEAR MSD COLLECTED:		**71,523.72**		**71,018.63**	**505.09**
CURRENT MSD COLLECTION PERCENTAGE:		**4.791%**		**4.758%**	**100.000%**

Town of Nags Head, North Carolina
ANALYSIS OF CURRENT 2019 MSD TAX LEVY
2020 New Year As of August 19, 2020 for the Sept. 2, 2020 BOC Mtg

	BEACH NOURISHMENT DISTRICT				
	MSD Valuation	Rate	Total Levy	MSD Excluding Registered Motor Vehicles	Registered Motor Vehicles
Original MSD Levy:					
MSD Beach Nourishment at current year's rate	1,043,698,667	0.00143	1,492,489.68	1,492,489.68	
Registered Motor Vehicles at current year's rate	0	0.00143	0.00		0.00
Registered Motor Vehicles at 2019 year's rate	0	0.00175	0.00		0.00
Registered Motor Vehicles at 2018 year's rate	0	0.00175	0.00		0.00
Penalties			0.00	0.00	
Total	**1,043,698,667**		**1,492,489.68**	**1,492,489.68**	**0.00**
Discoveries & Adjustments:					
Current year discoveries & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Discoveries			0.00	0.00	
Total			**0.00**	**0.00**	
Releases & Adjustments:					
Current year releases & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Releases			0.00	0.00	
Total			**0.00**	**0.00**	
Write-offs or Adjustments:			0.00	0.00	
Total MSD Valuation	**1,043,698,667**				
Net levy		**1,492,489.68**		**1,492,489.68**	**0.00**
TOTAL UNCOLLECTED MSD AS OF 08/19/20:		**(1,492,489.68)**		**(1,492,489.68)**	**0.00**
CURRENT YEAR MSD COLLECTED:		**0.00**		**0.00**	**0.00**
CURRENT MSD COLLECTION PERCENTAGE:		**0.000%**		**0.000%**	**0.000%**

Town of Nags Head, North Carolina
ANALYSIS OF CURRENT 2019 TAX LEVY
2020 New Year As of August 26, 2020 for the Sept. 2, 2020 BOC Mtg

	Town-Wide Tax			Total Levy	
	Property Valuation	Rate	Total Levy	Property Excluding Registered Motor Vehicles	Registered Motor Vehicles
Original levy:					
Property taxed at current year's rate	3,023,074,681	0.00265	8,011,156.45	8,011,156.45	
Registered Motor Vehicles at current year's rate	1,278,512	0.00265	2,932.42		2,932.42
Registered Motor Vehicles at 2019 year's rate	3,449,678	0.00317	10,935.48		10,935.48
Registered Motor Vehicles at 2018 year's rate	9,472	0.00307	29.08		29.08
Registered Motor Vehicles at 2017 year's rate	0	0.00297	0.00		0.00
Penalties			3,110.31	3,110.31	
Total	**3,027,812,343**		**8,028,163.74**	**8,014,266.76**	**13,896.98**
Discoveries & Adjustments:					
Current year discoveries & adjustments tax	0.00		0.00	0.00	
Town wide beach nourishment tax			0.00	0.00	
Corporate Utilities discoveries & tax	0.00		0.00	0.00	
Corporate Utilities beach nourishment tax			0.00	0.00	
Penalty Discoveries			0.00	0.00	
Total	**-**		**0.00**	**0.00**	
Releases & Adjustments:					
Current year releases & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Releases			0.00	0.00	
Total	**0**		**0.00**	**0.00**	
Write-offs or Adjustments:			0.00	0.00	
Total Property Valuation	**3,027,812,343**				
Net levy		**8,028,163.74**		**8,014,266.76**	**13,896.98**
Uncollected Taxes & Penalties		(6,940,368.00)		(6,940,368.00)	0.00
Uncollected Town Wide Beach Nourishment		(643,697.12)		(643,697.12)	0.00
TOTAL UNCOLLECTED TAXES AS OF 08/26/20:		**(7,584,065.12)**		**(7,584,065.12)**	**0.00**
CURRENT YEAR TAXES COLLECTED:		**444,098.62**		**430,201.64**	**13,896.98**
CURRENT LEVY COLLECTION PERCENTAGE:		**5.532%**		**5.368%**	**100.000%**

Town of Nags Head, North Carolina
ANALYSIS OF CURRENT 2019 TAX LEVY
2020 New Year As of August 19, 2020 for the Sept. 2, 2020 BOC Mtg

	Town-Wide Tax			Total Levy	
	Property Valuation	Rate	Total Levy	Property Excluding Registered Motor Vehicles	Registered Motor Vehicles
Original levy:					
Property taxed at current year's rate	3,023,074,681	0.00265	8,011,156.45	8,011,156.45	
Registered Motor Vehicles at current year's rate	0	0.00265	0.00		0.00
Registered Motor Vehicles at 2019 year's rate	0	0.00317	0.00		0.00
Registered Motor Vehicles at 2018 year's rate	0	0.00307	0.00		0.00
Registered Motor Vehicles at 2017 year's rate	0	0.00297	0.00		0.00
Penalties			3,110.31	3,110.31	
Total	**3,023,074,681**		**8,014,266.76**	**8,014,266.76**	**0.00**
Discoveries & Adjustments:					
Current year discoveries & adjustments tax	0.00		0.00	0.00	
Town wide beach nourishment tax			0.00	0.00	
Corporate Utilities discoveries & tax	0.00		0.00	0.00	
Corporate Utilities beach nourishment tax			0.00	0.00	
Penalty Discoveries			0.00	0.00	
Total	**-**		**0.00**	**0.00**	
Releases & Adjustments:					
Current year releases & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Releases			0.00	0.00	
Total	**0**		**0.00**	**0.00**	
Write-offs or Adjustments:			0.00	0.00	
Total Property Valuation	**3,023,074,681**				
Net levy		**8,014,266.76**		**8,014,266.76**	**0.00**
Uncollected Taxes & Penalties		(7,334,070.74)		(7,334,070.74)	0.00
Uncollected Town Wide Beach Nourishment		(680,196.02)		(680,196.02)	0.00
TOTAL UNCOLLECTED TAXES AS OF 08/19/20:		**(8,014,266.76)**		**(8,014,266.76)**	**0.00**
CURRENT YEAR TAXES COLLECTED:		**0.00**		**0.00**	**0.00**
CURRENT LEVY COLLECTION PERCENTAGE:		**0.000%**		**0.000%**	**0.000%**

Agenda Item Summary Sheet

Item No: **E-3**
Meeting Date: **September 2, 2020**

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

Item Summary:

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

August 5, 2020 Regular Session

Number of Attachments: 1

Specific Action Requested:

Provided for Board review and approval.

Submitted By: Carolyn F. Morris, Town Clerk Date: August 26, 2020

Finance Officer Comment:

No unbudgeted costs associated with this agenda item.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Greg Sparks Date: August 26, 2020

DRAFT MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING _(COVID-19)_
WEDNESDAY, AUGUST 5, 2020

*(**PLEASE NOTE:** In accordance with State and County Regulations due to COVID-19, Face Coverings must be worn in indoor and outdoor public spaces where social distancing cannot be maintained)*

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, August 5, 2020 at 9:00 a.m.

Board members Present:	Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley
Board members Absent:	None
Others present:	Interim Town Manager Greg L. Sparks; Attorney John Leidy; Andy Garman; Amy Miller; Randy Wells; Phil Webster; Karen Snyder; Michelle Gray; Roberta Thuman; Anthony Beasley; Mike Norris; Jason Brickhouse; Russell Canter; Charles Bliven; Michael Alvarez; Charles Richt; C. Grice McMullan; Cathleen Saunders; and Town Clerk Carolyn Morris

CALL TO ORDER
Mayor Cahoon called the meeting to order at 9:00 a.m. Mayor Cahoon said that we were fortunate to have minimal disruption from Hurricane Isaias but that we should remember those in other areas who suffered loss of life and property damage. He also mentioned the explosion and loss of lives in Beirut. A moment of silence was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the August 5th agenda as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

RECOGNITION

INTRODUCTION of 2020 Season Lifeguards - Mayor Cahoon pointed out that the Board has received numerous thank-you's from various visitors to the beach for the efforts of lifeguards this season.

Fire Chief Randy Wells commended Ocean Rescue Director Chad Motz who has put together a great group of lifeguards for many summer seasons. Chief Wells then presented a powerpoint presentation

where each lifeguard was introduced. Board members thanked staff for the presentation and commended the lifeguards.

Fleet Maintenance Superintendent Charlie Bliven introduced Fleet Mechanic Jason Brickhouse who was recognized by the Board for five years of service.

Facilities Maintenance Supervisor Mike Norris introduced Facilities Maintenance Technician Russell Canter who was recognized by the Board for five years of service.

Facilities Maintenance Supervisor Mike Norris introduced Sanitation Equipment Operator Anthony Beasley who was recognized by the Board for ten years of service.

Police Chief Phil Webster introduced Police Officer Michael Alvarez who was recognized by the Board for five years of service.

PUBLIC COMMENT
No one spoke during Public Comment.

CONSENT AGENDA
The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #2 to FY 20/21 Budget

Consideration of Tax Documents
- FY 19/20 Year End Tax Adjustment Report
- FY 19/20 Year End Tax Settlement Report
- FY 20/21 Charge to Tax Collector to prepare new year taxes

Approval of minutes

Approval of Revision 2020 of NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017 was approved at the July Board meeting)

Approval of revised contract with Dare County under the Federal CARES Act (this revised contract supersedes initial version approved at the July Board meeting)

Consideration of amendment to Traffic Control Map to lower speed limit on Nags Head/Manteo Causeway in response to NCDOT removal of pedestrian facilities at Little Bridge

Consideration of extension of existing MOA with Town of Cary for emergency relocation of government during a State of Emergency

Consideration of drainage easement agreement with Gandt Development, LLC at 101 E. Dove St.

Consideration of agreement with Outer Banks Professional Services

Request for Public Hearing to consider numerous minor text amendments to the Unified Development Ordinance for clarification and to correct errors

Request for Public Hearing to consider a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of commercial mixed-use uses

MOTION: Comr. Renée Cahoon made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

Mayor Cahoon asked Interim Town Manager Greg Sparks to follow up with NCDOT concerning erection of the 45 MPH signs on the Nags Head/Manteo Causeway.

Budget Adjustment #2 to the FY 20/21 Budget, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

The Tax Documents presented: the FY 19/20 Year-End Tax Adjustment Reports, the FY 19/20 Year-End Tax Settlement Report, and the FY 20/21 Charge to Tax Collector; as approved, are attached to and made a part of these minutes as shown in Addendum "B".

The agenda summary sheet concerning the revised 2020 NC Statewide Emergency Management Mutual Aid and Assistance Agreement read in part as follows:

"The NC Statewide Emergency Agreement, Revision 2017, was reviewed and approved at the July 1st Board of Commissioners meeting. The State subsequently asked that the agreement, Revision 2020, be reviewed and approved. The only change between the 2017 agreement and the 2020 agreement is below (definition of "Emergency" was expanded):

'2017 - "Emergency" means an occurrence or imminent threat of widespread or severe damage, injury or loss of life or property, resulting from any natural or man-made accidental, military, or paramilitary cause.

'2020 – "Emergency" means an occurrence or imminent threat of widespread or severe damage, injury or loss of life or property, resulting from any natural or man-made accidental, military, or paramilitary, terrorism, weather-related, public health, explosion-related, riot-related cause, or technological failure or accident, including, but not limited to, a cyber incident, an explosion, a transportation accident, a radiological accident, or a chemical or other hazardous material incident.

'Fire Chief Randy Wells has approved the request. Attached please find the NC Statewide Emergency Agreement, Revision 2020, for Board approval at the August 5th Board of Commissioners meeting."

The agreement, as approved, is on file in the Town Clerk's office.

The agenda summary sheet concerning the contract with Dare County under the Federal CARES Act read in part as follows:

"The initial contract with Dare County under the Federal CARES Act was approved at the July 1st Board of Commissioners meeting. The contract allocates funds for local governments as part of the Coronavirus Relief Fund established under the Federal CARES Act.

'Last week the Governor signed HB 1023 which is the second part of the State COVID-19 Relief Fund and voids the initial contract approved on July 1st. It requires each County to give 25% of the grand total of part 1 and part 2 to towns.

'Dare's part 1 = $852,149
Dare's part 2 = $718,269
Dare's total = $1,570,418 so $392,605 of that amount goes to the municipalities.

'In addition to the proposed contract with Dare County, also attached is House Bill 1023 and FAQ of the Coronavirus Relief Fund."

The agreement, as approved, is on file in the Town Clerk's office.

The agenda summary sheet concerning the proposed amendment to the Traffic Control Map read in part as follows:

"Attached please find correspondence from NCDOT dated July 13, 2020 re: Little Bridge on the Nags Head/Manteo Causeway. In it, NCDOT details what it has done and what it will be doing to increase pedestrian safety at the Little Bridge to include the following:

1. *Remove the high visibility pedestrian crosswalk pavement markings*
2. *Removal of the pedestrian refuge islands in the center turn lane of US 64 (work pending)*
3. *Remove all signage related to the crossing*
4. *Replace the guardrail end treatments by closing the gaps in the existing guardrail*
5. *Install fencing to prohibit access to the catwalk on the north side of the bridge*
6. *Install "no parking" signs along the north side of US 64 from a point 200 feet west of the Melvin R. Daniels Bridge to a point approximately 1000 feet east of the bridge*
7. *Reduce the existing speed limit on US 64 from 50mph to 45mph beginning at the western Town Limits of Nags Head to US 158 at Whalebone Junction*
8. *Enact "No Fishing" ordinance on the north side of the bridge*

'Also attached please find an amendment modifying the Traffic Control Map in response to NCDOT's actions to lower the speed limit."

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

The agenda summary sheet concerning the extension of the existing Memorandum of Agreement with the Town of Cary read in part as follows:

"The existing Memorandum of Agreement (MOA) with the Town of Cary authorizes the Town of Nags Head to utilize their spaces if needed in a State of Emergency. The attached MOA has only been

modified from the November 2015 version to be extended for an additional five (5) years and to include updated official names. Interim Town Manager Sparks has received concurrence from the Town of Cary for this extension."

The MOA with the Town of Cary, as approved, is on file in the Town Clerk's office.

The agenda summary sheet concerning the Drainage Easement Agreement with Gandt Development at 101 E Dove Street read in part as follows:

"Enclosed for Board consideration is a non-exclusive drainage easement agreement with Gandt Development, LLC for the subject property located at 101 E. Dove St. The agreement is being proposed to encompass a minor drainage swale encroachment across the northeast corner of 101 E. Dove St. A formal agreement will provide the Town a mechanism for continued operation and maintenance of the portion of drainage improvements which cross the corner of the subject property.

'A copy of the non-exclusive easement agreement and proposed stormwater easement exhibit is attached. Once fully executed, the agreement will be recorded with the Dare County Register of Deeds."

The easement agreement, as approved, is on file in the Town Clerk's office.

The agenda summary sheet concerning the agreement with Outer Banks Professional Services read in part as follows:

"The attached agreement is between the Town and Outer Banks Professional Services, LLC which is also known as The Outer Banks Hospital Center for Healthy Living ("Clinic"). The agreement would permit Town employees to utilize the Clinic's facility to provide immediate convenience care for acute complaints. The Clinic will accept from the Town's health insurance provider, MedCost, the allowable amount under the current network agreement between the Clinic and MedCost. Employees would not be required to pay a co-pay fee for these services."

The agreement with Outer Banks Professional Services, LLC, as approved, is on file in the Town Clerk's office.

The agenda summary sheet concerning the Request for Public Hearing - Numerous minor text amendments to the UDO - as approved - read in part as follows:

"Since the Board of Commissioners May 6, 2020 meeting where the first iteration of post-Unified Development Ordinance adoption typographical errors was adopted, staff has identified several additional areas for correction or improvement of the UDO. These proposed amendments include: correction to the Post-Firm Definition, correction of various mis-spelled words, amending the UDO with the updated information from the December 5, 2018 approval of stormwater management amendments, correction to clarify that there are no supplemental standards for the use of Government Administrative Office, and to include "flag (non-advertising, non-informational)" regulations that were inadvertently deleted during the adoption of the UDO.

'Staff Recommendation/Planning Board Recommendation
Planning staff recommends that the amendments be adopted as proposed.

'At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the proposed text amendments as proposed."

The agenda summary sheet concerning the Request for Public Hearing - to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use uses - as approved - read in part as follows:

"Cahoon and Kasten Architects, PC has submitted a text amendment application on behalf of Sumit Gupta of Legacy Homes, Inc. If adopted, this text amendment would amend the Unified Development Ordinance ("UDO"), Section 7.32.2., to add the "Furniture Store" use as an allowable use for all Commercial Mixed-Use designations. This includes the following use types: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Centers. Furniture is an allowed use within the C-2 Zoning District therefore it would within that district only that a furniture store could be incorporated as part of a mixed use. With the exception of the Commercial with Accessory Residential use, all other mixed-use designations require a conditional use permit within the C-2 District.

'Staff Recommendation/Planning Board Recommendation
Planning staff generally has no concern with listing the use of "Furniture Store" as an allowable use for all Commercial Mixed-Use designations and believes that is consistent with applicable policies.

'At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the proposed text amendment as proposed."

PUBLIC HEARINGS

Public Hearing to consider 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 and Parcel # 006749039; PIN # 989108893398); the revised Preliminary Plat proposes to create 17 building lots, along with an associated street and other required improvements, and requires a public hearing due to requested waivers

Attorney John Leidy introduced the Public Hearing to consider 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 and Parcel # 006749039; PIN # 989108893398); the revised Preliminary Plat proposes to create 17 building lots, along with an associated street and other required improvements, and requires a public hearing due to requested waivers.

Attorney Leidy explained that the Board sits as a quasi-judicial body and must make its decision: 1) based on competent material and substantial evidence - and those presenting must be sworn in 2) based on information presented, and 3) Board members must be recused if there is basis for believing

that they would not be able to be an impartial decision maker - to include a commissioner having a fixed opinion not susceptible to change. He questioned if Board members had any potential conflict and anything to disclose.

Comr. Brinkley said that while he has spoken with several Southridge Subdivision residents he confirmed that he would base his decision only on the evidence presented today.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, August 22, 2020 and on Wednesday, August 29, 2020 as required by law.

The time was 9:20 a.m.

Town Clerk Carolyn F. Morris swore in the following persons: Planning Director Michael Zehner and Quible & Associates engineer Cathleen Saunders.

The agenda summary sheet read in part as follows:

"The subject application is a Preliminary Plat for a Major Subdivision known as Coastal Villas, revised from the previous version considered by the Board in January 2020. The revised Plat now proposes the new street from US 158 (as opposed to Sea Bass Court) and incorporates a parcel owned by Dare County, planned for a future well site, determined to have not been properly subdivided in 2004. The proposed layout of the Dare County parcel necessitates waivers from provisions of the Subdivision Regulations concerning street access, access to US 158, and frontage; similar waivers were considered and approved in 2004.

'Planning Board/Staff Recommendation - Staff recommends approval of the Preliminary Plat, with conditions, and recommends approval of the requested waivers.

'The Planning Board, at their June 16, 2020 meeting, voted 7-0 to recommend approval of the Preliminary Plat to the Board of Commissions, with the conditions recommended by Staff, and recommended approval of the requested waivers based upon the required findings."

Planning Director Michael Zehner summarized the staff report which read in part as follows:

"As the Board is aware, a Preliminary Plat for the subject property (excluding Parcel #: 006749039; PIN #: 989108893398) was presented for review and action at the Board's meeting on January 8, 2020. In written comments received prior to the meeting, and in public comments at the meeting, the Commissioners heard from abutting residents in the South Ridge subdivision concerned about the access to the proposed subdivision, which was to be through existing neighborhood streets, and involved the improvement of an existing paper street (Mariners Way) to connect the proposed subdivision street to Sea Bass Court. Following a presentation by Staff and discussion amongst the Board of Commissioners, the Board passed a motion to table consideration of the Preliminary Plat until the Board of Commissioners March 2020 meeting and to ask that Staff facilitate a discussion between the developer and the Fourth Street property owners to have one curb cut, one right-of-way off of US 158 as a better solution for access. Prior to the March 4, 2020 Board of Commissioners meeting, the applicant requested a continuance to the Board's May 6, 2020 meeting, which was granted.

'Since the Board of Commissioners January meeting, as directed, Staff has worked to facilitate discussions between the developer of the subject subdivision and the owner of 6 lots abutting the paper street known as Fourth Street. Staff held multiple separate conversations with the parties pursuant to the Board's direction, and held a meeting with the parties and their respective engineers to discuss the proposed development and future plans for Fourth Street. While Staff is unaware of any agreement between the parties, the proposed revised plan relocates access to the subdivision to US 158/S. Croatan Highway (eliminating the street/vehicular connection to Sea Bass Court) and extends the proposed street to allow for connectivity to the existing Fourth Street right- of-way; the revision of the plan was determined to require reconsideration by the Planning Board. The revised preliminary plat was reviewed by the Planning Board at a meeting on April 21, 2020. Ultimately, the Planning Board unanimously recommended approval of the Preliminary Plat as recommended by Staff, but noted concerns related to safety due to the possibility of two additional curb cuts on 158 (one being associated with Fourth Street), and a preference for the preliminary plat that had been presented to the Board in December 2019 providing access through Mariners Way/Sea Bass Court.

'During the Planning Board's review, member Gary Ferguson had inquired as to the circumstances leading to the creation of the property subject to the preliminary plat. Following the meeting, in coordination with the applicant and their representatives, as well as the Town Attorney, it was determined that a division in 2004 that was intended to establish a separate 1.03 acre parcel to be transferred to Dare County for use as a future well site, had not been properly subdivided. While a preliminary plat and associated waivers for this division had been approved by the Board of Commissioners, there is no record that a final plat for this subdivision was ever produced, approved, or recorded. Therefore, the applicant revised the preliminary plat further to include this additional 1.03 acres, and is proposing to re-establish the lot as part of the proposed subdivision; similar to the proposal in 2004, the preliminary plat requires waivers from the subdivision regulations, discussed further below. This further revised preliminary plat with waivers was similarly determined to require reconsideration by the Planning Board, held at the meeting on June 16, 2020. The Planning Board recommended approval of the Preliminary Plat with conditions, and recommended approval of the requested waivers.

'With regard to Fourth Street, Staff is aware that representatives of the Fourth Street properties have contacted NCDOT to discuss improvement of the street, and specifically any restrictions that may be imposed on any intersection with US 158/S. Croatan Highway; Staff has also made the owner of these properties aware of the likely process for requesting and making improvements to this right-of-way. Staff has been made aware that NCDOT, at least preliminarily, is inclined to allow the connection to US 158/S. Croatan Highway, likely requiring this to be restricted to right-in/right-out only. It is important to note, that the development of the Fourth Street lots or improvements to the Fourth Street right-of-way beyond the subject property are not subject to review under this Preliminary Plat. No commitments have been made with respect to the improvements of this portion of the right-of-way that would affect the consideration of the subject Preliminary Plat.

'OVERVIEW

The subject application is a Preliminary Plat for a Major Subdivision[1] of an approximately 11.17-acre property located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 ("the Proposed Subdivision"). The Proposed Subdivision would create seventeen (17) building lots, located along a new street connecting directly to US 158/ S. Croatan Highway; additionally, the preliminary plat includes two open space areas, as well as the creation of Lot A-2, a 1.03 acre lot owned by Dare County with notes indicating the "lot shall be limited to a well

production site for the Dare County reverse osmosis plant." The new street, identified as Coastal Breeze Way, would terminate at the southern property line, allowing future connectively to an existing paper right-of-way identified as Fourth Street. The proposed Preliminary Plat provides for a cul-de-sac to be developed where the proposed new street terminates, with allowances for the cul-de-sac to be removed if the existing Fourth Street right-of-way to the south is improved. As noted, the property is zoned R-2, Medium Density Residential; all proposed building lots (numbered 1 thru 17) are conforming, meeting the minimum required lot size of 20,000 square feet and demonstrating compliance with required minimum yard depths (i.e. setbacks; Front: 30 feet, Side: 10 feet, Rear: 20% of lot depth, not to exceed 30).

'The proposed preliminary plat, and specifically the configuration of lot A-2 due to its lack of frontage, lack of direct access to a right-of-way, and proposed direct access through easement to US 158, requires waivers from the following provisions of the Subdivision Regulations:

- Section 10.46 Access to Public Street or Highway Required. There shall be no subdivision of any tract of land which does not have access to a public street or highway which is improved to the standards of the Town or the NCDOT, whichever is applicable, which access is of a right-of-way width and is improved in accordance with Section 10.66, Streets.

- Section 10.47 Limiting Access to US 158, US 64/264, NC 12, and SR 1243. Access to US 158, US 64/264, NC 12 or SR 1243 from any lot in a new residential subdivision of land or any recombination of existing residential lots is prohibited unless and except a variance or waiver is granted pursuant to this UDO. Access to any of the above major streets shall be provided by another existing, improved public street accepted for maintenance by the Town or a local access street, collector street or environmental street in the subdivision or an access easement shown on a subdivision plat approved by the Board of Commissioners; provided, however, that maintenance and replacement of accessways is approved by the Town Attorney and is in accordance with Section 10.51.4.

- Section 10.68.1. Frontage; Area. All lots in a subdivision must front a street, and no lot shall be laid out which shall have an area less than that required by Article 8, District Development Standards of this UDO

- Section 10.68.3. Minimum Amount of Frontage. All lots shall be designed so that they shall front on a public street for a distance of not less than fifty (50) feet which shall be measured along the right-of-way of such street; provided, further, that in the case of lots fronting on a cul-de-sac or street curve, the frontage may be reduced to not less than thirty (30) feet upon approval of the Planning Board.

'It is also important to note that the revised version of the preliminary plat provides for the multi-use path extension through the Mariners Way paper right-of-way to meander away from the southern property line. This was a change from previous versions, responsive to considerations previously requested by a property owner along Sea Bass Court, while also considering potential impacts to Live Oak trees proposed to be retained within this area.

'PROCEDURAL REQUIREMENTS/CONSIDERATIONS
The procedural requirements applicable to subdivisions are provided in Article 4, *Development Review Process*, Part IV, *Subdivision Procedures*, of the UDO; requirements or considerations of note are as follows:

- Pursuant to Section 4.22, *Initial Conference; Preliminary Sketch*, the applicant was first required to submit a preliminary sketch of the proposed subdivision and confer with the UDO Administrator. These requirements were completed, with authorization granted to the subdivider on October 3, 2019 to prepare a preliminary plat to be submitted to the Planning Board. Please note, the preliminary sketch plan for the subdivision provided for a street connection to US 158, with no connection through to Sea Bass Court; while the original plan proposed a connection to Sea Bass Court and no access from US 158, the now redesigned plan is more consistent with the preliminary sketch plan in this respect.

- The following subsections, or parts thereof, to Section 4.24, *Review Procedure for Major Subdivisions*, 4.24.1, *Preliminary Plat*, are applicable to the Proposed Subdivision:

○ 4.24.1.2., in part, "…the UDO Administrator who shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator will solicit and receive comments from other persons or agencies before making final recommendations. If the application is complete, the UDO Administrator will submit it to the Planning Board…"

'With the exception of the waivers noted above, it was determined by the UDO Administrator that the plan for the Proposed Development meets the requirements of the UDO, to be discussed further below under REGULATORY & DESIGN REQUIREMENTS/ CONSIDERATIONS.
Additionally, comments were solicited and received from Town Staff on both the original and now each of the redesigned plans; the attached letter from Cathleen Saunders, P.E., Quible & Associates, P.C., dated April 14, 2020, is an accurate representation of Staff comments pertaining to the revised Plan reviewed at the Planning Board's April 21 meeting, with responses from Ms. Saunders.

'The version of the proposed preliminary plat that is now before the Board was distributed for review by Town Staff. Returned comments noted that eventual construction drawings should include the planned location of water taps, further reference to the applicant's commitment to relocate the water line at the south of the subdivision to within the easement, the need to coordinate with Town Public Works on the installation of a waterline extension toward Sea Bass Court, and further requested that the applicant continue attempts to coordinate with NCDOT. On this last point, as previously indicated, the applicant's engineer did communicate that they received "preliminary verbal confirmation from NCDOT…that they will allow access off of S. Croatan Hwy," and were expecting to receive written confirmation with any applicable restriction or requirements. Staff can confirm that NCDOT's communications regarding Fourth Street noted this preliminary approval.

3 4.24.1.3., in part, "The Planning Board shall forward its recommendation to the Board of Commissioners within thirty (30) days after first consideration by the Planning Board. If the Planning Board fails to act within the 30-day period, the subdivision will be placed on the next available Board of Commissioners agenda. The Board of Commissioners shall consider the preliminary plat and approve, approve with conditions acceptable to the applicant, or disapprove the plan."

4 4.24.1.4., in part, "The Planning Board shall determine whether the preliminary plat meets the policy, purposes, and standards established by this Part and shall study its practicability, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands, construction plans, erosion control plans, and the requirements of the master plan and the official map, if such exist, the zoning requirements and this UDO. The

Planning Board shall submit its findings and recommendations to the Board of Commissioners at their next regularly scheduled meeting. The Board of Commissioners may approve, reject or grant conditional approval of the preliminary plat. The Planning Board or the Board of Commissioners, in its discretion, if it deems that health and sanitary conditions in the area, the subdivision plans and planned population density warrant, may require percolation tests of the soil by the subdivider and the installation of appropriate sanitary and waste disposal facilities as a condition of approval."

5 4.24.1.5., Conditional Approval, "When recommending conditional approval of a preliminary plat, the Planning Board shall state in writing the conditions of such approval, if any, with respect to:

4.24.1.5.1. The specific changes which it will require in the preliminary plat;

4.24.1.5.2. The character and extent of these required changes; and

4.24.1.5.3. The amount of all bonds which will be required as a prerequisite to the approval of the preliminary plat.

'Conditional approval of a preliminary plat shall not constitute approval of the final subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final plat, which will be submitted for approval by the UDO Administrator, and for recording upon fulfillment of the requirements of this Part and the conditions of the conditional approval, if any. The Planning Board or the Board of Commissioners may require additional changes as a result of further study of the subdivision plans or as a result of new information obtained subsequent to the time of conditional approval. The fulfillment of these conditions and the incorporation of these conditions into the preliminary plat shall be determined by the UDO Administrator in accordance with the instructions of the Board of Commissioners. At such time, the Board of Commissioners' approval shall become final, as to the preliminary plat, and the UDO Administrator shall so signify on the plat."

- With the necessary waivers, the provisions of Section 4.28, Subdivision Waivers, as follows, are applicable to consideration of the preliminary plat by the Planning Board and Board of Commissioners:

  - Section 4.28 Subdivision Waivers.

4.28.1. Waivers Generally. Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may recommend and the Board of Commissioners may waive such requirements subject to appropriate conditions. Any decision of the Board of Commissioners must be rendered by a simple majority of those members present and constituting three-fourths of the total membership of the Board. Waiver requests shall be handled in accordance with the procedures established in Section 3.13, Procedures for Quasi-Judicial Hearings.

4.28.2. Conditions. In granting such waivers, the Planning Board may recommend and the Board of Commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

'REGULATORY & DESIGN REQUIREMENTS/CONSIDERATIONS
The regulatory and design requirements applicable to subdivisions are provided in Article 10, *Performance Standards*, Part V., *Subdivision Regulations*, Division II., *Approval and Platting Requirements*, and Division III., *Improvements*, of the UDO; requirements or considerations of note are as follows:

- As noted above, the proposed preliminary plat requires waivers from Section 10.46, Access to Public Street or Highway Required, and Section 10.47, Limiting Access to US 158, US 64/264, NC 12, and SR 1243.

- Section 10.51.4., *Covenants and Deed Restrictions*, requires the submission of "proposed covenants, deed restrictions and a hold harmless agreement, in duplicate, which are intended to cover all or part of the tract…For any proposed subdivision amenities including, but not limited to, tennis courts, swimming pools, streets, and vehicular and pedestrian accessways for the benefit of the property owners, the developer shall establish a property owners association having the responsibility and authority for the upkeep, maintenance, repair, and reconstruction of such amenities and the authority to assess and collect dues and fees from the property owners within the subdivision for this purpose." The applicant has submitted a draft Declaration of Restrictive Covenants for review, with a final version required to be approved in conjunction with approval of the Final Plat.

- Section 10.62, *Required Improvements Enumerated*, indicates the improvements required to be provided by the subdivider, as follows:

  - Street rights-of-way and paved streets;
  - Water lines, mains, fire hydrants and services;
  - Electric and telephone lines and conduit;
  - Streetlights and supports and related electric wires and conduit;
  - Easements of right-of-way for utilities, where such are not within the street right-of-way;

- Section 10.63, *Dedications*, indicates the improvements and easements required to be offered to the Town or utility authorities for dedication:

  - Streets and street rights-of-way;
  - Water lines, mains, fire hydrants and services;
  - Easements of right-of-way for construction, operation and maintenance of utilities and cable television lines;
  - Streetlights and supports and related electric wiring and conduit;

- Section 10.66, *Streets*, establishes the standards for required streets, and specifically *local access streets*, as the proposed street is classified. Design standards for streets are contained in Chapter 36, *Streets, Sidewalks and Other Public Places*, of the Town Code.

'A resident did inquire with Staff as to whether the proposed street name of Coastal Breeze Way was too close to the name of an existing street, W. Breeze Way. Pursuant to Section 10.66.10., Street Names and Signs, "All streets must be named so as not to duplicate the names of any existing streets in the Town. Such names shall be approved by the UDO Administrator and incorporated on the preliminary and final plats." Staff contacted the Postmaster for the Nags Head Post Office, who responded that they did not anticipate a problem. Staff suggested that the applicant provide some

alternatives to alleviate any perceived concerns that the proposed name may lead to confusion; at least informally the applicant inquired whether Coastal Way would be an acceptable name, which the UDO Administrator deemed acceptable.

- Section 10.68, *Lots*, reiterates zoning requirements for frontage and lot area, but also provides that for "lots fronting on a cul-de-sac or street curve, the frontage may be reduced to not less than thirty (30) feet upon approval of the Planning Board." The Preliminary Plat does not necessitate the reduction of required lot frontage for lots fronting on a cul-de-sac (the original plan did); however, as noted above, waivers from Section 10.68.1., Frontage, and Section 10.68.3., Minimum Amount of Frontage, are necessary to account for lot A-2's lack of frontage.

- Section 10.72, *Stormwater Runoff, Storm Drains, and Sewer Lines and Mains*, indicates that "stormwater runoff from lots shall be managed in accordance with Article 11 of this UDO pertaining to Stormwater Management (Part I) and Soil Erosion and Sedimentation Control (Part II)." However, development of the Proposed Subdivision will trigger and require North Carolina Department of Environmental Quality stormwater permitting.

'POLICY CONSIDERATIONS
Policy specific to subdivisions is established in Article 10, *Performance Standards*, Part V., *Subdivision Regulations*, Division I., In General, Section 10.41, Jurisdiction; Policy, Section 10.41.2., of the UDO, as follows:

10.41.2. It is declared to be the policy of the Board of Commissioners and the Planning Board of the Town to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the Town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood erosion or other menace; that proper provisions shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient system conforming to the official map, if such exists and shall be properly related to the proposals shown on the master plan, if such exists and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of firefighting equipment to buildings, and to conform with existing or planned streets and with other public facilities; that a dedication of streets and rights-of-way or easements for pedestrian and utility purposes shall be made; that proper provisions shall be made for the distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and general welfare; and that proper provisions shall be made for open spaces for parks, playgrounds and public beaches.

'With regard to the area of the Proposed Subdivision and applicable policies of the *Comprehensive Plan*, this is considered to be within the *Neighborhoods Character Area*, described as "areas of primarily low-density single-family development that have limited to no commercial influence," and further, "The majority of the development in these areas is single-family residential. Lot sizes range from 6,000 square feet to greater than 25,000 square feet. Most newer subdivisions (post 1982) include lots that are 15,000 square feet or greater. It is the town's desire to keep these areas intact and protect them from incompatible land uses."

'Additionally, given the location of the Proposed Subdivision and the extension of the multi-use path along US 158, policies and recommendations contained in the Town's *Pedestrian Plan* are applicable; consistent with those policies and recommendations, the applicant has proposed to provide an extension of the multi-use path through the Proposed Subdivision, to connect to the recently constructed path along US 158.

'PLANNING BOARD RECOMMENDATION
At their meeting on December 17, 2019, the Planning Board voted 5-0 to recommend approval of the original Preliminary Plat to the Board of Commissioners, with conditions, as follows; in their recommendation, the Planning Board acknowledged that the Preliminary Plat satisfied the determinations contained in Section 4.24.1.4. of the UDO concerning applicable policies, purposes, and standards:

1. Prior to the commencement of land disturbance activities and/or construction of improvements, the applicant/developer shall submit construction drawings/plans for all improvements within the subdivision for approval by the UDO Administrator, who may seek input and comments from Town Staff in the review and approval of the construction drawings. In addition to providing details for all improvements, these drawings/plans shall also provide, and not be limited to, information on erosion and sedimentation control, culvert designs, and take into account any intended or required phasing/sequence of construction for the subdivision.

2. The clearing and grading of any lot or portions thereof shall be prohibited prior to the issuance of a building permit for any such lot, except as determined by the UDO Administrator to be necessary for the installation of stormwater measures. The developer/applicant is encouraged to address any necessary phasing and limits of disturbance on submitted construction drawings/plans.

3. Prior to or in conjunction with approval of the Final Plat for the subdivision, drainage easements, to be the responsibility of the applicant/developer and/or their successors (i.e. Property Owners Association), shall be properly conveyed by recordation with the Dare County Register of Deeds; such easements shall be reviewed and approved by the UDO Administrator prior to recordation, and the UDO Administrator may refer the easements to the Town Attorney for review and comment.

'As previously noted, a revised preliminary plat was reviewed by the Planning Board at a meeting on April 21, 2020. The Board unanimously recommended approval of the Preliminary Plat as recommended by Staff, which included a changed Condition #2, as follows:

'The clearing and grading of any lot or portions thereof shall be prohibited prior to the issuance of a building permit for any such lot, except as determined by the UDO Administrator (a) to be necessary for the installation of stormwater measures or (b) to accommodate the stockpiling of soil from lots within the subdivision which are subject to an issued building permit. The developer/applicant is encouraged to address any necessary phasing and limits of disturbance on submitted construction drawings/plans.

'As part of their motion to recommend approval, the Board did note concerns with respect to safety due to the possibility of two additional curb cuts on 158, and a preference for the preliminary plat that had been presented to and recommended

'Based upon their review of the further and final revised version of the Preliminary Plat on June 16,

2020, now before the Board of Commissioners, the Planning Board voted 7-0 to recommend approval of the Preliminary Plat to the Board of Commissions, with the conditions recommended by Staff, and recommended approval of the requested waivers based upon the required findings.

'STAFF RECOMMENDATION
Staff recommends approval of the Preliminary Plat as revised and proposed, with the conditions noted below. With the exception of the requested waivers, Staff is of the opinion that the Preliminary Plat complies with all applicable requirements and that the applicant has addressed all issued comments; additionally, Staff is of the opinion that the Proposed Subdivision is consistent with applicable policy considerations. With respect to the requested waivers, Staff is of the opinion that the intended use of lot A-2 is a special circumstance, that, when taken into consideration with the existing easement, does not necessitate frontage in the interest of public health, safety and general welfare or preclude direct access to US 158 as inappropriate; given notes on the preliminary plat restricting the use of the lot and the existing easement, Staff does not recommend conditions specific to the requested waivers.

1. Prior to the commencement of land disturbance activities and/or construction of improvements, the applicant/developer shall submit construction drawings/plans for all improvements within the subdivision for approval by the UDO Administrator, who may seek input and comments from Town Staff in the review and approval of the construction drawings. In addition to providing details for all improvements, these drawings/plans shall also provide, and not be limited to, information on erosion and sedimentation control, culvert designs, and take into account any intended or required phasing/sequence of construction for the subdivision.

2. The clearing and grading of any lot or portions thereof shall be prohibited prior to the issuance of a building permit for any such lot, except as determined by the UDO Administrator (a) to be necessary for the installation of stormwater measures or (b) to accommodate the stockpiling of soil from lots within the subdivision which are subject to an issued building permit. The developer/applicant is encouraged to address any necessary phasing and limits of disturbance on submitted construction drawings/plans.

3. Prior to or in conjunction with approval of the Final Plat for the subdivision, drainage easements, to be the responsibility of the applicant/developer and/or their successors (i.e. Property Owners Association), as well as easements to be conveyed to the Town and Dare County, shall be properly conveyed by recordation with the Dare County Register of Deeds; such easements shall be reviewed and approved by the UDO Administrator prior to recordation, and the UDO Administrator may refer the easements to the Town Attorney for review and comment."

Mayor Pro Tem Siers questioned right-in and right-out at the Deering Street intersection and he expressed concern about the drainage on lots 16 and 17 once development is completed. He noted that it will still take five minutes driving to get out of the neighborhood; Director Zehner noted that Public Safety has indicated they had no issue.

Comr. Fuller confirmed with Attorney Leidy that the Town may be able to do what it wants re: right-in/right-out once the street/right-of-way is dedicated to the Town. He also confirmed with Director Zehner that there is a Homeowners Association (HOA) for the new subdivision.

Mayor Cahoon suggested that the walkway in the right-of-way be more natural for less maintenance.

Cathleen Saunders of Quible and Associates; she stated that each lot is able to retain 2.5 inches of stormwater drainage on site; infiltration basins will be grassed.

There being no one else present who was sworn in and wished to speak, Attorney Leidy announced that the evidentiary phase was concluded. The time was 10:10 a.m.

MOTION: Comr. Fuller made a motion to approve waivers for the proposed Coastal Villas Subdivision – as relates to Town Code/UDO Sections 10.46 (access to public street or highway), 10.47 (limiting access to US 158, US 64/24, NC 12, and SR 1243), 10.68.1 (frontage to a street), and 10.68.3 (minimum amount of frontage). The motion was seconded by Comr. Brinkley which passed unanimously.

MOTION: Comr. Brinkley made a motion to approve the Coastal Villas Subdivision Plat as presented - with staff's three recommended conditions as follows:

> - Prior to the commencement of land disturbance activities and/or construction of improvements, the applicant/developer shall submit construction drawings/plans for all improvements within the subdivision for approval by the UDO Administrator, who may seek input and comments from Town Staff in the review and approval of the construction drawings. In addition to providing details for all improvements, these drawings/plans shall also provide, and not be limited to, information on erosion and sedimentation control, culvert designs, and take into account any intended or required phasing/sequence of construction for the subdivision.
>
> - The clearing and grading of any lot or portions thereof shall be prohibited prior to the issuance of a building permit for any such lot, except as determined by the UDO Administrator (a) to be necessary for the installation of stormwater measures or (b) to accommodate the stockpiling of soil from lots within the subdivision which are subject to an issued building permit. The developer/applicant is encouraged to address any necessary phasing and limits of disturbance on submitted construction drawings/plans.
>
> - Prior to or in conjunction with approval of the Final Plat for the subdivision, drainage easements, to be the responsibility of the applicant/developer and/or their successors (i.e. Property Owners Association), as well as easements to be conveyed to the Town and Dare County, shall be properly conveyed by recordation with the Dare County Register of Deeds; such easements shall be reviewed and approved by the UDO Administrator prior to recordation, and the UDO Administrator may refer the easements to the Town Attorney for review and comment.

The motion was seconded by Comr. Renée Cahoon which passed unanimously.

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

Update from Planning Director

Planning Director Michael Zehner summarized his report which is attached to and made a part of these minutes as shown in Addendum "D". Some highlights follow:

Public Hearing scheduled for September 2nd Board meeting

MOTION: Mayor Pro Tem Siers made a motion to schedule a Public Hearing on a text amendment that would allow for lots west of NC12 and SR1243 which have a Base Flood Elevation (located in an AE zone) to have fill added up to a height required by the Dare County Health Department for the September 2, 2020 Board of Commissioners meeting. The motion was seconded by Comr. Brinkley which passed unanimously.

National Endowment for the Arts - Our Town Grant - for the design and development of plans for the future renovation of the Town's Skate Park located at the YMCA. If successful, the local match would be $15,000. It was Board consensus for staff to pursue the grant.

Joint workshop between the Board of Commissioners and the Planning Board - for a review of the Town's residential stormwater regulations. Director Zehner asked if the Board was interested in engaging a third party to facilitate the workshop to review regulations - part of the workshop could be a presentation with the Board/Planning Board jointly. Mayor Cahoon suggested this be a September 2020 Retreat discussion and then to return to the Board if any action is needed - It was Board consensus to take no action at this time.

Update of the Decentralized Wastewater Management Plan - evaluation and selection for the RFQ project consultant - It was Board consensus to not be involved in the process of evaluation and selection for a project consultant for the Decentralized Wastewater Management Plan.

US Census - Director Zehner explained that he and Mayor Cahoon recently spoke with a US Census representative - the Town currently has a 84.5% response rate; it was indicated that the upcoming work by enumerators will be ending a month earlier than originally hoped - the end of September 2020. To encourage participation staff has a banner from Dare County that is used at the Farmers' Markets, notes encouraging participation will be included in water utility bills. Information was provided to the Census enumerators by Director Zehner to make sure they begin in residential neighborhoods where they would be more efficient.

Comr. Renée Cahoon - Land Use Plan Update – Comr. Renée Cahoon questioned the delay in approval of the Land Use Plan Update document. Director Zehner stated that the document was initially submitted for approval early last year; it was approved by the Board of Commissioners in 2017. Comr. Renée Cahoon questioned if the delay was on the Town or on CAMA. He noted that staff continues to prepare revisions responding to their comments. Director Zehner is to verify the timeline of the approval process and provide to the Board.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From July 1st Board meeting - Discussion of Dowdy Park part-time position

The agenda summary sheet read in part as follows:

"At the July 1st Board meeting, the Board passed a motion to unfreeze the $16,000 Dowdy Park part-time position funds for a 30-day period - until the August 5th Board meeting - and to have staff spend the funds at their discretion. Post action reports were provided to the Board after the Thursday, July 2nd and the Thursday, August 6th Farmer's Market events as requested."

Mayor Cahoon confirmed with Planning Director Zehner that the last Dowdy Park Farmers Market is August 27th; Closeout work is for the following two weeks and preparation for the FY 20/21 season starts in February/March 2021.

Comr. Renée Cahoon would like staff to develop a plan as the Farmers Market seems to be consuming a lot of Planning Dept staff time – she would like for staff to develop a plan moving forward to include how to run Dowdy Park, how it will be staffed, etc.

MOTION: Mayor Cahoon made a motion to extend the Dowdy Park part-time manager position through the last scheduled Farmers Market (August 27, 2020) plus two weeks for closeout. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

From July 1st Board meeting - Consideration of Charge for and Appointments to the Reuse and Recycle Task Force

Dep Town Manager Andy Garman summarized his memo which read in part as follows:

"The Board would like to establish a task force focused on waste reduction initiatives. These initiatives would promote the reuse of materials, reduced consumption, and diversion of materials from the waste stream. They would also focus on the proper and responsible handling of materials by the consumer as well as the town or the town's contractors. Although there are policies in the town's comprehensive plan and solid waste plan related to waste management and waste reduction goals, these need to be reviewed in light of changing market conditions, available resources, current practices, and community needs and desires. The task force could provide research and recommendations to inform the town's waste reduction efforts and provide leadership as it relates to this important community need and government function. Although this discussion began with a focus on the town's curbside recycling program, Nags Head recognizes that recycling is only one facet of waste reduction and is often cited as the last of the three R's, Reduce, Reuse, and Recycle. Many communities have expanded this list and also identify "Refuse" and "Rot" which illustrate the need for a broader focus when discussing waste reduction. Individual effort as it relates to responsible product and consumption choices and programs focused on composting or removing food waste from the waste stream are important components of this conversation. Therefore, community education and a multi-faceted approach becomes critical for a successful and comprehensive waste reduction program. Attention should also be paid to the life cycle

of materials to ensure that expenditures related to collection and processing have legitimate benefits as opposed to landfilling and incineration.

'To get this process started, the Board will need to appoint members to the task force. Staff would recommend no more than an eight person citizen task force with support from staff. The board has a list of 13 individuals who have expressed interest in the task force which summarizes their background and interests. Although staff has no specific recommendation on members, the task force members should represent a broad spectrum of town interests, including business, institutional, government and academia. There are several individuals listed whose background and interests align well with the following tasks. During this process, staff would expect to bring in individuals from industry, NC DENR, or other local governments who can provide information to the task force and/or discuss opportunities for collaboration.

'It is anticipated that the first assignment of the task force would be to review and recommend goals for Nags Head community waste reduction efforts. This would involve a review of existing goals from adopted plans and policies. Other items for the task force could include:

- Establish a planning framework to review the town's waste reduction efforts
- Evaluate existing town recycling and waste reduction programs to understand community needs and desired service levels; provide cost effective recommendations to enhance these services
- Define metrics for cost effectiveness and service quality related to waste reduction and disposal initiatives; this could include a cost-benefit analysis of curbside vs. distributed collection/disposal options
- Identify new programs to remove materials from the waste stream including food waste, household hazardous waste, etc.; review the use of distributed town recycling drop off sites and recommend service enhancements
- Identify high return recycling activities that could be enhanced such as commercial collection of pre-sorted materials
- Review the current limitations of single-stream recycling programs and provide research on the state of the industry; provide recommendations for future efforts that align with anticipated recycling industry changes
- Determine local and regional capacity to support reuse, reduction and recycling programs; identify gaps that need further policy level support or regional collaboration; this also includes review of available private sector resources that are available to the town
- Identify local, regional, or state partnerships that support the goals of the task force and the town
- Develop and implement progressive educational programming aimed at reducing waste and promoting reuse, recycling, and consumer education on consumption
- Develop education campaigns that improve recycling participation and minimize contamination

'Staff welcomes feedback on the suggested work items for the task force. It is anticipated that the task force would meet at least monthly through the early part of 2021 in order to have recommendations to the Board prior to consideration of the FY 2021/22 budget."

Board members spoke favorably of the charge presented for the Task Force and expressed their appreciation of the work that went into the charge and report prepared by staff. Comr. Renée Cahoon said that there needs to be a local and regional partnership to make this work.

Comr. Fuller suggested an addition to the charge to look at the fiscal component; there needs to be a more full and clear understanding of the cost the Town has invested.

It was Board consensus to add to the charge for the Reuse and Recycle Task Force the fiscal component - to include a full and clear understanding of what the Town has invested.

MOTION: Mayor Cahoon made a motion that the following be appointed to the Town Reuse and Recycle Task Force: Meredith Fish, Robert Netsch, David Bragg, Ann Daisey, and Kari Bakus – subject to each being a Nags Head resident. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

NEW BUSINESS

Consideration of Human Resources Manager job description

Interim Town Manager Greg Sparks summarized the agenda summary sheet which read in part as follows:

"Attached for Board review and approval is a job description for Human Resources Manager.

'Informal approval was received from the Board to create and advertise the position. This formalizes approval of the position."

Interim Manager Sparks explained that he and staff are now in the process of setting up interviews. He is asking for Board approval of the job description which modifies the job description title from Human Resources Director to Human Resources Manager.

MOTION: Comr. Fuller made a motion to approve the Human Resources Manager job description, to include the reduction in pay grade, as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

MOVE TOWN ATTORNEY REQUEST FOR CLOSED SESSION TO END OF MEETING

Mayor Pro Tem Siers requested and Board members agreed to move the Town Attorney's request for a Closed Session (Item K on the agenda) to the end of the meeting.

Interim Town Manager Greg Sparks - West side US 158 Multi-Use Path project update

Town Engineer David Ryan updated the Board on the 2.5 miles of added path to the US 158 multi-use path:

Project 8A – Soundside Road to W Danube - The project was completed April 2020.

Project 8C – W Danube to w Seachase - The project is 99% complete with some incidental work still to be completed.

Project 8B – W Baymeadow to Gull Street - The halfway point of the project was completed at the Outer Banks Event site - crews are now working south of this location and have completed the pathway to the Nags Head Raceway. The project is now approximately 65% to 70% complete. Staff has worked with businesses along this corridor and posted additional signage for vehicular traffic at entranceways during the course of construction.

Comr. Fuller noted the differences between completion and substantial completion – Mr. Ryan noted separate fees for liquidated damages for each which have been discussed with the contractor.

Board members expressed their appreciation to staff for meeting with the business owners and for providing the signage.

Interim Town Manager Greg Sparks - Discussion of Town Organizational Assessment/Recommendations

Interim Town Manager Greg Sparks summarized his report which read in part as follows:

"INTRODUCTION
The Board of Commissioners requested the incoming Interim Town Manager to review the organizational structure with the goal of improving communication and accountability within the organization. This report represents an initial assessment of observations and analysis, with recommendations for accomplishing the Commission's objectives.

'BACKGROUND
-Organizational Structure
An initial review of organization structure based on the chart posted on the town's website and in other documents indicates that the Town Manager directs all departmental activities through the Deputy Town Manager (Appendix A). However, the Deputy Town Manager was overseeing Planning and Development, Administrative Services, Public Works, Town Engineer, and Information Technology, while the Town Manager directly supervised the two public safety departments and the Human Resources Director. This was further complicated in that the Public Works Director typically reported directly to the Town Manager and coupled with the remote location of Public Works has led to both overlapping and insufficient oversight of the department from the Town Manager and Deputy Town Manager.

'Following is a review of departmental organization charts and structure issues:

'-Fire and Rescue Department

The Fire Chief has two direct reports-Deputy Fire Chief who oversees six Captains at the two stations and the Ocean Rescue Captain who manages four supervisors of Lifeguards; Office Manager. (Appendix B)

'-Police Department
The Chief has amended the Organizational Chart to reflect two direct reports: Deputy Chief who oversees operations through the Lieutenant over four Patrol Sergeants, Investigations Sergeant, and Animal Control; Office Systems Manager who oversees an Office Assistant. (Appendix C)
-Planning and Development

'The departmental organization chart shows the Planning Director as a direct report to the Deputy Town Manager, and with one direct report-Deputy Director of Planning who oversees 10 positions: Administrative Assistant, PT Event Coordinator, Principal Planner, Zoning Administrator, Permitting Coordinator, Code Enforcement, Environmental Planner, Engineering Technician, and Chief Building Official and Senior Building Official. The Director has indicated that it has not functionally operated in the manner as indicated by the chart. (Appendix D)

'-Administrative Services
Organization chart reflects the Finance Officer as a direct report to the Deputy Town Manager and that the Finance Officer oversees the Deputy Finance Officer who supervises six positions: Tax Collection, Accounting Technician, Payroll/Benefits Specialist, Customer Service Representative/Cashier, Water Billing and Customer Service Coordinator, and a PT Office Assistant. (Appendix E)

'-Public Works
The current organization chart shows the Director as having three direct reports: Office Manager, Fleet Maintenance Superintendent, and the Facilities/Sanitation Superintendent. In addition, the Water Superintendent is also a direct report but is not reflected in the organization chart. Additionally, another organization chart shows the reporting structure to the Deputy Town Manager and includes the unfunded Deputy Public Works Director, as well as the Sanitation Superintendent and Sanitation Supervisor positions that are unfunded with the Superintendent combined with Facilities Maintenance. (Appendix F)

'-Other Positions
Information Technology-includes the Coordinator and contractual services under the direction of the Deputy Town Manager.

'Administrative Assistant/Public Information Officer-under the direction of the Town Manager.

'Town Engineer-under the direction of the Deputy Town Manager.

'Human Resources Director-Under the direction of the Town Manager. With the recent changes in the HR position the Town Manager has previously recommended that this position be amended to a Human Resources Manager under the general direction of the Finance/Administrative Services Director.
The Interim Town Manager has re-initiated weekly staff meetings with department directors, a weekly check-in meeting with Town Manager staff-Deputy Town Manager, Town Clerk, Administrative Assistant/PIO, and Deputy Town Clerk, as well as monthly one on one meetings with department directors for the purpose of improving communication and addressing significant issues and coordination of town services. One of the themes that has emerged both from the Commission perspective and departmental level is the need for improved communication and the building of trust

up and down the organization. Of concern is the perspective from Public Works that staffing issues are not given enough priority from management or the Board. With the upcoming retirement of the Public Works Director, timing is key for addressing several issues that impact the department.
The town has conducted strategic planning sessions in the past that included the Town Manager and Deputy Town Manager. However, department directors were not generally included in all aspects of the sessions. Department directors and the board have both noted that communication between the board and staff could be improved. Staff has questions about the board's priorities and the board would like more information from departments that demonstrate an effective approach to providing public services.

'CONCLUSIONS
1. Departmental organization structures need to be evaluated for optimal reporting, accountability, and efficiency.
2. The group of "Other Positions" should be evaluated in terms of reporting requirements to the Town Manager and Deputy Town Manager.
3. All departments except Public Works have Deputy Director positions that are responsible for managing a significant number of staff.
4. The current Personnel Policy indicates that changes to job descriptions and the Position Classification Plan require Board approval. As a result, minor changes to job descriptions and the pay plan tend to be delayed due to the extra steps involved in making changes.
5. Communication can be enhanced between staff and the commission through strategic visioning and regular written and oral communication from the management team, and ongoing agenda review meetings between the Town Manager and Commission.
6. Public Works has an immediate need for additional supervisory staffing due to the previously approved combination of the Facilities and Sanitation Superintendent positions and not filling a vacated Sanitation Supervisor position.

'RECOMMENDATIONS
1. Refine organizational oversight responsibilities between the Town Manager and Deputy Town Manager. The Deputy Town Manager to be responsible for management oversight of Public Works, Planning and Development, and Information Technology. The Town Manager will directly oversee the Deputy Town Manager, Police, Fire/Rescue, Administrative Services, and Town Clerk.
2. Capital project planning and engineering functions should be coordinated to a higher degree with Public Works. The Deputy Town Manager and Town Engineer should establish weekly meetings with the Public Works Director and Superintendents to address capital project planning and on-going maintenance of public facilities. The Town Engineer would continue to be responsible for specific project engineering as well as managing outside engineering contracts.
3. The Administrative Assistant/PIO to be placed under the supervision of the Town Clerk.
4. The Human Resources Director to be re-classified as a Human Resources Manager at one salary grade lower (from a 16 to 15), and to be incorporated into the Administrative Services Department as a direct report to the Finance/Administrative Services Director.
5. Amend the Public Works organization chart to reflect the inclusion of the Water Division.
6. Public Works should re-institute the vacated Sanitation Supervisor position.
7. Amend the Personnel Policy to allow the Town Manager to approve changes to job descriptions and pay classification plan, if the changes are cost neutral or result in a decrease. Any changes that result in an increase in compensation or to a higher grade in the pay plan would continue to require Commission approval.
8. Schedule a strategic visioning session in the Fall of 2020 that has the active participation of all department directors with the Board of Commissioners.

9. Departmental staffing, use, and responsibilities of deputy director positions and general staffing issues should be reviewed for potential changes prior to the next fiscal year budget process.
10. Approve a revised organization chart. (Appendix G)"

Board members spoke favorably of the preliminary recommendations for organizational changes as presented by Interim Town Manager Sparks; he noted that some of the changes would be implemented later such as after the hiring of a new Public Works Director.

If agreed to by the Board, Interim Manager Sparks said that he would bring the finalized organizational chart back for Board approval at its September meeting.

Comr. Fuller made the following comments:

1. Modify title of Finance Director to Director of Administrative Services/Finance Director
2. Move Fire Lieutenant to between Fire Captain and the other positions - Manager Sparks agreed and said that he would be speaking with the Fire Chief about this.
3. Public properties - he recommended that one person, such as a department deputy manager, be responsible for each public property - currently different staff are responsible for grass cutting, scheduling, insurance, etc. such as is the case for Dowdy Park.

It was Board consensus to agree with Interim Manager Spark's process - with some input - and to proceed.

Interim Town Manager Greg Sparks - Upcoming September 2, 2020 Board meeting

For the September 2, 2020 Board of Commissioners meeting, Interim Manager Sparks indicated that the Fire Dept Strategic Plan will be presented. In addition, Police Chief Webster will be presenting a Police activities update.

Also to be brought forward in September is a modification to the Personnel Policy to reflect the requested process for modification to job descriptions/classification and pay plan.

Interim Town Manager Greg Sparks - Soundside Road (Jockey's Ridge State Park) parking area

Interim Manager Sparks updated the Board on the parking issues with the Jockey's Ridge Soundside access where neighbors have complained about the growing problem of parking on the roadway as well as vehicles waiting for the site to open in the mornings. He reported that staff has met with Soundside Road neighbors and Jockey's Ridge officials. Solutions are being discussed.

Interim Town Manager Greg Sparks - Beach Nourishment Projects

Interim Town Manager Sparks reported that staff recently met with the county, other municipalities, and consultants for the first of quarterly meetings to see if we can collaborate beach nourishment projects for a potential cost savings. He noted that while the Town's maintenance project does not line

up with other towns as we are awaiting our FEMA obligation funds for 2021, staff will continue to work with the others in this regard.

Interim Town Manager Greg Sparks - Hurricane Isaias

Interim Town Manager Sparks thanked all Town departments for their work in preparing for Hurricane Isaias - he feels fortunate that the Town ended up with very minor issues.

BOARD OF COMMISSIONERS AGENDA

Comr. Fuller – Police monitoring of public beach access parking and multi-use path issues

Comr. Fuller asked Police Chief Webster to explain the procedural process in place to monitor the public beach access parking and multi-use path issues.

Police Chief Phil Webster responded that during undedicated time officers patrol and during this time they address this issue – a lot of tickets have not been issued as officers try to work with the public. At the beginning and at the end of each shift, officers try to review their specific areas.

Comr. Fuller said that the Board's value has always been to put the multi-use path in a higher priority category – this year he has seen more electric vehicles on the path as opposed to last year when he observed more construction vehicles on the path.

Mayor Cahoon questioned Board members if the Town should still have a zero tolerance re: electric skateboards, etc. on the path or should this be revisited.

Chief Webster expressed interest in educating people first because if pushed off the path, they will go somewhere else.

Comr. Brinkley re-emphasized the importance of officers keeping an eye on the beach accesses and the motorized vehicles/golf carts on the multi-use path.

Comr. Renée Cahoon said that she has not seen as much patrol/traffic control at Whalebone as in previous years. Chief Webster said he would reinforce this with his officers.

Comr. Renée Cahoon has seen public safety hazards such as a Pepsi truck unloading and blocking a lane of traffic.

Chief Webster encouraged Board members to call him if a violation is seen and he will respond.

Comr. Renée Cahoon - Thank You to Sanitation Staff

Comr. Renée Cahoon thanked Public Works sanitation staff for securing trash carts prior to Hurricane Isaias as well as picking up afterwards. She suggested more communication between the Town and rental companies to help with this.

Mayor Cahoon pointed out that he has observed staff continuing to keep up with minimizing the amount of equipment left on the beach by renters/tenants and they are doing a good job.

MAYOR'S AGENDA

Mayor Cahoon - Future Town Envision

Mayor Cahoon stated that this item is to be left on the meeting agenda with an opportunity for discussion at the September 2020 Board Retreat.

Mayor Cahoon - Discussion of September 2020 Board Retreat

Mayor Cahoon confirmed the dates of September 23 – 24, 2020 with Board members for a Retreat with September 25th to be used for staff discussions.

It was Board consensus to proceed with the recommendation of facilitator by Interim Town Manager Sparks.

Mayor Cahoon - Discussion of Town Manager search firm selection

Discussion of a Town Manager search firm will take place at the August 19th mid-month meeting at 2 p.m. Mayor Cahoon said that the search has been narrowed down to three firms.

As was done with the Interim Town Manager position, representatives of the three companies will be interviewed via the Zoom platform.

Interim Town Manager Sparks was directed to make arrangements with the three firms of interest for interview time, break, and deliberation. Attorney Leidy pointed out that he would not be available on August 19th and Mayor Cahoon stated that Interim Town Manager Sparks could assist if needed.

Attorney Leidy pointed out that the hiring and selection of the Town Manager search firm would be an open meeting process.

CLOSED SESSION

MOTION: Comr. Renée Cahoon made a motion to enter Closed Session to confer with the Town Attorney re: matters within attorney client privilege, to preserve that privilege to include discussion of the Blackburn v Dare County, Town of Nags Head, et al in accordance with GS 143-318.11(a)(3) - and to discuss a confidential personnel matter in accordance with GS 143-318.11(a)(6). The motion was seconded by Comr. Brinkley which passed unanimously. The time was 11:45 a.m.

OPEN SESSION

The Board re-entered Open Session at 1:00 p.m. Attorney Leidy reported that during Closed Session the Board conferred with the Town Attorney re: pending litigation as well as other legal matters. Some action was taken but there is nothing to report at this time.

ADJOURNMENT

MOTION: Comr. Renée Cahoon made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 1:00 p.m.

_____
Carolyn F. Morris, Town Clerk

Date Approved: _____

Mayor: _____
Benjamin Cahoon

Agenda Item Summary Sheet

Item No: **E-4**
Meeting Date: **September 2, 2020**

Item Title: Consideration of request from Fraternal Order of Eagles to conduct 2020 bonafide fishing tournament

Item Summary:

Attached please find a resolution for Board consideration on September 2nd authorizing the Fraternal Order of Eagles #4506 to hold its annual surf fishing tournament on the Town's beaches on Saturday, October 24, 2020. Also included is the letter of request.

Number of Attachments: 2

Specific Action Requested:

Request Board approval and adoption of attached resolution authorizing Fraternal Order of Eagles to conduct fishing tournament on Saturday, October 24, 2020. Also included is authorization to issue the specified temporary beach driving permits.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

I concur with the request as long as in concurrence with the Governor's COVID-19 orders.

Signature: Greg Sparks Date: August 26, 2020

Michelle Gray

From: John Snyder <esnyderobx@gmail.com>
Sent: Friday, August 7, 2020 9:41 AM
To: Michelle Gray
Subject: Outer Banks Fraternal Order of Eagles Fishing Tournament

Good Morning Michelle,

The Outer Banks Fraternal Order of Eagles would like to have a fall fishing tournament on Saturday October 24, 2020 from 8:00 AM to 3:00 PM. We would also request 25 beach driving passes. Given the current situation with the pandemic, we will make this a safe event by spacing teams out. If the current situation changes by order of Governor Cooper with respect to events occurring in NC, we would cancel the event and notify the Town promptly.

Please let me know if you need any additional information.

Thank you.

Ed Snyder, President FOE 4506
1312 Elizabeth Street
Kill Devil Hills, NC 27948

esnyderobx@gmail.com

Resolution No. 20-09-XXX
Fraternal Order Eagles Tourn
BOC Meeting September 2, 2020

Ben Cahoon
Mayor

Michael Siers
Mayor Pro Tem

Greg L. Sparks
Interim Town Manager

Town of Nags Head
Post Office Box 99
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Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

M. Renée Cahoon
Commissioner

J. Webb Fuller
Commissioner

Kevin Brinkley
Commissioner

RESOLUTION REGARDING THE ISSUANCE OF BEACH DRIVING PERMITS FOR THE FRATERNAL ORDER OF EAGLES, AERIE #4506 SURF FISHING TOURNAMENT TO BE HELD SATURDAY, OCTOBER 24, 2020

WHEREAS, the Fraternal Order of Eagles, Aerie #4506 is sponsoring its annual Surf Fishing Tournament October 24, 2020; AND

WHEREAS, in accordance with Section 8-83 (b) (3) of the Nags Head Code of Ordinances, the Fraternal Order of Eagles, Aerie #4506 submitted a request on August 7, 2020 for the Town of Nags Head to issue 25 (two permits per each team of six) short-term beach driving permits to the Fraternal Order of Eagles, Aerie #4506 to be distributed to participants in its annual surf fishing tournament.

NOW, THEREFORE BE IT RESOLVED by the Town of Nags Head Board of Commissioners that the Town of Nags Head is pleased to offer its assistance for the Fraternal Order of Eagles, Aerie #4506 Surf Fishing Tournament this year.

BE IT FURTHER RESOLVED as follows: The Town Clerk is authorized to issue 25 short-term beach driving permits to be distributed to participants in its annual Fraternal Order of Eagles, Aerie #4506 Surf Fishing Tournament to be held Saturday, October 24, 2020. These special permits will be valid for Saturday, October 24, 2020. Only six (6) persons shall be allowed per team fishing in the tournament.

The Fraternal Order of Eagles, Aerie #4506 is responsible for the distribution of all short-term beach driving permits for the 2020 Fraternal Order of Eagles, Aerie #4506 Surf Fishing Tournament. No short-term permits for the tournament will be issued by Staff.

The name of the team and town to whom a permit is issued shall appear on each permit.

Prior to the start of the tournament, the Fraternal Order of Eagles, Aerie #4506 shall provide the Nags Head Town Clerk with a list showing the team name or tournament official and the numbers of the permits issued to each. A pamphlet (to be provided by the Town) on Regulations Governing Beach Vehicular Traffic in the Town of Nags Head shall be supplied with each permit distributed.

Each permit shall be displayed on the inside front windshield on the passenger side of the vehicle, even if a normal Nags Head Beach Driving Permit is already displayed. The short-term beach driving permit MUST be in the possession of the team at all times. The permit is not transferable.

The Town of Nags Head Beach Driving Ordinance is to be strictly enforced by the Nags Head Police Dept.

With regards to COVID-19, the Fraternal Order of Eagles, Aerie #4506 shall abide by any order in place issued by Governor Roy Cooper for the duration of the tournament held on Saturday, October 24, 2020.

Should the weather or high tide call for the closure of the beach or a section of the beach, the Town Manager will close the beach.

THIS THE 2nd DAY OF SEPTEMBER 2020.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:

_____
Carolyn F. Morris, Town Clerk

Agenda Item Summary Sheet

Item No: **E-5**
Meeting Date: **September 2, 2020**

Item Title: Consideration of approval of a Health Reimbursement Arrangement Plan Maintenance Agreement and a Business Associate Agreement effective September 1, 2020 for the Town Manager

Item Summary:

Formal approval is being requested of the Board on September 2nd to establish a Health Reimbursement Account to cover Medicare Supplement expenses for the Interim Town Manager and his spouse. The attached documents are a Health Reimbursement Arrangement Plan Maintenance Agreement and a Business Associate Agreement - both to become effective September 1, 2020.

Number of Attachments: 2

Specific Action Requested:

Request Board approval of attached documents.

Submitted By: Amy Miller, Finance Officer Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

Attorney Leidy has reviewed the agreements.

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Greg Sparks Date: August 26, 2020

HEALTH REIMBURSEMENT ARRANGEMENT PLAN
MAINTENANCE AGREEMENT

This Agreement made and entered into by and between **Flexible Benefit Administrators, Inc.**, a Virginia Corporation ("FBA") and **Town of Nags Head** ("CLIENT") provides as follows:

WHEREAS, CLIENT has adopted the following plan: Health Reimbursement Arrangement Plan

WHEREAS, CLIENT has enrolled its and its affiliates' eligible employees in the Plan; and

WHEREAS, CLIENT desires to have FBA perform the administrative bookkeeping of the Plan;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. **Engagement of FBA**. CLIENT hereby engages FBA to do the administrative bookkeeping of the Plan, and FBA agrees to accept such duties on the terms and conditions provided in the Agreement. Although FBA will serve as the administrative bookkeeper, FBA makes no representation as to the tax effects of the Plan, and CLIENT warrants to FBA that it is relying solely on its own counselors and advisors regarding any potential tax benefit of the Plan.

2. **Term of Agreement**. This agreement shall remain in effect for the Plan Year as stated in the Client's Plan Document. This Agreement will automatically renew one (1) year from the Effective Date for an additional one (1) year term, unless terminated earlier by either party with at least ninety (90) days advance notice prior to the end of the term. Agent of Record change is not considered a valid reason for termination of the contract without the required timeframe of notice.

3. **Fees.** CLIENT agrees to pay the fees as set forth in the attached Fee Schedule. Such fees shall be comprised of a set-up fee for company and employee files, and a spending account fee for reviewing the claim forms, processing the claims, and printing the checks. These fees may change from Plan Year to Plan Year. Fees are due the 15th of the month following the month of provided service.

4. Operation of the Plan.

a. **Reimbursement.** FBA agrees to reimburse according to IRS Regulations as outlined in the Employee Guide.

b. **Claim Forms.** FBA shall provide a claim form for CLIENT to copy for use by CLIENT's employees and its affiliate's employees. Completion of the claim form shall be the sole responsibility of the employee and FBA shall make no recommendation to the employee as to the existence or amount of any claim. However, FBA shall provide information to CLIENT, its employees, and its affiliates' employees regarding the Plans' status, the amounts claimed to date, and the claim limits. CLIENT shall be responsible for distribution of the claim forms.

c. **Process.** FBA shall process the claim forms, check the apparent validity of the claims, and produce reimbursement checks representing claims made under the Plan.

d. **Taxes**. CLIENT is solely responsible for any Federal, State or Local taxes which are or may become applicable to the Plan.

e. **Maintenance of Records.** FBA agrees to maintain the computer and physical records regarding the claims and reimbursements made under the Plan retention period as required by the Internal Revenue Service. FBA shall, at the frequency decided in the most recent design phase, deliver a status report regarding the Plan to CLIENT, accounting for all funds received and disbursed by FBA with respect to the Plan.

f. **Customer Service.** At no additional charge to CLIENT, FBA agrees to provide help in answering questions of CLIENT's accounting department regarding administration of the Plan.

5. **Confidentiality.** FBA acknowledges that information about CLIENT and its employees represents confidential and proprietary information, and CLIENT acknowledges that information provided by or concerning FBA is confidential and proprietary information of FBA. Both parties agree to maintain the confidentiality of information obtained about the other party during the term of this Agreement, and agree not to disclose any such information to any third party without the prior written consent of the other party. This agreement regarding confidentiality shall survive the termination of this agreement.

6. **Not Trustee.** Notwithstanding anything to the contrary herein contained, FBA shall not hold any funds in trust for CLIENT, its employees or its affiliates' employees, and shall in no event be deemed to be a trustee for either of the parties regarding any sums covered by the Plan.

7. FBA agrees to provide service to any CLIENT affiliates and affiliates' employees who are or may become eligible to participate in the Plan.

8. FBA agrees not to outsource its administration services.

9. **Termination due to non-payment**. CLIENT shall be given written notice of any unpaid invoice within 30 days of its due date. Thereafter, CLIENT shall be given 30 days from the date of such notice to cure the default.

10. FBA shall maintain Professional Liability Insurance for administration of the Plan with limits of liability of one million dollars and Excess Liability Insurance with limits of liability of nine million dollars covering the errors and omissions of FBA, its employees, agents, servants and associates. FBA further agrees to indemnify CLIENT and its officers for, and hold CLIENT and its officers harmless against, any and all losses, claims, suits, or expenses arising out of or relating to FBA's performance of its duties in administering the Plan.

11. In the event of a natural disaster, all administration data is backed up daily and kept off premise along with additional check stock.

12. Flexible Benefit Administrators, Inc. will mail, fax, email or upload to our secure website a disbursement register at the frequency determined in the design phase to:

    Town of Nags Head
    _____
    _____

13. All required notices to FBA should be sent to:

    G. Landon Browning, III
    Vice President
    Flexible Benefit Administrators, Inc.
    P.O. Box 8188
    Virginia Beach, VA 23450

14. Our toll-free line is 1-800-437-3539. Live representatives are available anytime Monday through Friday from 8:30 am to 5:00 pm. FBA can also be reached via e-mail at *flexdivision@flex-admin.com*.

15. CLIENT is required to update plan participant information prior to each reimbursement cycle to ensure that all records are accurate at the time of processing. Our clients and participants notify us of changes by telephone, facsimile, e-mail or written correspondence or electronic file. The method utilized is determined by CLIENT.

16. If CLIENT has chosen to use Flexible Benefit Administrators, Inc.'s General Reimbursement Account, the amount disbursed for claim payment each processing cycle must be deposited at FBA's Bank within 24 hours of release of checks and direct deposit.

17. Employer reports are generated each processing cycle. All participants' accounts have year-to-date activity listed on the check stub, online portal or mobile account.

18. Prior to commencement of services, Flexible Benefit Administrators, Inc. will need the name, address, and employee identification numbers of each employee that will be participating in the Health Reimbursement Arrangement Plan.

19. This agreement constitutes the entire agreement of the parties, and may be modified only by an instrument in writing signed by both parties. This agreement shall be construed in accordance with and governed by the laws of the State of Virginia.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this ___ day of _____, 20__**.**

Signatures: Presentation and acceptance of this agreement through electronic communication will be effective to bind the parties to the same extent as if the parties affixed written signatures to a printed document.

For: Flexible Benefit Administrators, Inc.	**For: Town of Nags Head**
_____	_____
Signature	Signature
G. Landon Browning III	_____
Printed Name	Printed Name
Vice President	_____
Title	Title
_____	_____
Date	Date

Fee Schedule – Health Reimbursement Arrangement
Effective 9/1/2020

First Year Set-up Fees	$300.00
Annual Renewal Fees	$300.00 each renewal date
Monthly Administrative Fee	$5.00 per participant, per month
Benefits Card	Included – No monthly fee Dependent Cards/Lost Cards – No monthly charge
HRA Plan Document and SPD Preparation (Optional Service)	$375.00 First Year Preparation Revisions and Updates- Priced at time of Request
Discrimination Testing (Optional Service)	Priced at time of request
Employee Group Meetings	$100.00 per day, per presenter, plus expenses
Employee Educational Webinars	Included
Electronic Communication Materials	Included
Returned Mail Fee – Checks and Cards	$5.00 per returned mail/re-mailing of check or card
File Processing Fee – Production File Corrections *Minimum charge - $50.00*	Minimum charge of $50.00 per hour (up to a maximum of $75.00 per hour) to correct production data errors received from the group or approved file vendor, resulting in manipulation of data for any eligible employees

- *Administrative fees and line item adjustments are subject to change by Flexible Benefit Administrators, Inc.*

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into effect as of **September 01, 2020,** by and between **Town of Nags Head** ("Plan Sponsor") and **Flexible Benefit Administrators, Inc.** ("Business Associate").

Recitals

A. Plan Sponsor has entered into an agreement with Business Associate and may enter into future agreements with Business Associate (each a "Services Agreement"), whereby Business Associate will provide certain functions or services for or on behalf of Plan Sponsor, and in the course of providing those functions or services, will receive, create, maintain, or transmit certain information that may identify a participant of Plan Sponsor.

B. Plan Sponsor is subject to certain federal requirements to enter into this Agreement with Business Associate.

Agreement

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

2. Definitions. Capitalized terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules, as appropriate. Unless the context otherwise requires, the following terms have the following meaning as used in this Agreement:

(a) "Electronic Protected Health Information" or "ePHI" has the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Plan Sponsor.

(b) "Financial Information" means the first name or first initial and last name of an individual who is linked to any one or more of the following data elements that relate to such individual, when the data elements are not Encrypted, Redacted, or publicly available information that is lawfully made available to the general public from federal, state, or local government records: (i) social security number, (ii) driver's license number or state identification card number, or (iii) financial account number, or credit or debit card number, alone or in combination with any required security code, access code or password that would permit access to such individual's financial account. As used above, (x) "Redacted" means the alteration or truncation of data such that no more than the following are accessible as part of the information: (1) five digits of a social security number, or (2) the last four digits of a driver's license number, state identification card number, or account number; and (y) "Encrypted" means the transformation of data through the use of algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process or key, or securing the information by another method that renders the data elements unreadable or unusable.

(c) "Financial Information Breach" means the unauthorized access and acquisition of Financial Information that compromises the security, confidentiality, or integrity of Financial Information and that actually or reasonably may cause identity theft to the individual to whom the Financial Information relates, but good faith acquisition of Financial Information by an employee or agent of Business Associate for the purposes of Business Associate is not a Financial Information Breach, provided that the Financial Information is not used for or is not subject *to* further unauthorized disclosure

(d) "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

(e) "Individual" has the same meaning as the term "individual" in 45 CFR § 160.103 and includes a Person who qualifies as a personal representative under 45 CFR § 164.502(g).

(f) "Protected Health Information" or "PHI" has the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Plan Sponsor.

(g) "Unsecured Protected Health Information" or "Unsecured PHI" has the same meaning as the term "unsecured protected health information" in 45 CFR § 164.402, limited to PHI.

3. Obligations and Activities of Business Associate. Business Associate agrees to:

(a) General Restrictions. Not Use or Disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(b) General Safeguards. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent Use or Disclosure of the PHI other than as provided for by this Agreement.

(c) Reporting. Report to Plan Sponsor any Use or Disclosure of the PHI not provided for by this Agreement of which it becomes aware, including a Breach of Unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware.

(i) Security Incidents. A report of a Security Incident:

(A) Will be made promptly in writing, for any actual, successful Security Incident.

(B) Will be made in writing on a reasonable basis after Plan Sponsor's written request, for any attempted, unsuccessful Security Incident.

(ii) Breach Notification. Without limiting its obligations under 45 CFR § 164.410, Business Associate will notify Plan Sponsor in writing of the Discovery of any Breach of Unsecured PHI. Such notice will be made not later than five (5) business days after Discovery and will include (x) such information then-known or then-available to

Business Associate that Plan Sponsor would be required to include in a notification to an Individual under 45 CFR § 164.404(c), including, without limitation, the date of Discovery of such Breach, and (y) such information required or helpful for Plan Sponsor to determine whether Business Associate constitutes Plan Sponsor's agent (determined in accordance with the federal common law of agency) with respect to such Breach. If Plan Sponsor notifies Business Associate of its determination that Business Associate was Plan Sponsor's agent with respect to such Breach, Business Associate will comply with all of its obligations under 45 CFR § 164.410 within five (5) business days after receipt of such notice. Business Associate agrees to cooperate with Plan Sponsor in preparing any notices by Plan Sponsor concerning such Breach, and if directed by Plan Sponsor, fulfill Plan Sponsor's obligations under Subpart D of 45 CFR Part 164, and provide verification of the same.

(d) Subcontractors. In accordance with 45 CPR §§ 164.502(e)(l)(ii), 164.308(b)(2), if applicable, ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

(e) Access to PHI. At the request of Plan Sponsor, make available PHI in a Designated Record Set, to Plan Sponsor or, as directed by Plan Sponsor, to an Individual or an Individual's designee as necessary to satisfy Plan Sponsor's obligations under 45 CFR § 164.524.

(f) Amendment to PHI. Make any amendment(s) to PHI in a Designated Record Set directed or agreed by Plan Sponsor to pursuant to 45 CFR § 164.526 or take other measures as necessary to satisfy Plan Sponsor's obligations under 45 CFR § 164.526.

(g) Accounting of Disclosures. Maintain and make available to Plan Sponsor or, as directed by Plan Sponsor, to an Individual or an Individual's designee, information required to provide an accounting of Disclosures as necessary to satisfy Plan Sponsor's obligations under 45 CFR § 164.528.

(h) Privacy Rule Compliance. To the extent Business Associate is to carry out one or more of Plan Sponsor's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Plan Sponsor in the performance of such obligations.

(i) Internal Practices. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Standards for Electronic Transactions. Business Associate agrees that if it (or an agent or subcontractor) conducts an electronic transmission for or on behalf of Plan Sponsor that qualifies as a Standard Transaction, Business Associate (or its agent or subcontractor, as those terms are used in 45 CFR Part 162) will comply with the requirements of the Standards for Electronic Transactions (45 CPR Parts 160 and 162) (the "Transaction Standards"). Business Associate further agrees that, in connection with the transmission of Standard Transactions, it will not (and will not permit any agent or subcontractor, as those terms are used in 45 CFR Part 162, with which it might contract to): (i) change the definition, Data Condition, or a Data Element or Segment in a Standard Transaction; (ii) add any Data Elements or Segments to the maximum

defined Data Set; (iii) use any code or Data Elements that are either marked "not used" in the Transaction Standards' implementation specification or are not in the Transaction Standards' implementation specification; or (iv) change the meaning or intent of the Transaction Standards' implementation specification(s). Business Associate agrees and understands that there exists the possibility that the Plan Sponsor might request an exception from the uses of the Transaction Standards as permitted by 45 CFR § 162.940, and, if such an exception is sought, Business Associate agrees to participate in a *test* modification. Business Associate (and any agent or subcontractor, as those terms are used in 45 CFR Part 162) agrees to abide by any changes to the Transaction Standards that might be applicable to the services supplied under the Services Agreements.

(k) Financial Information Breach. Without limiting its obligations under applicable law, Business Associate will notify Plan Sponsor in writing of the discovery of any Financial Information Breach. Such notice will be made not later than five (5) business days after discovery and will include such information then-known or then-available to Business Associate that Plan Sponsor would be required to include in a notification to an individual to whom the Financial Information relates under applicable law, including the identity of such individuals. Business Associate agrees to conduct in good faith a reasonable and prompt investigation to determine the likelihood that Financial Information has been or will be misused and cooperate with Plan Sponsor in preparing any notices by Plan Sponsor concerning such Financial Information Breach, and if directed by Plan Sponsor, fulfill Plan Sponsor's obligations under applicable law with respect to such notice and provide verification of the same.

(l) Mitigation. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a violation of the requirements of this Agreement, which may include, without limitation, investigating and remediating the harmful effects of any Breach of Unsecured PHI caused by Business Associate.

(m) Manner of Performance. Unless otherwise specified in this Section 3, Business Associate will perform its obligations under this Section 3 within a time and in a manner reasonable under the circumstances to allow Plan Sponsor to comply with its obligations under the HIPAA Rules. If Business Associate receives a request directly from an Individual with regard to Plan Sponsor's obligations under 45 CFR *§§* 164.524, 164.526, or 164.528, Business Associate will promptly forward the request to Plan Sponsor and not respond to the Individual unless directed by Plan Sponsor.

4. Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, Business Associate:

(a) Use and Disclosure. May only Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, Plan Sponsor as specified in the Services Agreements.

(b) Required By Law. May Use or Disclose PHI as Required By Law.

(c) Minimum Necessary. Agrees that its Use, Disclosure, or requests for PHI will satisfy the minimum necessary requirements of Subpart E of 45 CFR Part 164.

(d) Further Restrictions. May not Use or Disclosure PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Plan Sponsor, except as permitted under Section 5 of this Agreement.

5. Specific Use and Disclosure Provisions. Except as otherwise limited by this Agreement, Business Associate may:

(a) Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the Person to whom the information is Disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the Person, and the Person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) If necessary to perform under a Service Agreement, provide Data Aggregation services related to Plan Sponsor's Health Care Operations.

6. Obligations of Plan Sponsor. Plan Sponsor will:

(a) Notify Business Associate of any limitation in Plan Sponsor's notice of privacy practices under 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

(b) Notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose such Individual's PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

(c) Notify Business Associate of any restriction to the Use or Disclosure of PHI to which Plan Sponsor has agreed or by which Plan Sponsor is required to abide under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

(d) Not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 145if done by Plan Sponsor, except as otherwise allowed under Section *5* of this Agreement.

7. Term and Termination.

(a) Term. The term of this Agreement will begin on the Effective Date and will terminate on the expiration or termination of all Services Agreements or on the effective date of termination by Plan Sponsor under Section 7(b) of this Agreement, whichever is sooner.

(b) Termination for Cause. Plan Sponsor may terminate this Agreement if Plan Sponsor determines Business Associate has violated a material term of this Agreement and, if such violation is capable of cure, Business Associate has not cured the breach or ended the violation within the time specified by Plan Sponsor. If the violation is not capable of cure, Plan Sponsor may terminate this Agreement immediately.

8. Obligations on Termination. Upon termination of this Agreement for any reason, Business Associate will:

(a) Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.

(b) Return to Plan Sponsor or, if agreed to by Plan Sponsor, destroy the remaining PHI that Business Associate maintains in any form, and retain no copies.

(c) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section 8, for as long as Business Associate retains the PHI.

(d) Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in Sections 5(a) and 5(b) of this Agreement.

(e) Return to Plan Sponsor or, if agreed to by Plan Sponsor, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, and retain no copies.

(f) At Plan Sponsor's request from time to time, provide Plan Sponsor a written certification of Business Associate's compliance with the obligations of this Section 8.

9. Indemnification. Business Associate agrees to indemnify, defend, and hold harmless Plan Sponsor, its affiliates, and their respective employees, directors, officers, agents, and Workforce members (each an "Indemnified Party") against all actual or direct losses, liabilities, profits, fines, penalties, costs, or expenses, including without limitation, reasonable cost of mitigation or remediation and attorneys' fees, that are or may be suffered by an Indemnified Party arising out of or related to any breach of this Agreement by Business Associate or its Subcontractors or notification made by Plan Sponsor due to a Breach of Unsecured PHI or a Financial Information Breach caused by Business Associate or its Subcontractors.

10. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Survival. The respective rights and obligations of the parties under Sections 8 and 9 of this Agreement will survive the termination of this Agreement.

(d) Interpretation. Any ambiguity in this Agreement will be resolved to permit compliance with the HIPAA Rules.

(e) Integration and Amendment. This Agreement and the Services Agreements constitute the parties' only agreement with respect to PHI. All previous or contemporaneous oral, written, electronic, or other agreements concerning PHI, including all prior business associate agreements or terms (if any), are hereby terminated and superseded by this Agreement. When in conflict, the terms and conditions of this Agreement control over the terms of the Services Agreements. This Agreement may not be amended except in writing signed by the representatives of the parties.

This Business Associate Agreement has been executed by the parties as of the Effective Date.

Town of Nags Head as the Plan Sponsor and on behalf of the Plan Sponsors

By: _____

Name: _____

Title: _____

Date: _____

"Plan Sponsor"

Flexible Benefit Administrators, Inc.

By: _____

Name: G. Landon Browning III

Title: Vice President

Date: _____

"Business Associate"

Agenda Item Summary Sheet

Item No: **E-6**
Meeting Date: **September 2, 2020**

Item Title: Request for Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers

Item Summary:
The proposed text amendments to the UDO seek to add a Section 7.12.3. pertaining to existing nonconforming hotels, allowing a conditional use permit to be sought to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5, Nonconforming Use of Land, or 5.6, Nonconforming Use of a Structure. Additionally, and related, Section 7.50.1. pertaining to fishing piers is proposed to be amended to reference that dwelling units existing as of July 1, 2020 are an allowable use in conjunction with fishing piers.

The proposed amendments are the result of an issue raised in February 2020 where it was identified that the requirements of the Town Code impose limitations on the evolution of certain nonconforming uses which may constitute "legacy" businesses, establishments, and structures warranting preservation pursuant to applicable policies in the Town's Comprehensive Plan.

Staff Recommendation/Planning Board Recommendation
Planning staff recommends that the public hearing be scheduled.

At their August 18, 2020 meeting the Planning Board voted 6-1 to recommend approval of the proposed text amendments as presented.

Number of Attachments: 1

Specific Action Requested:

Schedule the Public Hearing.

Submitted By: Planning and Development Date: August 25, 2020

Finance Officer Comment:

N/A

Signature: Amy Miller Date: August 25, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 25, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Greg Sparks Date: August 25, 2020

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO NONCONFORMING HOTELS AND ACCESSORY USES TO PREEXISTING FISHING PIERS

ARTICLE I. Purpose(s) and Authority.

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

WHEREAS, the Board of Commissioners find that the Town of Nags Head 2017 Comprehensive Plan includes an objective supporting the preservation and maintenance of legacy commercial businesses, and advocates for flexibility with respect to legacy type establishments for renovations as a way to retain the character of the Town, specifically of the Beach Road and the Whalebone Junction Character Area; and

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

ARTICLE II. Construction.

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

ARTICLE III. Amendment of the Unified Development Ordinance.

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

PART I. That **Section 7.12, Hotels, of Article 7., Supplemental Regulations, of the UDO**, be amended by the addition of Section 7.12.3., as follows:

7.12.3. Nonconforming Hotels.
Where an existing hotel is considered to be a legally nonconforming use of land and/or legally nonconforming use of a structure, pursuant to Sections 5.5 and/or 5.6 of the UDO, a conditional use permit may be sought in accordance with Section 3.8, Conditional Use Permits, to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5 or 5.6, or subsections thereof. Such hotels shall be subject to the provisions

of Section 7.12.1., Dimensional Requirements, and Table 7-2, Dimensional Requirements for Hotels, applicable to hotels located in the C-2 zoning district.

PART II. That **Section 7.50.1. of Section 7.50, Fishing Piers, of Article 7., Supplemental Regulations, of the UDO**, be amended as follows:

7.50.1. Fishing piers, which may include accessory restaurant or retail uses, or dwelling units existing as of July 1, 2020, are permitted in the R-2 and CR districts in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

PART XI. That the **Table of Contents to Article 7 updated to reflect Part I of this Ordinance**.

ARTICLE IV. Severability.

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

ARTICLE V. Effective Date.

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

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:

_____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

_____
John Leidy, Town Attorney

Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: _____ AYES _____ NAYS

Agenda Item Summary Sheet

Item No: **E-7**
Meeting Date: **September 2, 2020**

Item Title: Consideration of amendment to Consolidated Fee Schedule for Post-Season Per Farmers Market Vendor fee

Item Summary:

Due to the popularity of the Dowdy Park Farmers Market, staff is requesting that it be extended through September 2020. In order to help with the unbudgeted expense, a post-season vendor fee of $15 is being requested.

The proposed amendment to the Consolidated Fee Schedule would read as follows and is attached:

Post-Season Per Farmers Market Vendor fee - $15 per vendor

Number of Attachments: 1

Specific Action Requested:

Request Board approval of modification of Consolidated Fee Schedule of $15 per vendor to pay for extension of Dowdy Park Farmers Market through the end of September 2020.

Submitted By: Administrative Services Date: August 27, 2020

Finance Officer Comment:

Anticipated that the funds would fully pay for the Farmers Market Manager's salary.

Signature: Amy Miller Date: August 27, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 27, 2020

Town Manager Comment and/or Recommendation:

I concur with staff's request.

Signature: Greg Sparks Date: August 27, 2020

Administrative Services (cont.)

Farmers Market			
Membership Fee		Annual	$125
Drop-In Fee		Per market date	$25
Post-Season Vendor fee		Per vendor	$15
Fees for Business License/Registration			
Per G.S. 105-113.77:	**Privilege License Tax**		
	City Beer On and Off Premises	per location	$15
	City Beer Off Premises only	per location	$5
	City Wine On and Off Premises	per location	$15
	City Wine Off Premises only	per location	$10
	Beer Wholesaler	per location	$37.50
	Wine Wholesaler	per location	$37.50
Per G.S. 20-97(d):	**Privilege License Tax**		
	Taxicabs	per vehicle	$15
	Limousines	per vehicle	$15
	Vehicle for Hire	Application fee only	-
Business Registration:			
	Business Registration	per location	$25
	Massage Therapist	with State license	-
	Massage Business	Application fee only	-

Licenses/Registrations not renewed by September 1st shall be considered delinquent.
- Business Registrations are subject to a civil penalty of $50.
- Business Licenses are subject to a penalty of 5%.

Penalties will be assessed on September 2nd.

Agenda Item Summary Sheet

Item No: **F-1**
Meeting Date: **September 2, 2020**

Item Title: Public Hearing to consider a text amendment to the Unified Development Ordinance as it pertains to fill regulations for properties west of NC 12 and SR 1243 subject to a Base Flood Elevation

Item Summary:
Following the adoption of the Flood Damage Prevention Ordinance on June 3, 2020, Staff identified two necessary amendments to the text related to fill regulations applicable to properties west of NC 12 and SR 1243 and subject to a Base Flood Elevation. The first, a simple re-numbering to correct a typographical area. The second involves Section 11.5.3 of the Unified Development Ordinance, where properties located west of NC 12 and 1243 for which the Flood Insurance Rate Map (FIRM) provides a Base Flood Elevation, fill shall not be permitted to exceed the Base Flood Elevation. As written, this section of the UDO does not adequately address the scenario where fill required for the wastewater permit would exceed the established Base Flood Elevation. Generally, this is the result of the significant change in the Base Flood Elevations and did not present issues previously. The proposed amendment would remedy this situation by allowing fill height up to the Base Flood Elevation or as required by the Dare County Health Department, whichever is greater.

Staff Recommendation/Planning Board Recommendation
Planning staff recommends that the amendments be adopted as proposed.

At their August 18, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as proposed.

Number of Attachments: 3

Specific Action Requested:

Conduct the Public Hearing and take action on the proposed text amendment.

Submitted By: Planning and Development Date: August 25, 2020

Finance Officer Comment:

Signature: Amy Miller Date: August 25, 2020

Town Attorney Comment:

Signature: John Leidy Date: August 25, 2020

Town Manager Comment and/or Recommendation:

Signature: Greg Sparks Date: August 25, 2020

Town of Nags Head
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NOTICE OF PUBLIC HEARINGS
TOWN OF NAGS HEAD BOARD OF COMMISSIONERS

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, September 2, 2020** 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 a text amendment to the UDO that would allow for lots west of NC12 and SR1243 which have a Base Flood Elevation (located in an AE zone) to have fill added up to a height required by the Dare County Health Department for onsite wastewater
>
> Public Hearing to consider numerous minor text amendments to the Unified Development Ordinance for clarification and to correct errors
>
> Public Hearing to consider a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use uses

A copy of the application requests are available for public inspection at 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 the 17th day of August 2020.

Kelly Wyatt
Dep Planning Director

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Deputy Planning Director

Michael Zehner, Director of Planning & Development

Holly White, Principal Planner

Date: August 25, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance as it pertains to fill regulations for properties west of NC 12 and SR 1243 subject to a Base Flood Elevation. (Attachment F-1)

OVERVIEW AND BACKGROUND

Following the adoption of the Flood Damage Prevention Ordinance by the Board of Commissioners on June 3, 2020, Staff identified two necessary amendments to the text related to fill regulations applicable to properties west of NC 12 and SR 1243 and subject to a Base Flood Elevation. The first, a simple re-numbering to correct a typographical area. The second, a more substantive change to the regulations to address an unintended consequence associated with the significant reduction of the Base Flood Elevation, whereby fill is currently limited to not exceed the Base Flood Elevation but it may be necessary for the Dare County Health Department to require fill in excess of the Base Flood Elevation.

Section 11.5.3 of the Unified Development Ordinance addresses limitations on the utilization of fill based upon a property's location being either east or west of NC 12 and SR 1243. For properties west of NC 12 and SR 1243 for which the Flood Insurance Rate Map (FIRM) provides a Base Flood Elevation, fill shall not be permitted to exceed the Base Flood Elevation. It has been brought to our attention for one property currently the subject of planning for development, and will likely affect other westside properties, that the Dare County Health Department requirements for fill placement for the wastewater facilities will exceed the newly established Base Flood Elevation. The situation that Staff is aware of is as follows:

- The parcel was in an AE-11 (Base Flood Elevation of 11') flood zone and is now in an AE-4 flood zone.
- The average ground elevation on this lot is approximately 2.5'.
- The ordinance allows fill to be placed to the Base Flood Elevation, therefore, pursuant to current regulations, fill could not exceed 4'.
- The Dare County Health Department evaluation for wastewater improvement requires the septic field to be elevated 30 inches, bringing the lot elevation up to 5 feet, 1 foot greater than what the UDO would permit.

As written, this section of the Unified Development Ordinance does not adequately address the scenario where fill required for the wastewater permit would exceed the

established Base Flood Elevation. Generally, this is the result of the significant change in the Base Flood Elevation and did not present issues previously. The proposed amendment would remedy this situation by specifically allowing lots to fill to the Base Flood Elevation or the minimum amount of fill required by the Dare County Health Department, whichever is greater. Additionally, this will be consistent with fill requirements in areas where the FIRM provides no Base Flood Elevation.

STAFF RECOMMENDATION

Staff recommends that the amendments be adopted as proposed.

PLANNING BOARD RECOMMENDATION

At their August 18, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendments as presented.

With regard to the Board of Commissioner's review, Staff recommends consideration of the following UDO provisions:

3.5.3. Action by the Planning Board.

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

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

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

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

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

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

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

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

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

> *3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*
>
> *3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*
>
> *3.5.4.5.3. A statement approving the amendment and containing at least all of the following:*

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

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

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

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

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

Attachments:

1. Draft Ordinance pertaining to fill located west of NC 12 and SR 1243 where subject to a Base Flood Elevation.

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA TO AMEND THE UDO AS IT PERTAINS TO FILL REGULATIONS WEST OF NC 12 AND SR 1243 SUBJECT TO A BASE FLOOD ELEVATION

ARTICLE I. Purpose(s) and Authority.

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

WHEREAS, following adoption of the Flood Damage Prevention Ordinance, Planning Staff has identified an area in need to clarification with regard to fill limits west of NC 12 and/or 1243 subject to a Base Flood Elevation; and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes goals and policies aimed at maintaining a well-run and efficient government that provides high quality and cost-effective services through good governance in order to advance the Town's vision; and

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

ARTICLE II. Construction.

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

ARTICLE III. Amendment of the Unified Development Ordinance.

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

PART I. That **Section 11.5.3.2, Standard for Depth or Elevation of Fill, Properties West of NC 12 and SR 1243, of the Unified Development Ordinance**, be amended as follows:

11.5.3.2.1. In areas where the most recent Flood Insurance Rate Map (FIRM) provides a base flood elevation for a subject property, fill shall not ~~be permitted to~~ exceed the amount required for wastewater permits required by the Dare County Health

Department, or the base flood elevation, whichever is greater. However, when fill is proposed to be ~~except in cases where it is~~ placed directly beneath a slab that is designed to meet the base flood elevation depicted on the FIRM~~. In these instances~~, fill may exceed the base flood elevation by up to twelve inches (12") to support a turn-down or thickened edge slab or beneath a slab that is supported by a ring-wall style foundation; when designed in this manner, fill~~. Fill~~ placed above the base flood elevation shall not extend beyond the outside edge of the slab.

11.5.3.2.~~1~~2. In areas where the most recent Flood Insurance Rate Map (FIRM) provides no base flood elevation, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet (2') above pre-development surface elevation, whichever is greater.

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor

ATTEST:

_____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

_____
John Leidy, Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

Agenda Item Summary Sheet

Item No: **F-2**
Meeting Date: **September 2, 2020**

Item Title: Public Hearing to consider numerous minor text amendments to the Unified Development Ordinance for clarification and to correct identified typographical errors

Item Summary:
Since the Board of Commissioners meeting on May 6, 2020 where the first iteration of post-Unified Development Ordinance adoption typographical errors was adopted, Staff has identified several additional areas for correction and/or improvement of the UDO. These proposed amendments include: correction to the Post-Firm Definition, correction of various mis-spelled words, amending the UDO with the updated information from the December 5, 2018 approval of stormwater management amendments, correction to clarify that there are no supplemental standards for the use of Government Administrative Office, and to include "flag (non-advertising, non-informational)" regulations that were inadvertently omitted from the adopted UDO.

Staff Recommendation/Planning Board Recommendation
Planning staff recommends that the amendments be adopted as proposed.

At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the proposed text amendments as proposed.

Number of Attachments: 2

Specific Action Requested:

Conduct the Public Hearing and take action on the proposed text amendment.

Submitted By: Planning and Development Date: August 25, 2020

Finance Officer Comment:

Signature: Amy Miller Date: August 25, 2020

Town Attorney Comment:

Signature: John Leidy Date: August 25, 2020

Town Manager Comment and/or Recommendation:

Signature: Greg Sparks Date: August 25, 2020

Town of Nags Head
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NOTICE OF PUBLIC HEARINGS
TOWN OF NAGS HEAD BOARD OF COMMISSIONERS

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, September 2, 2020** 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 a text amendment to the UDO that would allow for lots west of NC12 and SR1243 which have a Base Flood Elevation (located in an AE zone) to have fill added up to a height required by the Dare County Health Department for onsite wastewater
>
> Public Hearing to consider numerous minor text amendments to the Unified Development Ordinance for clarification and to correct errors
>
> Public Hearing to consider a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use uses

A copy of the application requests are available for public inspection at 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 the 17th day of August 2020.

Kelly Wyatt
Dep Planning Director

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Deputy Planning Director

Michael Zehner, Director of Planning & Development

Holly White, Principal Planner

Date: August 25, 2020

Subject: Consideration of numerous minor text amendments to the Unified Development Ordinance for clarification and to correct identified typographical errors. (Attachment F-2)

OVERVIEW AND BACKGROUND

Since the Board of Commissioners meeting on May 6, 2020 where the first iteration of post-Unified Development Ordinance adoption typographical errors was adopted, Staff has identified several additional areas for correction and/or improvement of the UDO. The proposed amendments and a brief description of each is included below.

Correction to the Post-Firm Definition

The Flood Damage Prevention Ordinance Ordinance, adopted by the Board of Commissioners on June 3, 2020, contained an incorrect date within the definition of "Post-FIRM". The Post-FIRM date is cited as being December 31, 1974, and the Pre-FIRM date is cited as being November 10, 1972; both dates should be November 10, 1972. The December 31, 1974 date had previously been provided to the Town as the correct Post-FIRM date from FEMA, however, we have since been directed to utilize the November 10, 1972 date. We have received direction that the November 10, 1972 is relevant for floodplain purposes; the December 31, 1974 date is relevant for insurance purposes.

Correction to Section 3.5.3.3, Action by Planning Board, to correct a typographical error: "matter".

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

Correction to Section 4.12.2.1, Specific Site Plan Requirements Based on the Proposed Activity, Stormwater Management.

This section of the UDO had not yet been revised with the updated information from the December 5, 2018 approval of various stormwater management amendments.

Correction to Section 6.2.4.1, Zoning Districts, Commercial Districts, to correct a typographical error, "as".

The second to last sentence should read, "It is also the intent of this C-1 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well **as** site layout".

Correction of strike-through typo's in Section 6.6, Table of Uses and Activities as well as to clarify no supplemental standards listed for Government Administrative Office use.

Two (2) uses within Section 6.6 Table of Uses and Activities contain strikethrough of unnecessary text, this was unintentional and simply a carry over from a "mark-up" version.

Additionally, the use of "Government Administrative Office" contains a notation that supplemental standards are required and located within Section 7.42 of the UDO. This is an error, this use does not have supplemental standards associated with it and as such we are recommending the Table of Uses and Activities be amended to reflect that.

Correction to Section 8.3.1.5, Special Development Standards, C-3 Commercial Services District, to correct a typographical error, "pollution as".

The first sentence should read, "No outside storage of processed materials, which may be a possible source of **pollution as** determined by the NC Department of Environmental Quality, shall be allowed".

Correction to Section 10.24.2, Signs Permitted in Commercial Districts and the Commercial/Residential District, to include flag (non-advertising, non-informational) regulations that were inadvertently deleted during the adoption of the UDO.

Prior to the adoption of the Unified Development Ordinance, Chapter 48, *Zoning*, of the Code of Ordinances, contained various use regulations within the definition of the use. Listing use regulations within the definition of the use is not considered to be an ideal regulatory practice, and as such, during the drafting of the UDO, Staff attempted to move those regulations into the Supplemental Standards for the appropriate use. In the process, the spacing requirement for "Flag (non-advertising, non-informational)" which had previously been part of the definition, was not carried into the appropriate section of the UDO. This was inadvertently lost during the drafting process; this amendment would simply add the spacing requirement back into the use requirements.

STAFF RECOMMENDATION

Staff recommends that the amendments be adopted as proposed.

PLANNING BOARD RECOMMENDATION

At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the proposed text amendments as proposed.

With regard to the Board of Commissioner's review, Staff recommends consideration of the following UDO provisions:

3.5.3. Action by the Planning Board.

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

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

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

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

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board.

However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

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

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

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

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

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

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

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

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

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

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

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

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

Attachments:

1. Draft Ordinance to clarify and address identified typographical errors within the UDO.

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA TO CLARIFY AND CORRECT IDENTIFIED TYPOGRAPHICAL ERRORS WITHIN THE UDO.

ARTICLE I. Purpose(s) and Authority.

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

WHEREAS, following adoption of the Unified Development Ordinance, Planning Staff has identified several unintended errors within the text of the Ordinance, necessitating amendment to correct; and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes goals and policies aimed at maintaining a well-run and efficient government that provides high quality and cost-effective services through good governance in order to advance the Town's vision; and

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

ARTICLE II. Construction.

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

ARTICLE III. Amendment of the Unified Development Ordinance.

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

PART I. That the **definition of Post-FIRM as contained in Appendix A. Definitions, of the Unified Development Ordinance**, be amended as follows:

> ***Post-FIRM*** means construction or other development for which the start of construction occurred on or after ~~December 31, 1974~~ November 10, 1972, the effective date of the initial Flood Insurance Rate Map.

PART II. That **Section 3.5.3.3, Action by the Planning Board, of the Unified Development Ordinance**, be amended as follows:

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

PART III. That **Section 4.12.2.1, For All Types of Development Activity, of the Unified Development Ordinance**, be amended as follows:

4.12.2. Specific Site Plan Requirements Based on the Proposed Activity.

4.12.2.1 For All Types of Development Activity.

- Site plan/survey
  - Property information- address, ownership, lot number/map book/page reference
  - Existing and proposed development including but not limited to streets, topographic and natural features, and drainage
- Coastal Area Management Act (CAMA) Permit.
- Wastewater approval from Dare County Health Department or NC Department of Environmental Quality.
- Erosion control approval is issued with general development for projects disturbing more than 5,000 square feet (see Article 11, Part II).
- Flood (if in a Special Flood Hazard Area, Shaded X, or X Zone, see Article 11, Part III).
- Stormwater management (~~for projects which propose filling greater than one foot or for all new commercial construction, see Article 11, Part I~~ as required by Article 11, Part I, for projects involving, but not limited to, commercial, mixed use, and multi-family development or redevelopment, new detached single-family and duplex residential properties, existing single-family and duplex residential properties where more than 500 square feet of new built-upon area is being added, and/or the removal or replacement of driveways).
- Architecture (for residential structures greater than 3,500 square feet, see UDO Section 7.4, Dwelling, Large Residential)
- Utility connections (see Town Code Chapter 44).
- Any other State or Federal Permits

PART IV That **Section 6.2.4.1. C-1 Neighborhood Commercial District of the Unified Development Ordinance**, be amended as follows:

6.2.4.1. C-1 Neighborhood Commercial District. The C-1 neighborhood commercial district is intended to accommodate neighborhood scale, pedestrian-oriented development that serves the needs of the immediate residential neighborhoods with an emphasis on expanding neighborhood commercial activities

along NC 12. The purpose of this district is to provide needed goods and services within walkable distances to residential neighborhoods. Development must be designed in use, scale, character, and intensity to be compatible with and protect surrounding residential areas, natural resources, and scenic viewsheds. Activities such as shopping, strolling, and dining are leisure activities as much as other needed services. Typical uses in this designation include restaurant (walk-up or sit down), commercial, office, retail, personal services establishments, gallery/museum, beach equipment rentals, cottage courts, hotels, and single-family residential (5,000 square feet or less). Commercial development should be designed to activate the street fronts, encourage walkability, and be situated closer to street grade while still elevated to minimize flood risk. It is also the intent of this C-1 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well as site layout. This could include the use of accessory residential dwelling units to commercial businesses or other arrangements of mixed use that are designed to be pedestrian oriented and in close proximity to one another.

PART V. That **Section 6.6. Table of Uses and Activities, of the Unified Development Ordinance**, be amended as follows:

Use Category/Class	**Use Type**
Residential	Cluster Housing
Residential	Cottage Court~~s~~
Residential	Dwelling, Accessory

Use/Category/Class	**Use Type**	**R-3**	**Supplemental Regulations**
Institutional	Government~~al~~ Administrative Office	P~~S~~	~~Section 7.42~~

PART VI. That Section **8.3.1.5. C-3 Commercial Services District of the Unified Development Ordinance**, be amended as follows:

Section 8.3 Special Development Standards – Primary Zoning Districts

8.3.1. C-3 Commercial Services District.

8.3.1.5. No outside storage of processed materials, which may be a possible source of pollution~~as~~ as determined by the NC Department of Environmental Quality, shall be allowed. Processed materials would include, but not be limited to, chemically treated lumber, or petroleum-based products which when exposed to the elements could create stormwater runoff containing pollutants. Areas devoted to the outside storage of materials shall be maintained permeable and shall be calculated as permeable lot coverage. These areas shall be clearly delineated on the site plan, and any expansion of such areas shall be considered a site modification for which approval by the Board of Commissioners is required.

PART VII. That **Section 10.24.2.7. Signs Permitted in Commercial Districts and the Commercial/Residential District, of the Unified Development Ordinance**, be amended as follows:

10.24.2.7. One (1) flag sign shall be permitted in accordance with the specifications listed in the definition for flag sign as described in Appendix A Definitions.

10.24.2.8. Flag signs (non-advertising, non-informational), as defined, shall be permitted, with no more than one flag for every 20 linear feet of street frontage.

10.24.2.~~8~~9. Outdoor stands shall be allowed one (1) temporary sign attached to the stand. Such sign shall not exceed fifteen (15) square feet in area or extend above the roof of the stand. This sign area shall be exempt from the calculation of total commercial site sign area limitations imposed by this subsection.

PART VIII. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____

Benjamin Cahoon, Mayor

ATTEST:

_____

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

_____

John Leidy, Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

Agenda Item Summary Sheet

Item No: **F-3**
Meeting Date: **September 2, 2020**

Item Title: Public Hearing to consider a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use uses

Item Summary:
Cahoon and Kasten Architects, PC has submitted a text amendment application on behalf of Sumit Gupta of Legacy Homes, Inc. If adopted, this text amendment would amend the Unified Development Ordinance ("UDO"), Section 7.32.2., to add the "Furniture Store" use as an allowable use for all Commercial Mixed-Use designations; this designation includes the following use types: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Centers. Furniture Store is an allowed use within the C-2 Zoning District; therefore, it would be within that district only that a furniture store could be incorporated as part of a mixed use. With the exception of the Commercial with Accessory Residential use, all other mixed-use designations require a conditional use permit within the C-2 District.

Staff Recommendation/Planning Board Recommendation
Planning staff generally has no concern with listing the use of "Furniture Store" as an allowable use for all Commercial Mixed-Use designations and believes this amendment to be consistent with applicable policies.

At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the proposed text amendment as proposed.

Number of Attachments: 4

Specific Action Requested:

Conduct the Public Hearing and take action on the proposed text amendment.

Submitted By: Planning and Development Date: August 25, 2020

Finance Officer Comment:

Signature: Amy Miller Date: August 25, 2020

Town Attorney Comment:

Signature: John Leidy Date: August 25, 2020

Town Manager Comment and/or Recommendation:

Signature: Greg Sparks Date: August 25, 2020

Town of Nags Head
Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

NOTICE OF PUBLIC HEARINGS
TOWN OF NAGS HEAD BOARD OF COMMISSIONERS

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, September 2, 2020** 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 a text amendment to the UDO that would allow for lots west of NC12 and SR1243 which have a Base Flood Elevation (located in an AE zone) to have fill added up to a height required by the Dare County Health Department for onsite wastewater
>
> Public Hearing to consider numerous minor text amendments to the Unified Development Ordinance for clarification and to correct errors
>
> Public Hearing to consider a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use uses

A copy of the application requests are available for public inspection at 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 the 17th day of August 2020.

Kelly Wyatt
Dep Planning Director

Item 3

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Ben Cahoon as Agent for Sumit Gupta

Mailing address 118 W. Woodhill Drive, Nags Head, NC 27959

Explanation of request

[X] Zoning Ordinance - Section(s) 7.32
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

In section 7.32.2 Retail add the following use:

- Furniture store

Reason for request

Furniture stores are permitted in the C-2 zoning district. But while convenience stores, grocery stores, pharmacies, general retail, and hardware stores can be paired with other uses in mixed use and (2) principal use configurations, furniture stores cannot.

Ben Cahoon / [signature]
Applicant

7/13/20
Date

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Deputy Planning Director

Michael Zehner, Director of Planning and Development

Date: August 25, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use designations. (Attachment F-3)

OVERVIEW AND BACKGROUND

Cahoon and Kasten Architects, PC has submitted the attached text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc. The requested amendment seeks to amend Section 7.32 of the UDO, and specifically Section 7.32.2., to add the Furniture Store use as an allowable use for all Commercial Mixed-Use designations; this would include the following use types: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Centers. Currently, and without this amendment, a Furniture Store use would not be allowed to be incorporated as part of one of the aforementioned mixed-use uses. Generally, the various mixed-use uses contemplate and allow for multiple independent entities and/or uses to occupy a single building or property.

It is also important to note that furniture stores are an allowed use only within the C-2 zoning district. Therefore, it would be within the C-2 district only that a furniture store could be incorporated as part of a mixed-use use. With the exception of the Commercial with Accessory Residential use, all other mixed-use use designations require a conditional use permit within the C-2 district.

Applicable definitions are as follows:

- ***Commercial with accessory residential*** means a principal commercial use with accessory single-family residences either attached or detached. This use could include single-family residential, duplex, or multiple detached single-family residential dwelling units configured in a cottage court arrangement.

- ***Mixed-use development*** means a single building containing more than one type of land use or single development of more than one building, and use, under common ownership, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. Mixed use is defined by a combination of professional offices, personal services, indoor recreation facilities, retail, and/or restaurant uses in combination with residential development.

- ***Multiple principal uses*** means multiple, unrelated, primary or predominate uses located within one building.

- ***Shopping Center*** means a single, commercial structure which includes or is designed to include two or more establishments with a combined floor area of at least 10,000 square feet planned for a single or contiguous lot.

- ***Furniture store*** means an establishment that sells goods and/or movable objects, intended to support various human activities such as seating, eating, and sleeping, for furnishing or improving housing units that make a room or other area ready for occupancy.

Additionally, there is a definition for furniture showroom, as follows, but this is not identified as a separate use in the UDO:

- ***Furniture showroom*** means a retail establishment that utilizes large, open floor areas to display furniture or mattresses.

While it is important to remember that text amendments are not site specific, this text amendment has been proposed with the intent to seek a conditional use permit to incorporate the use as part of a Multiple Principal Uses use of the existing structure located at 205 East Baltic Street (formerly His Dream Center), situated within the C-2 zoning district; this application has been filed and is expected to come before the Planning Board and Board of Commissioners respectively for review and recommendation following resolution of the proposed text amendment. The approval of the subject text amendment does not commit any future action on the subsequent conditional use permit.

POLICY CONSIDERATIONS

While staff has not identified policies within the Town's Comprehensive Plan specific to "Furniture Stores" in association with mixed-use uses, the following policies are generally relevant and should be taken into consideration:

LU-9; pg. 3-20 – Encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community.

EC-1; pg. 3-117 – Develop and promote a sustainable economy that supports a high quality of life for residents and visitors without compromising the integrity of natural and cultural resources and a sense of place.

EC-3; pg. 3-117 – Meet the infrastructure and service needs of the community at appropriate levels as the community continues to grow.

EC-8; pg. 3-123 – Enhance economic health and increase employment opportunities through business retention and expansion.

STAFF RECOMMENDATION

In review of this text amendment application, Staff generally has no concern with listing the use of "Furniture Store" as an allowable use for all Commercial Mixed-Use designations and believes it is consistent with applicable policies. As referenced above, this would only be applicable within the C-2 zoning district, and, with the exception of the Commercial with Accessory Residential use, would require a conditional use permit. Therefore, Staff recommends adoption of the proposed text amendment.

PLANNING BOARD RECOMMENDATION

At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the requested text amendment as proposed.

With regard to the Board of Commissioner's review, Staff recommends consideration of the following UDO provisions:

3.5.3. Action by the Planning Board.

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

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

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

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

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of

Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

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

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

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

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

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

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

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

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

request or application for amendment to the Comprehensive Plan.

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

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

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

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

Attachments:

1. Proposed Ordinance; and
2. Application from Cahoon and Kasten Architects, PC

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA TO LIST "FURNITURE STORE" AS AN ALLOWABLE USE IN COMMERCIAL MIXED-USE DESIGNATIONS.

ARTICLE I. Purpose(s) and Authority.

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

WHEREAS, a text amendment application has been submitted requesting consideration be given to listing "Furniture Store" as an allowable use within Commercial Mixed-Use Designations.

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes policies supporting land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community.

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 7.32.2 Retail.** be amended as follows:

PART VI. – COMMERCIAL MIXED-USE

Section 7.32 – General Provisions.

The following provides the allowable uses for all Commercial Mixed-Use designations as permitted in accordance with Section 6.6, Table of Uses and Activities:

7.32.2. Retail.

- Food/Grocery Store.
- Furniture Store.
- General Retail, including…

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor

ATTEST:

_____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

_____
John Leidy, Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

Agenda Item Summary Sheet

Item No: **G-1**
Meeting Date: **September 2, 2020**

Item Title: Update from Planning Director

Item Summary:

Attached please find a monthly update from Planning Director Michael Zehner.

Number of Attachments: 1

Specific Action Requested:

Provided for Board information and update.

Submitted By: Planning and Development Date: August 26, 2020

Finance Officer Comment:

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

Signature: Greg Sparks Date: August 26, 2020

MEMORANDUM
Town of Nags Head
Planning & Development Department

To:	Board of Commissioners
	Planning Board
From:	Michael Zehner, Director of Planning & Development
Date:	August 26, 2020
Subject:	Planning and Development Director's Report (G-1)

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 September 2, 2020.

Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for July 2020*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Wednesday, July 1 - Board of Commissioners Meeting
- Thursday, July 2 - Farmers Market
- Wednesday, July 8 - Arts & Culture Committee Meeting
- Thursday, July 16 - Farmers Market
- Tuesday, July 21 - Planning Board Meeting
- Thursday, July 23 - Farmers Market
- Thursday, July 30 - Farmers Market

Impact of Coronavirus on Permitting

The following information was contained in the Report dated July 24, 2020; at this time, unless the boards wish to be provided with continued updates, Staff will discontinue this specific reporting, focusing instead on providing the standard quarterly reports on permitting:

As previously reported, a total of 67 building permits (non-trade) were applied for in both March 2020 and March 2019. In April, 48 building permits were applied for in both 2020 and 2019. In May, 57 building permits were applied for in 2020, while 48 were applied for in 2019. Finally, in June, 48 permits were applied for in 2020, while 39 were applied for in 2019. Since March 16 through July 23, 215 permits were applied for in 2020 compared to 194 in 2019.

With regard to trade permits, a total of 469 were issued in March through June of 2019, and a total of 300 were issued during the same period in 2020.

Short-Term Rental Registration Update

A total of 69 properties were registered as short-term rentals in 2019; as of August 25, 2020, 32 of these properties were registered in 2020. As of the same date, 98 additional properties were newly registered in 2020. A total of 167 properties are currently registered as short-term rentals.

Properties registered in 2019 have until September 1, 2020 to register to continue to maintain compliance. Unregistered short-term rentals being rented or offered for rent would be in violation of the Town's regulations. Emails were sent on July 21, 2020 to owners of properties registered in 2019, reminding them of the need to renew registrations by September 1, 2020. Additionally, on July 27, 2020, postcards were mailed to owners of approximately 300 properties determined from Dare County records as likely qualifying as short-term rentals. Staff will continue efforts to identify and register active short-term rentals within Town. So far, 40 properties have been registered as short-term rentals that were not previously identified as rentals on Dare County's records.

Through the administration of the registration program, Staff has determined that it may be necessary to seek an amendment of the provisions to specifically exempt cottage court units managed by a single entity from being required to register as short-term rentals. Staff understands that it was the intent that these units, which operate more closely to hotels/motels, would not require registration, and has therefore not been requiring these units to be registered. However, Staff would recommend that this be clarified within the Town Code.

Camping Provisions

As the Board of Commissioners may recall, amendments to the Town's camping provisions were approved on July 1, 2020 to clarify the prohibition on the use of vehicles for camping within Town. At that time, members of the Board suggested that it may be worthwhile to revisit the provisions at a later date to ensure that they were consistent with expectations. Staff will work with the Town Manager's Office to schedule a future discussion on the provisions.

Update of Decentralized Wastewater Management Plan

As part of the project to update the Town's Decentralized Wastewater Management Plan, it is contemplated that an Advisory Team or steering committee would be formed to assist in guiding the project and the work of the consultant. If the Board of Commissioners agree, Staff would like to begin seeking volunteers for consideration by the Board at a future meeting. The RFQ seeking qualified consultants was released on August 14, 2020, with responses due September 30, 2020.

NFIP Community Rating System Audit

For the last several months, Staff has been preparing information in advance of the 5-Year Cycle audit for the Town's participation in the Community Rating System. The Community Rating System (or CRS) is part of the National Flood Insurance Program (NFIP), and is a voluntary incentive program that recognizes and encourages

community floodplain management activities that exceed the minimum program requirements. As a result, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community actions meeting the three goals of the CRS:

1. Reduce flood damage to insurable property;

2. Strengthen and support the insurance aspects of the National Flood Insurance Program; and

3. Encourage a comprehensive approach to floodplain management

Planning Board - Pending Applications and Discussions

The August 18, 2020 meeting of the Planning Board was held in person without use of the Zoom platform as the meeting was not considered an electronic meeting pursuant to the Town's policy and applicable State statutes. The agenda included consideration of a text amendment to address nonconforming hotels and preexisting uses in conjunction with fishing piers, and a text amendment to address fill regulations for properties west of NC 12 and/or 1243 and subject to a Base Flood Elevation.

The Planning Board's next meeting is scheduled for September 15, 2020. At this time, the agenda is expected to include consideration of a conditional use permit application for the Dream Center property contingent upon the text amendment regarding Furniture Stores as an allowable use as part of Commercial Mixed-Use uses.

As the Board is aware, a request has been submitted from the Outer Banks Realtors asking that consideration be given to allowing live broadcast and/or remote participation in Planning Board meetings. Staff will be working with the Town Manager's Office, the Planning Board Chair, and the Town Attorney to determine how best to accommodate this request.

Additional Updates

- **2020 Census** - As previously indicated, the number/percentage of vacant vacation/rental homes in Town would skew the response rate recognized by the Census, as the rate is not adjusted at this time to account for those homes. Dare County has begun releasing the information on the rate depicting more accurate response rates based upon the number of occupied homes in the various communities. Based upon this methodology, the Town's response rate as of August 17, 2020 has been determined to be 87.39%, up from 85.46% on July 20, 2020, and up from 83.91% on June 23.

  A previously reported, Census enumerators will be working within the community to seek completion of the Census from nonresponse addresses. Collection of Census responses will cease on September 30, 2020.

- **Town Workforce Housing Study & Plan** - Phase 1 Report presented to the Board of Commissioners at the February 5, 2020 meeting. Further action on this project is on hold pending direction from the Board of Commissioners; however,

it is important to note that funds associated with this project were liquidated due to budgetary constraints associated with the Covid-19 Pandemic.

- **Skate Park Renovation - Phase 1** - Staff is working to finalize a survey to determine community preferences for any future renovation of the Skate Park. Staff has also discussed the project with the Arts & Culture Committee, who are supportive of incorporating public art within the Park. As previously reported, Staff finalized submission of an application for the National Endowment for the Arts Our Town Grant on August 18, 2020, seeking funds to design and develop plans for a future renovation of the Skate Park.

- **CAMA Land Use Plan Update** - As previously noted, on July 15, 2020, Staff received further comments on the revised submission pertaining to the completeness of the Plan based upon CAMA requirements. Staff submitted a further revised Plan in response to the comments on August 20, 2020. A determination of Plan completeness is required before further review is initiated.

- **UDO Reference Manual & Permitting Workflow** - Staff continues to develop Reference Manual materials, including identifying and refining workflows, to be brought to the Board of Commissioners for approval at a later date.

- **Art Masts** - As previously noted, the Art Mast project, coordinated with the Arts & Culture Committee, has resulted in four completed art panels. The Arts & Culture Committee continues to discuss the locations for the new Art Masts, and is considering installations beginning at Bonnet Street and ending in the Gallery Row District. Staff is awaiting a proposal from a sign company to identify the best way to install the masts.

- **Decentralized Wastewater Master Plan** - As noted above, an RFQ seeking proposals from consultants was released on August 14, 2020, with responses due September 30, 2020.

- **Islington Street Beach Access** - Subject to DCM/CAMA and CIP funds to improve the access, Staff will be working to prepare plans for permitting. Staff anticipates the site plan to be reviewed initially at the September or October Planning Board meeting.

- **Jacob Street Beach Access** - Construction of this project is complete and Staff is working with DCM staff to close out the grant.

- **Legacy Establishments/Structures** - As previously noted, Staff had been working with the Planning Board on this initiative, with the focus narrowed to pertain to nonconforming hotels, as well as fishing pier properties that include residential units, also a nonconforming condition. The Planning Board considered and recommended adoption of a text amendment at their August meeting, and consideration of the scheduling of a public hearing is on the Board of Commissioners consent agenda for the meeting on September 2, 2020.

- **Dowdy Park Farmer's Market** - The last scheduled date for the Market is Thursday, August 27. However, given expressed interest from vendors, the extended season, and staffing availability, Staff is working to determine whether a Market will be held on Thursday, September 3. Staff has been enforcing masking and other protocols to ensure the public's health and safety.

- **Permitting/Online Permitting** - Staff had previously contacted representatives of the Outer Banks Home Builders Association to coordinate a schedule for a workshop/forum for the building community. However, given current circumstances, this effort has been placed on hold. Staff is considering developing a series of videos in the interim.

  Staff has begun an email distribution to contractors registered with the Town to provide updates on changes to permitting and inspection procedures associated with the Coronavirus Pandemic and response. Similar updates in the future are expected to be made on a more regular schedule and Staff will likely transition to using the News Flash feature on the Town's website.

  As previously reported, as of May 8, 2020, online permitting has been activated for all residential and commercial building and trade permit types. As noted in the FY19-20 3rd and 4th Quarter Permitting Report, Staff will continue to work to make improvements to the platform, publicize the availability of the resource, refine documents providing guidance to the Town's customers, and develop protocols for records management in support of the platform.

- **Grants and Assistance**

  - Staff had submitted a request under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan. Staff learned that funding under that event was no longer being considered, but that the request was being considered under funding decisions related to Hurricane Dorian.

  - Staff submitted a Letter of Interest ("LOI") under the Hazard Mitigation Grant Program related to Hurricane Dorian for the acquisition of property, and assisted Fire Chief Wells in the submission of an LOI for replacement of a generator; we have been notified that the generator request has been selected for further consideration, and have also learned that the request for funds for property acquisition also continues to be considered.

  - A final application for a National Fish and Wildlife Foundation - National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan was submitted in July 2020. Additionally, an application was submitted for the 2020 North Carolina Attorney General Environmental Enhancement Grant for the same project. Staff anticipates learning the status of these applications by the end of September 2020.

- As noted, Staff submitted a final application for the National Endowment for the Arts Our Town Grant on August 18, 2020 seeking funds to prepare designs for the renovation of the Town's Skate Park.

- **Academic/NGO Projects**

  As the boards are likely aware, the Outer Banks and Town are the subject of numerous academic and general research projects. We felt it important to provide an overview of the active projects involving the Town in some degree, as follows:

  - 2020 OBX Field School and UNC-CSI Capstone Project

    The OBX Field School, along with the UNC-CSI Capstone Project, are coordinated through the Coastal Studies Institute. Kicking off the Fall 2020 Semester, Department Staff along with Town Engineer David Ryan were invited to join the UNC Field School on their Water Tour on August 12, 2020. Mr. Ryan and Holly White provided students with an overview of the Town's Comprehensive Plan and challenges related to groundwater, septic health management, stormwater, and water quality. The students concluded their time with Town Staff with a trip to the groundwater lowering wells near the Barnes Street Park.

    In conjunction with the Field School, the Planning Department will virtually host an intern this semester. Brianna "Bri" Thompson is a junior at UNC double majoring in Environmental Studies and Public Policy. She also has an interest in art and design that will assist her in her project with the Town. Bri will work on developing social media messaging and general outreach materials for the stormwater, septic health, and floodplain management programs.

    As part of the UNC-CSI Capstone Project, students will perform water sampling at several locations in Nags Head throughout the semester to monitor bacteria and optical brighteners. Their work last year suggested that the groundwater lowering systems, managed by the Town, are having an added benefit to improved water quality; additional research will be conducted to investigate this further. Lastly, students will develop and conduct a survey to resident and non-residential property owners to assess their knowledge and awareness, attitudes/risk perceptions, and behaviors/practices regarding septic systems. Previous work, and this semester's work, will benefit the forthcoming update of the Town's Decentralized Wastewater Management Plan.

  - C-CoAST - The Collaboratory for Coastal Adaptation over Space and Time (C-CoAST)

    A Research Coordination Network (RCN) funded by the National Science Foundation (NSF) to address grand challenges in coastal resilience. Developed coastal environments are shaped by interactions between human activities and natural processes. Mitigation and recovery strategies

that promote adaptation at the time scale of storm events can be counterproductive over longer timescales. A series of collaborative activities will integrate coastal researcher, stakeholder, and practitioner expertise, building capacity for a comprehensive understanding of the human-natural coastal system. This will enable the potential for steering away from future outcomes that communities may want to avoid, and toward outcomes they deem more desirable.

This network is working to develop a hub which will ultimately provide funding for project implementation for both researchers and practitioners. Dare County was identified as a pilot community in which virtual listening session and a community meeting will be held. Staff's role is limited to providing feedback as a sounding board for ideas and connection to local stakeholder groups.

- ECU Groundwater Study

  This project was initiated in 2019, intended to measure and identify changes in groundwater levels within the Town and the causes. There is to be a related focus on impacts to onsite wastewater. The lead researcher is currently out of the country working on a separate research assignment.

- Wastewater Infrastructure Tipping Points: Prioritizing Implementation of Climate Adaptation Plans in Decentralized Systems

  This project is being led by North Carolina Sea Grant and faculty from ECU. The project is researching the relationship between climate change/adaptation, groundwater, and onsite decentralized wastewater systems.

- Climate Change Adaptation in a Coupled Geomorphic-Economic Coastal System

  This project is being led by UNC-Wilmington, UNC, Duke, and Ohio State. There have been no recent updates.

Upcoming Meetings and Other Dates

- Thursday, August 27 - Farmers' Market
- Monday, August 31 - P&D Staff Meeting
- Tuesday, September 1 - Technical Review Committee Meeting
- Wednesday, September 2 - Board of Commissioners Meeting
- Thursday, September 3 - Extended Farmers' Market Day - tentative
- Wednesday, September 9 - Arts & Culture Committee Meeting
- Thursday, September 10 - Board of Adjustment Meeting
- Tuesday, September 15 - Planning Board Meeting
- Tuesday, September 15 - CRS Audit

TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT
MONTHLY REPORT
JULY 2020

DATE SUBMITTED: August 7, 2020

	Jul-20	Jul-19	Jun-20	2020-2021 FISCAL YTD	2019-2020 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
BUILDING PERMITS ISSUED - RESIDENTIAL						
New Single Family	2	1	0	2	1	1
New Single Family, 3000 sf or >	0	1	0	0	1	(1)
Duplex - New	0	0	0	0	0	0
Sub Total - New Residential	2	2	0	2	2	0
Miscellaneous (Total)	21	16	38	21	16	5
Accessory Structure	*3*	*3*	*4*	3	*3*	0
Addition	*3*	*0*	*1*	3	*0*	3
Demolition	*0*	*0*	*0*	0	*0*	0
Move	*0*	*0*	*0*	0	*0*	0
Remodel	*5*	*3*	*6*	5	*3*	2
Repair	*10*	*10*	*27*	10	*10*	0
Total Residential	**23**	**18**	**38**	**23**	**18**	5
BUILDING PERMITS ISSUED - COMMERCIAL						
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	0	0
Subtotal - New Commercial	0	0	0	0	0	0
Miscellaneous (Total)	9	5	2	9	5	4
Accessory Structure	*6*	*3*	*2*	6	*3*	3
Addition	*0*	*0*	*0*	0	*0*	0
Demolition	*1*	*1*	*0*	1	*1*	0
Move	*0*	*0*	*0*	0	*0*	0
Remodel	*0*	*1*	*0*	0	*1*	(1)
Repair	*2*	*0*	*0*	2	*0*	2
Total Commercial	**9**	**5**	**2**	**9**	**5**	4
Grand Total	**32**	**23**	**40**	**32**	**23**	9
SUB-CONTRACTOR PERMITS						
Electrical	28	49	39	28	49	(21)
Gas	3	2	2	3	2	1
Mechanical	43	43	59	43	43	0
Plumbing	6	9	8	6	9	(3)
Sprinkler	0	0	2	0	0	0
VALUE						
New Single Family	$686,336	$175,000	$0	$686,336	$175,000	$511,336
New Single Family, 3000 sf or >	$0	$700,000	$0	$0	$700,000	($700,000)
Duplex - New	$0	$0	$0	$0	$0	$0
Misc (Total Residential)	$617,281	$355,569	$547,315	$617,281	$355,569	$261,712
Sub Total Residential	**$1,303,617**	**$1,230,569**	**$547,315**	**$1,303,617**	**$1,230,569**	$73,048
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	$0	$0
Misc (Total Commercial)	$111,700	$62,875	$5,340	$111,700	$62,875	$48,825
Sub Total Commercial	**$111,700**	**$62,875**	**$5,340**	**$111,700**	**$62,875**	$48,825
Grand Total	**$1,415,317**	**$1,293,444**	**$552,655**	**$1,415,317**	**$1,293,444**	**$121,873**

TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT
MONTHLY REPORT
JULY 2020

DATE SUBMITTED: August 7, 2020

	Jul-20	Jul-19	Jun-20	2020-2021 FISCAL YTD	2019-2020 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
ZONING						
Zoning Permits	26	21	17	26	21	5
CAMA						
CAMA LPO Permits	2	3	0	2	3	(1)
CAMA LPO Exemptions	5	5	8	5	5	0
Sand Relocations	0	N/A	0	0	N/A	N/A
CODE COMPLIANCE						
CCO Inspections	82	157	75	82	157	(75)
Cases Investigated	51	78	53	51	78	(27)
Warnings	11	10	7	11	10	1
NOVs Issued	40	68	41	40	68	(28)
Civil Citations (#)	0	0	0	0	0	0
Civil Citations ($)	$0	$0	$0	$0	$0	$0
SEPTIC HEALTH						
Tanks inspected	0	64	8	0	64	(64)
Tanks pumped	4	5	4	4	5	(1)
Water quality sites tested	0	46	92	0	46	(46)
Personnel Hours in Training/School	15	0	6	15	0	15

Michael D. Zehner, Director of Planning & Development

COMMENTS:

Agenda Item Summary Sheet

Item No: **H-1**
Meeting Date: **September 2, 2020**

Item Title: Committee Reports

Item Summary:

At the September 2nd Board of Commissioners meeting, Board members will provide reports from meetings they have attended on behalf of the Town.

Number of Attachments: 0

Specific Action Requested:

Provided for Board update.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Greg Sparks Date: August 26, 2020

Agenda Item Summary Sheet

Item No: **H-2**
Meeting Date: **September 2, 2020**

Item Title: Police Dept - Presentation of Police Department Progress Report

Item Summary:

At the September 2nd Board of Commissioners meeting, Police Chief Phil Webster will present a progress report highlighting the past year in the Police Department. His report is attached.

Number of Attachments: 1

Specific Action Requested:

Provided for Board update.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

I will participate in the discussion as necessary.

Signature: Greg Sparks Date: August 26, 2020

Nags Head Police Department

2019-2020 FISCAL YEAR SUMMARY

The men and women of the Nags Head Police Department are committed to the town vision of a:

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

We work hard every day in a partnership with our community, visitors, fellow law enforcement and public safety agencies throughout the Outer Banks to create an environment of safety.

You will see in this report the rewards of hard work and dedication of your police department. In addition, your department has met the challenges posed by COVID-19 and remained consummate professionals.

J Phillip Webster, Chief of Police

MISSION STATEMENT

We are the guardians of life and property in our coastal community. We will deter crime and disorder and be resilient in times of peril.

VISION

We will provide excellence in service through proactive law enforcement initiatives in partnership with our community, town departments, and our Outer Banks neighbors. We will utilize law enforcement strategies that are fair, equitable, and transparent to all. We will ensure the Town of Nags Head remains a great place to live, work, and play.

VALUES

Members of the Nags Head Police Department are committed to professionalism through:

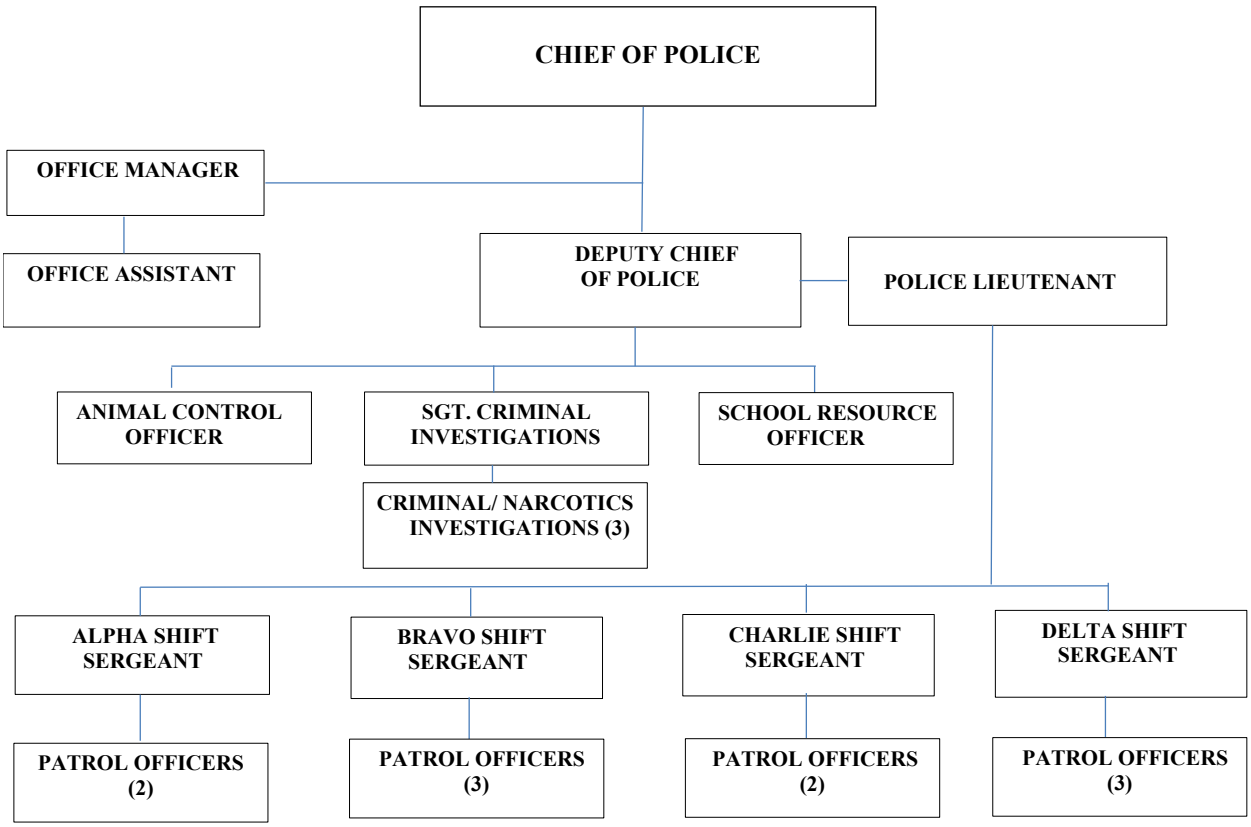
SERVICE- by partnering with those in our community in need of law enforcement assistance and addressing their concerns.

PROFESSIONALISM- by providing effective and efficient police services via; qualified, trained, and equipped officers.

INTEGRITY- by operating in an ethical, and honest manner towards our partners, peers, and the Nags Head Community.

STRENGTH- by being courageous and perseverant in times of adversity.

POLICE DEPARTMENT ORGANIZATIONAL CHART



The Police Department includes 25 sworn and non-sworn personnel. The department is divided into three divisions:

Administration- Includes the Chief of Police, Deputy Chief of Police, Police Lieutenant, Office Manager, and Office Assistant.

Criminal Investigations- Includes a Sergeant, two Investigators, and one Narcotics Investigator

Uniform Patrol- Includes four sergeants, each supervising a patrol squad. Each squad contains two officers. Two K9 Officers are assigned to uniform patrol along with the School Resource Officer and Animal Control Officer.

COVID-19 Impacts

COVID-19 has impacted the department significantly.

In March 2020, we cancelled all in house training, out of town travel and meetings.

We changed the way we respond to calls for service including triaging calls by phone and attempting to conduct business outside. We require persons being transported to wear a mask and for cars and touch surfaces to be cleaned post transport.

All officers are required to wear a mask and other appropriate PPE.

We all must take pre work temperatures checks.

We have limited officer-initiated activity. This included proactive traffic enforcement and non-enforcement community contacts.

The department was not able to participate in this year's J-1 Student program and Bike-Ped Coalition activity due to cancellations. Both of these programs are critical components in our safety and relationship building outreach.

Programs such as our community watch meetings and citizens academy have been placed on hold.

Since March we have addressed over 50 calls for COVID related issues including complaints on businesses. We have addressed these issues via education. Officers also proactively addressed many groups on social distancing issues during the spring on our ocean front.

As we move forward, we will begin to train once again this fall to meet state mandated requirements. Officers will also be able to attend state training in person or via video conferencing as directed by the state.

We are incrementally resuming officer-initiated activity with the safety of staff as a top concern.

Statistics

Group A Crimes

In 2012, the federal government implemented a new crime reporting system and changed from Uniform Crime Reporting (UCR) Summary Reporting System (SRS) to the National Incident Based Reporting System (NIBRS). In late 2018, the State along with Nags Head Police Department began reporting its crime data to NIBRS.

Group A Crimes in NIBRS are grouped into Crimes Against Persons, Crimes Against Property and Crimes Against Society. In the fiscal year 2019-2020, 401 Group A crimes were committed in Nags Head.

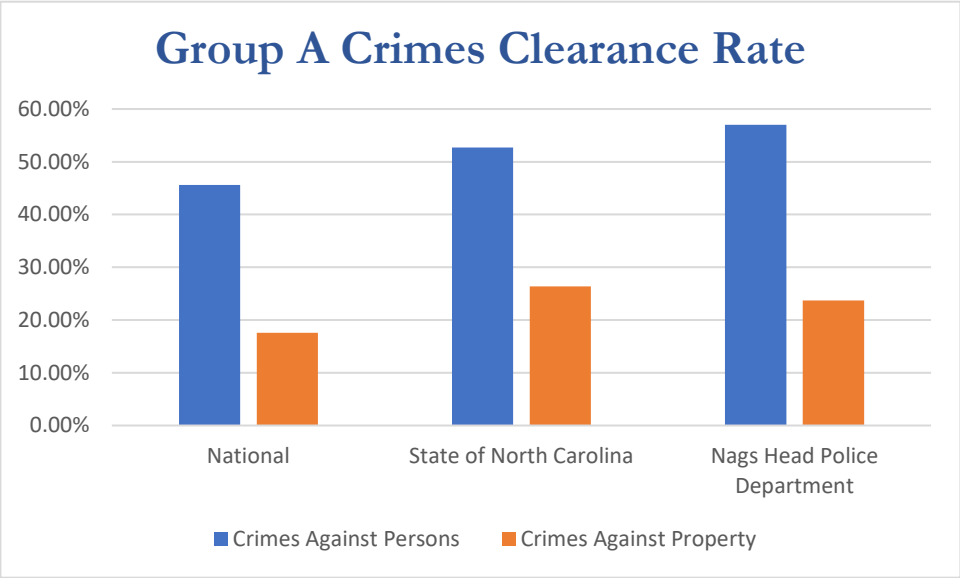
Clearance Rate

The clearance rate is essentially defined as, was the crime solved. Did we develop suspects or make arrests? The Nags Head Police Department clearance rate in fiscal year 2019-2020, for Group A crimes was 60%. Crimes against person was 57%, and crimes against property, 23.7%.

In comparison the 2017, national average clearance rate for Group A offences was 45.6% for crimes against persons and 17.6% for crimes against property.

Additionally, the state average for crimes against persons was 52.7%, and crimes against property 26.4% according to the 2017 report.

We attribute our clearance rate to a combination of excellent work by the first responding officer in securing the scene and investigative follow up and examination by our investigators.



Recent Case Highlights

Three recent cases were indicative of the hard work and dedication of our officers and investigators.

Cooler Caper

On 7/30/2020 over 10 larcenies occurred on the beach road. The larcenies consisted mainly of coolers, fishing equipment, and beach accessories. Captured on a surveillance camera were two white males who were actively checking properties.

A vehicle description was developed. While on patrol officer Danny Harris spotted the vehicle at a residence. Further investigation was conducted, and the stolen property was located. One suspect was arrested, and warrants have been issued for a second individual. A third person involved received a juvenile petition.

The Jewelry Return

Another recent case involved great investigative work by Det. Brandon Bostick. A suspect entered a local jewelry store and using a false credit card purchased a bracelet valued at $6,000.00. Det. Bostwick utilized several investigative methods to identify and track down the suspect. These methods included fingerprinting, utilizing multiple databases, and solid interview techniques.

The suspect was in Norfolk VA. Det. Bostwick was able to convince the suspect to return the merchandise the store. Det. Bostwick went on seek warrants against multiple individuals involved in the crime.

Life Saving Effort

Not all work involves arrest. Recently, Officer Christian Aguirre responded to a medical call in South Nags Head. During the call Officer Aguirre worked tirelessly performing CPR on a gentleman who lost consciousness and a detectable pulse. While this incident was unfolding, Officer Ben Jadoff comforted the gentleman's wife.

Unfortunately, the gentleman did not survive. Many times, these calls go unheralded. In this case I received a message from a neighbor who praised the officer's efforts. She praised the officer's empathy and kindness.

Task Force Investigators

Homeland Security Investigations

Nags Head Police Department has committed a full time Task Force Officer (TFO) dedicated to work with Homeland Security Investigations (HSI). Through our participation in the task force we can partake in region wide narcotic investigations with the goal of interdicting the flow of narcotics into our town.

Since 2018, our task force officer has participated in:

Wire case - 5 kilos of cocaine, 1.5 kilos of heroin, 1 kilo of fentanyl, $262,000, and firearms.

Nags Head traffic stop - small amount of marijuana and $37,250 seizure. As an aside, this case began as a traffic stop by one of our patrol officers and was taken federally by our TFO due to its impact and scope.

Nags Head drug case - synthetic drugs and $7,190 seizure.

Wire case - approx. 50 kilos of heroin and $600,000 seizure.

Nags Head initiated case – 4.9 kilos of heroin, 3.8 kilos of cocaine, 1.4 kilos of fentanyl, 326 grams of crack, 212 grams of methamphetamine, $272,414, and 3 firearms.

Several controlled deliveries of packages containing illegal drugs that were intercepted by US Customs and Border Protection at US Ports of Entry with a destination in Dare County.

Nags Head patrol call – two firearms and suppressor recovered by a convicted felon. Case adopted by HSI and Barnwell federally indicted.

Current Cases:

Wire case with OBX connections

Fentanyl case out of Elizabeth City

Nags Head overdose death, three indicted federally and more indictments pending

Barnes – 9 count indictment

Boone – 3 count indictment (Guilty plea, awaiting sentencing)

Jones – 11 count indictment

Miller – state charges (Pending federal indictment)

Joint Case with the FBI:

Dare County initiated case – 8 kilos of cocaine and $473,723 seizure

Internet Crimes Against Children

This year we partnered with the State Bureau of Investigation (SBI) in a task force program that targets the investigation and prosecution of persons involved in child sex abuse and exploitation. In all there are over 4,500 federal, state and local agencies involved.

Our participation gives us access to expedited processing of warrants and subpoenas from certain social media and cellular providers, as well as direct access to the SBI cybercrime unit which lends support to the investigations. Our investigator has received an abundance of free training due to his participation on the Task Force. Being a member of the Task Force has also opened a vast network of resources between other participating agencies that act as a force multiplier for our efforts here in Nags Head.

Our investigator has received five cyber tips leading to three investigations here locally. Two of the three investigations have been turned over to federal authorities for investigations in other localities.

Animal Control Officer (ACO)

Our animal control officer provides an excellent service to the town not only in his primary ACO assignment but also in his ancillary duties as a law enforcement officer.

During the past year our ACO handled 196 animal related calls. These calls included 15 animal bites, 3 which ended in the declaring 3 dogs as dangerous and potentially dangerous animals. The ACO also supervises our coyote depredation program which ended the season with the capture of 7 coyotes.

Additionally, our ACO assisted with training, managing the department range, traffic enforcement, community policing, beach patrol and this year COVID-19 related issues on our ocean front.

K9 Unit

Our K-9 unit continues to deliver outstanding service to the Town of Nags Head. During the past fiscal year our dogs, Ami and Bak were deployed 186 times resulting in 93 misdemeanor and 27 felony charges, hitting on every narcotic they are certified on, including: marijuana, cocaine, heroin, meth, and MDMA.

Our teams conducted 5 tracks, 21 building searches, and 16 apprehensions. Our K-9's assisted our neighboring jurisdictions, DCSO, KDH PD, Manteo PD and on the state level with SBI, further strengthening our partnerships.

Training for teams are certified at a national level and exceed mandated training.

Our teams have also performed a key role in our community-oriented policing outreach. Our teams conducted multiple presentations for Nags Head Elementary School and National Night Out.

Governors Highway Safety Program (GHSP)

GHSP is focused on the reduction of automobile crashes and fatalities. The program depends on local and county participation to be effective in reducing these numbers. Throughout the year our department participates with local and state agencies in saturation patrols and safety check points to bring awareness and provide education.

In return our department accrues points which we can utilize to obtain a variety of traffic related equipment from DWI blood kits to in-car camera systems.

Special Events

Our officers have continued to support both, town sponsored and privately organized special events.

This past year of course was significantly impacted by COVID-19 related cancellations. In the calendar year 2019, 112 officers participated in 44 events for a total of 704.5 hours.

Our town sponsored events, St. Patrick's Day Parade and 4th of July Fireworks, utilized a total of 28 officers for a combined 119 hours.

School Resource Officer (SRO)

Highlights of SRO Duties

The School Resource Officer is first and foremost responsible for providing safety and security to the students and staff at Nags Head Elementary School.

The SRO patrols on foot throughout the school grounds and engages students and school employees. He conducts investigation on incidents that happen during school activities (assaults, larcenies, etc.). This has an additional effect of freeing up on duty patrol officers.

The SRO builds lasting relationships with the students and shows them that police officers are a trusted friend in times of need.

The SRO teaches a twelve-week D.A.R.E program to the 5th grade class and conducts additional D.A.R.E. talks to the lower grade levels throughout the school year.

The SRO assists with extracurricular activities. These events include, field trips, bike rodeo, walk/bike to school, after hour school and family events, and school reading nights. It appears the school activities are constantly growing.

The school year was cut short this year due to COVID-19.

Beach Patrol

At the end of the school year the SRO is assigned to the beach for patrol functions. This year's Beach Patrol began earlier than normal.

COVID-19 initially drove the early assignment as beach patrol assisted by other officers addressed mass gathering and social distancing issues.

Beach Patrol responsibilities include observing for criminal activities, providing education on various ordinances, and assisting Nags Head Ocean Rescue as needed.

This summer patrol has assisted with numerous water rescues. The officer has provided support by observing the victim and guard in the water, as well as handling radio traffic for Ocean Rescue as needed. The officer has assisted with several EMS calls, including leg injuries (sprains and fractures), jellyfish and stingray stings, seizures, heat related illness, and others.

21st Century Policing Task Force

In 2015, The task Force on 21st Century Policing produced a Final Report. This report quickly became the seminal guidance for law enforcement throughout our nation. The report is meant to provide departments with a road map to improve community relations as well as more effective and efficient police service. The report provides a framework of achievable recommendations. The report itself is divided into 6 pillars; building trust and legitimacy, policy and oversight, technology & social media, community policing & crime reduction, training & education, and officer wellness and safety.

The following is an overview of the progress our department has made under the 21st Century Task Force Report framework:

Pillar 1- Building Trust and Legitimacy

A citizen's willingness to obey the law or follow directives of the police is dependent on the view of their police department as being procedurally just. Is the department fair, transparent, providing an opportunity for voice, and impartial in decision making?

The department is moving forward with the adoption of processes that improve transparency and trust both internally and externally with our community.

Part of this process included the adoption of a new mission statement which follows the task force recommendation to embrace a "guardian" over "warrior" philosophy:

We are the guardians of life and property in our coastal community. We will deter crime and disorder and be resilient in times of peril.

In addition, we are laying the foundation for imbedding procedural justice and legitimacy as a guiding principle. To this end officers are encouraged to make non-enforcement community contacts in their discretionary time.

Future work in this arena includes training on Procedural Justice and Legitimacy as well on-going policy development.

The department has also worked on our hiring processes and future recruiting efforts to promote diversity and fairness. As part of this development we have sponsored two BLET recruits and hosted an intern from First Flight High School.

Pillar 2-Policy and Oversight

In this area it is suggested that departments develop policies that provide "clear and comprehensive" guidance for high risk/ low frequency police activities. Our current policies do address these issues.

However, a process is underway with guidance from IACP model policies, and the North Carolina Law Enforcement Accreditation Network to update to review and update policies.

Although covered in our current policy, this update will include current mandates from the NC Task Force for Racial Equity in Criminal Justice. These mandates are Duty to Intervene, and Prohibition of Neck Holds.

Pillar 3- Technology & Social Media

The use of technology and social media helps build "trust and legitimacy" within communities.

Nags Head Police Department has implemented a body worn camera program that has already demonstrated success. Success in the prosecution of criminal cases and success in defusing a negative citizen encounter.

The department began its own social media footprint this year with Facebook and Instagram. The use of social media has allowed the department to create its own brand and messaging. Social media use for the department is still in its infancy but already we have been able to high light the good works of our personnel and gain valuable tips in solving crimes. The page is now over 1,700 followers and growing. In the future we hope that our social media outreach will assist with our recruiting efforts.

The neighbor's app has also been utilized by the department this year. The app allows officers to interact with members of the platform to share video captured by their home security cameras in Nags Head.

Communication is the most important tool for law enforcement. Radio communication directs officers to calls for service and is used to by officers to call for assistance. The department has taken delivery of new Motorola radios. These radios will make the department compliant for P25 Phase II radio communications.

The department is constantly seeking new technology to help assist in our delivery of services.

Pillar 4- Community Policing & Crime Reduction

Community policing is a philosophy the department adheres to. The department has a record of collaboration with our citizens to assist with crime and problem solving. The department has

historically opened the door to relationship building. Programs to this end are, Coffee w/ a Cop, National Night Out, Community Watch, J1 Students and a host of school related events.

The department is increasing its problem-solving involvement. Officers have identified areas of repeat calls for service and have attempted to find longer term resolution. Officers became involved in a long-standing neighborhood dispute and supplied help and guidance to the community. Another longer-term project is currently underway.

Pillar 5-Training & Education

The department has always encouraged officers to seek additional training. Training in a variety of subjects from state mandated courses to crisis intervention training. Our level of focus on training was evidenced in the newly implemented career progression plan. The plan allows officers to progress in rank dependent on experience and training benchmarks. In addition, officers are encouraged to complete their state intermediate and advanced training.

Officers have been completing online community oriented policing training via the Virginia Center for Policing Innovation (VCPI). Officers have now taken the courses, Community Policing Defined and Ethical Decision Making: Policing with Principled Insight.

Future community oriented policing training will include fair and impartial policing, as well as the aforementioned procedural justice and legitimacy.

Pillar 6- Officer Wellness and Safety

This final pillar focuses on providing the tools necessary for the care and welfare of the officer. Officer health is extremely important not only for safeguarding the individual officer but the department and the public as well.

Pillar 6 suggests every officer should carry an Individual First Aid Kit (IFAK) and be provided a bullet proof vest. Nags Head does this along with mandating officers wear lap and shoulder restraints while operating vehicles.

This past year the department joined a growing trend in law enforcement to move equipment from being carried on the officer's waist to a load bearing vest. The goal being to mitigate back injuries and strains.

We updated our annual wellness physical by partnering with a local provider. Our annual physical focuses on more than just measurements and readings but how to become more fit and healthy. Additionally, we are providing officers a whole-body assessment including mental wellness.

Positive Public Comments

Our family just wants to say THANK YOU all for being amazing and helping make a very scary time less so. My son was hit by a car today and the response time was unbelievably fast, the officers were concerned and sensitive, and Officer Jadoff visited my son in the hospital bearing gifts that cheered my son up and that he will likely keep forever.

Officer Shane Allen was able to assist a veteran with a newly assigned service dog. "This may not seem as a big deal to some, but to a disabled veteran with a service dog, that avoids public interactions and functions, this was HUGE in my view. It has given me some additional confidence in going out in public. Please extend my greatest and most sincere gratitude to Master Officer Allen."

You have wonderful officers working in your department. The officer who took care of my situation was extremely nice! Officer Bruce

Finally

Your police department has worked diligently this year, continuing to provide the level of service the Town of Nags Head has become accustomed to. The department is continuing to overcome the challenges of COVID-19 and now entering a new environment for policing nationally. We will continue to build upon the progress made in adhering to guidelines offered by the 21st Century Policing Task Force in a building and increasingly fair and transparent police department to our citizens and visitors. We will continue to employ technology to become a more effective and efficient law enforcement agency. We will continue to provide and employ best practices to safeguard our officers and staff.

Agenda Item Summary Sheet

Item No: **I-1**
Meeting Date: **September 2, 2020**

Item Title: Town Attorney John Leidy - Request for Closed Session

Item Summary:

At the September 2nd Board of Commissioners meeting, Attorney Leidy will request a Closed Session to:

- Preserve attorney/client privilege in accordance with GS 143-318.11(a)(3) to discuss Beach Nourishment Project condemnations, and
- To discuss confidential personnel matters in accordance with GS 143-318.11(a)(6).

Number of Attachments: 0

Specific Action Requested:

Provided for Board information and update.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Greg Sparks Date: August 26, 2020

Agenda Item Summary Sheet

Item No: **J-1**
Meeting Date: **September 2, 2020**

Item Title: Interim Town Manager Greg Sparks - Presentation by Dominion Energy

Time Specific - 10:00 a.m.

Item Summary:

At the September 2nd Board of Commissioners meeting, Ms. Katherine "Winnie" Wiseman, External Affairs, Representative III, with Dominion Energy, will provide a presentation summarizing Dominion's project to install new electric transmission lines on US 158.

An update on the Nags Head/Manteo Causeway pole replacements is expected to also be provided.

Attached slides were provided by Ms. Wiseman.

This item is time specific for 10:00 a.m.

Number of Attachments: 1

Specific Action Requested:

Provided for Board information and update.

Submitted By: Administration Date: August 25, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 25, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 25, 2020

Town Manager Comment and/or Recommendation:

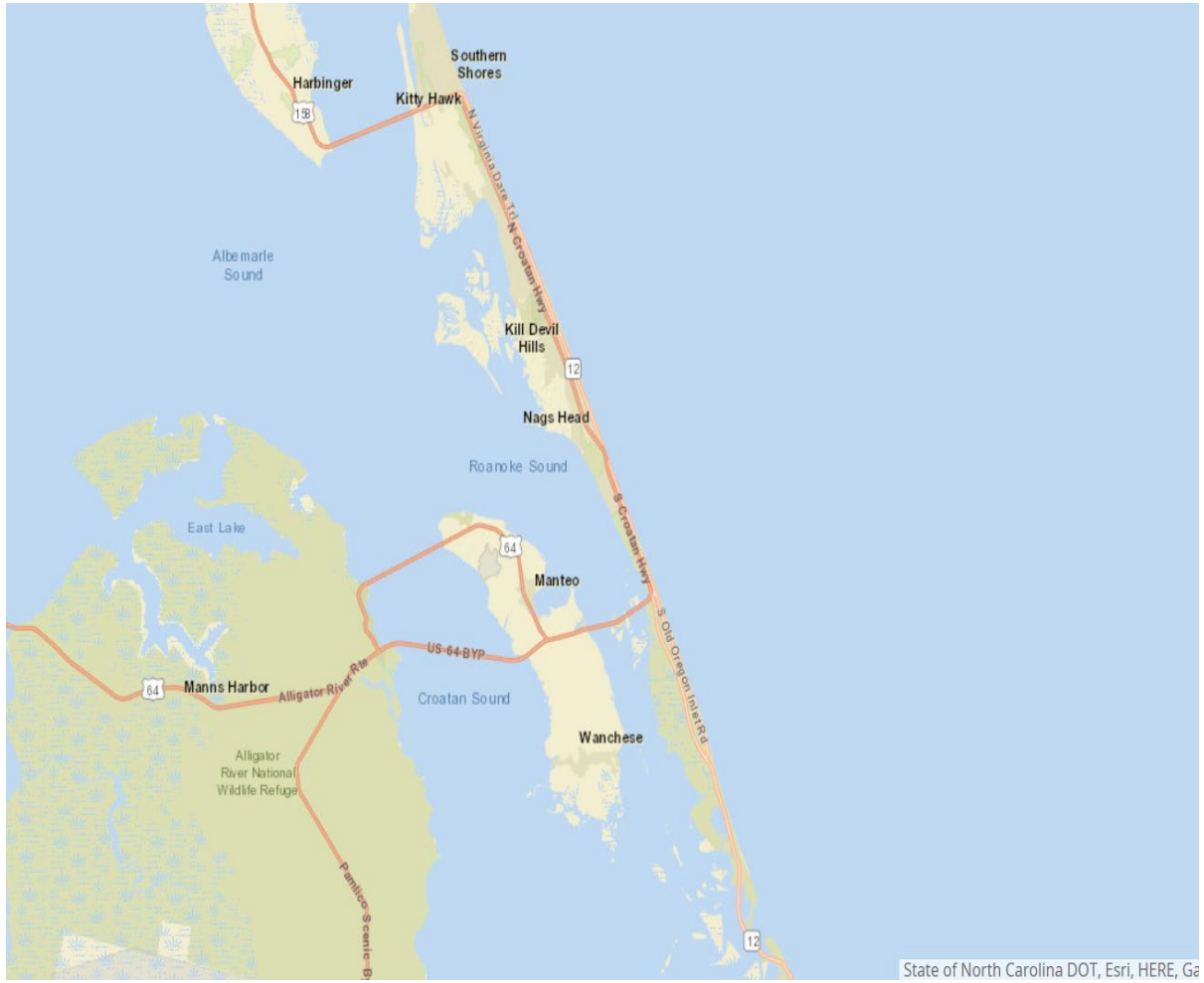
Provided for Board information and update.

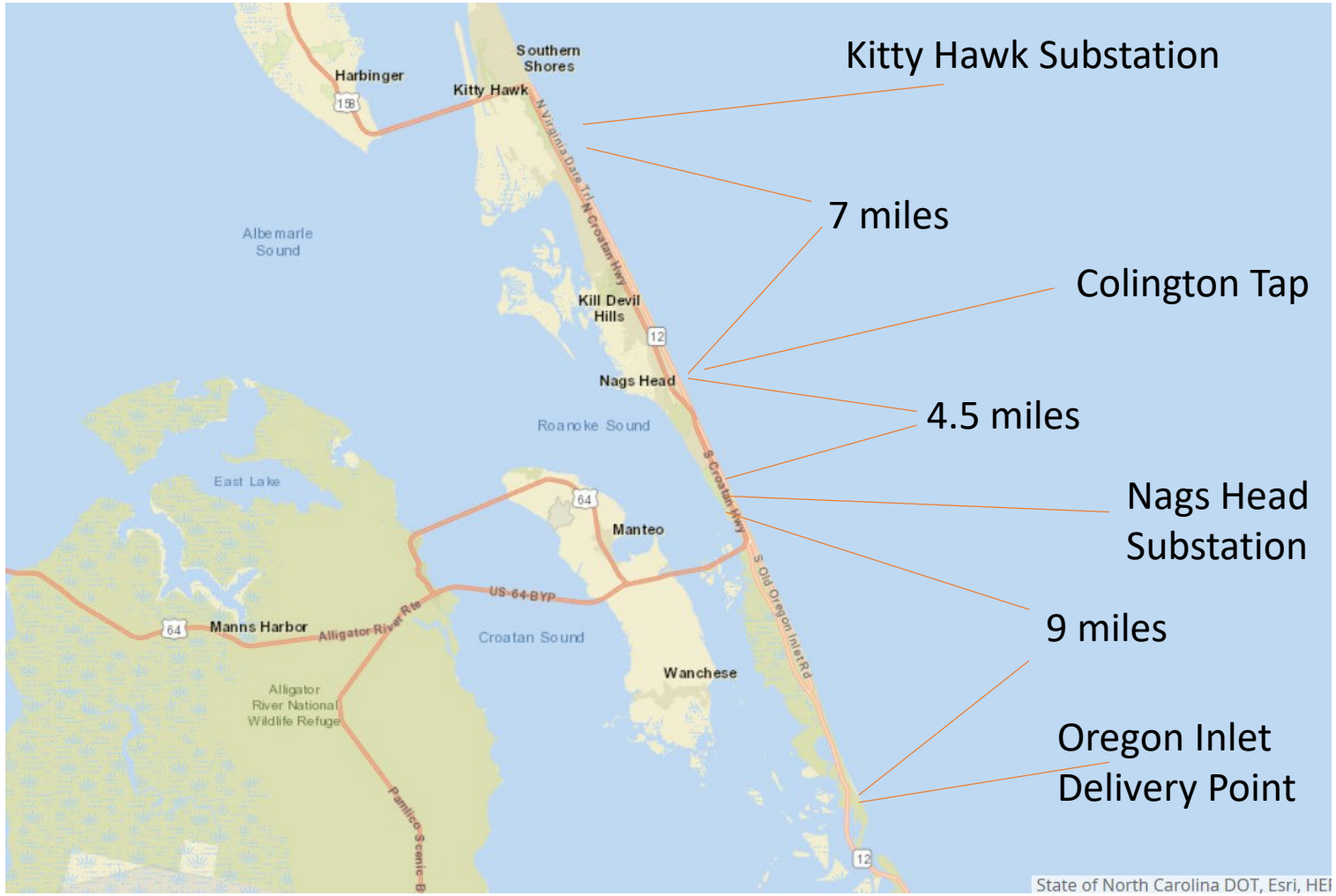
Signature: Greg Sparks Date: August 25, 2020

Dominion Energy℠

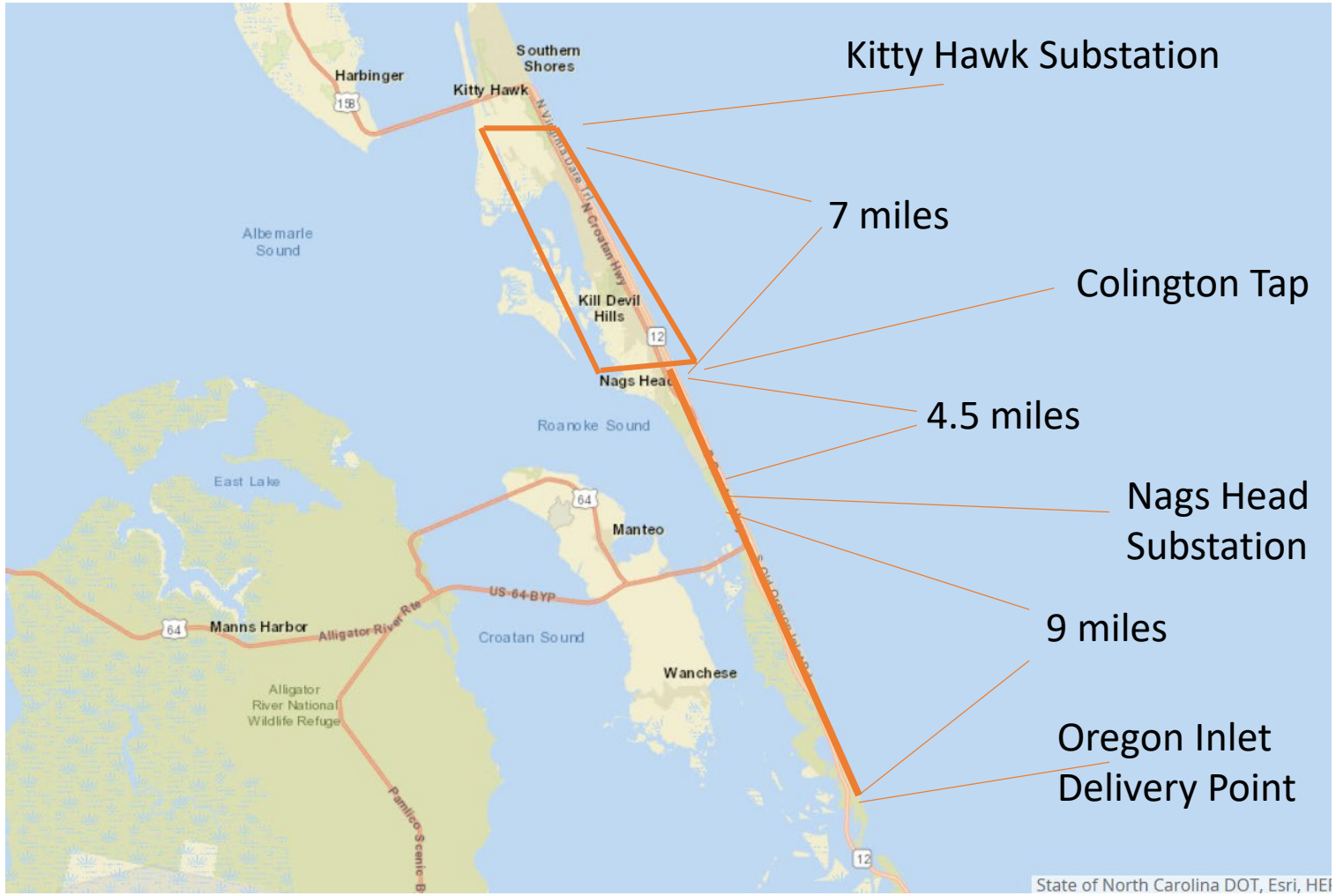
Proposed 115kV Electric Transmission Line
Colington Tap to Nags Head Substation

WRIGHT MEMORIAL
BRIDGE


Southern Shores
Harbinger
Kitty Hawk
158
N Virginia Dare Trl
N Croatan Hwy
Albemarle Sound
Kill Devil Hills
12
Nags Head
Roanoke Sound
S Croatan Hwy
East Lake
64
Manteo
US-64-BYP
S Old Oregon Inlet Rd
Manns Harbor
Alligator River Rte
Croatan Sound
Wanchese
Alligator River National Wildlife Refuge
Pamlico Scenic Br
State of North Carolina DOT, Esri, HERE, Ga



Kitty Hawk - Nags Head - Oregon Inlet 20 miles long



Kitty Hawk - Nags Head - Oregon Inlet 20 miles long

Colington Tap to Nags Head Substation

2010-2019
Permanent Dare County residents +9%
Dare County housing units +144%
Nags Head population +6%

OBX

Survey work

Questions?

Agenda Item Summary Sheet

Item No: **J-2**
Meeting Date: **September 2, 2020**

Item Title: Interim Town Manager Greg Sparks – Consideration of Proposed Town Organizational Chart

Item Summary:

At the August 5th Board of Commissioners meeting, Interim Town Manager Greg Sparks presented a report titled "Organizational Assessment and Recommendations". The Board reviewed the report and gave approval to bring back preliminary recommendations for specific Board action. Attached is the Proposed Town of Nags Head Organization Chart that reflects the recommendation from the report.

Number of Attachments: 1

Specific Action Requested:

Request Board review and approval of attached organizational chart.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

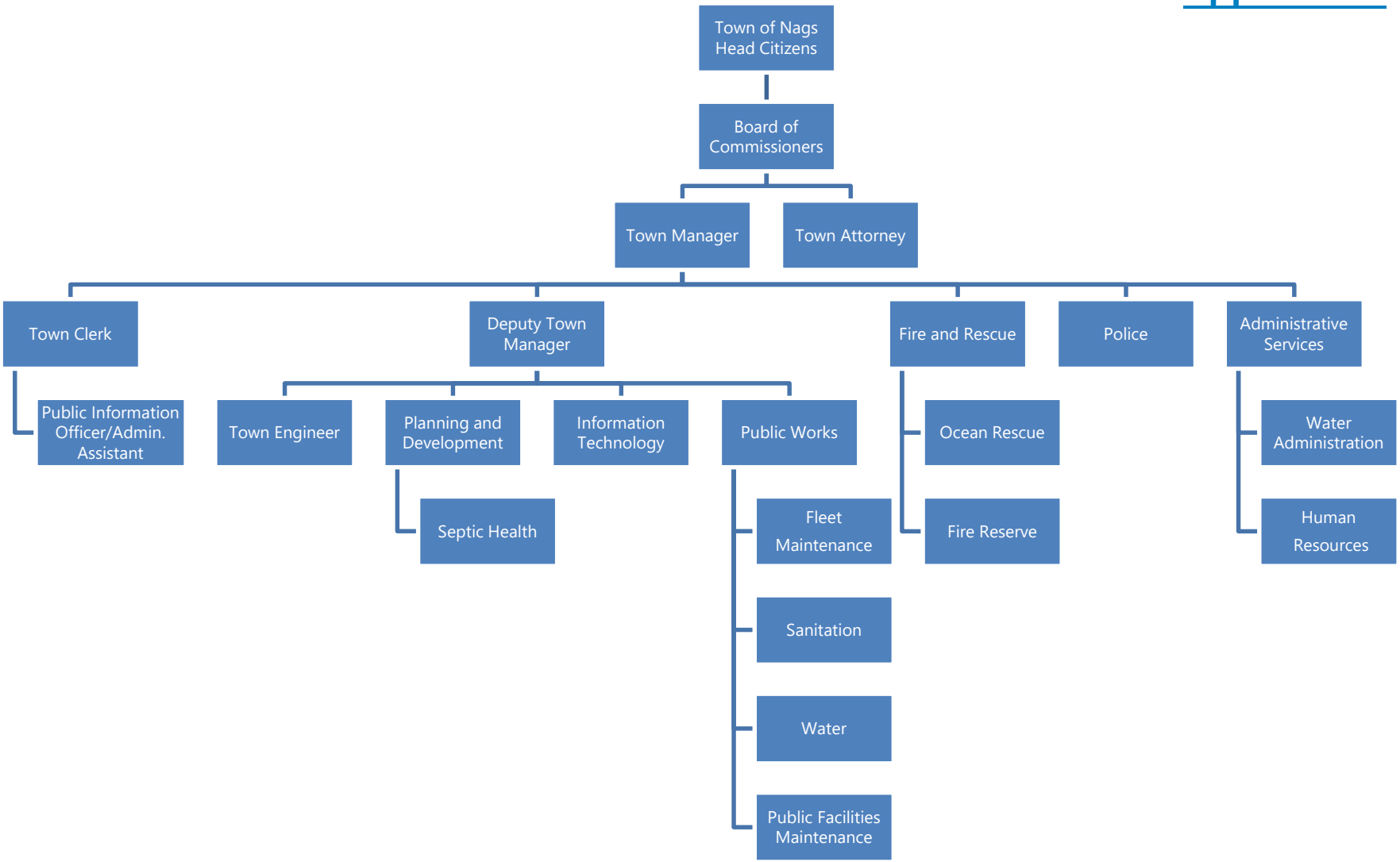
Town Manager Comment and/or Recommendation:

Provided for Board review and approval.

Signature: Greg Sparks Date: August 26, 2020

TOWN OF NAGS HEAD ORGANIZATION (PROPOSED)

Appendix G



Agenda Item Summary Sheet

Item No: **J-3**
Meeting Date: **September 2, 2020**

Item Title: Interim Town Manager Greg Sparks - Consideration of modification to Personnel Policy re: Approval of job descriptions/pay class plan

Item Summary:

At the August 5th Board of Commissioners meeting, a modification to the Personnel Policy to reflect the process for modification to job descriptions/classification and pay plan was discussed.

Request Board approval of the following modification to the Personnel Policy - Article II. General Provisions - Section 6. Responsibility of the Town Manager - Item B:

B. ~~Recommend revisions of the position classification plan to the Board of Commissioners.~~

May approve revisions to job descriptions and to the position classification plan that maintains or lowers the established pay grade. Revisions that increase a position grade shall require approval from the Board of Commissioners. The Town Manager shall inform the Board of Commissioners in writing within 30 days of any changes to the position classification plan.

Number of Attachments: 0

Specific Action Requested:

Provided for Board review and approval.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

Provided for Board consideration on September 2nd.

Signature: Greg Sparks Date: August 26, 2020

Agenda Item Summary Sheet

Item No: **J-4**
Meeting Date: **September 2, 2020**

Item Title: Interim Town Manager Greg Sparks - Discussion of authorization to apply for Dare County Tourism Board grants

Item Summary:
Each year the Dare County Tourism Board (DCTB) offers grants to local governments for capital projects that assist local governments with providing services needed due to the impact of tourism. In past years, this has been referred to as the short-term restricted grant fund. The town has used these funds for projects such as the multi-use path, parks, and beach and sound access improvements. The DCTB is now offering a similar program referred to as the Tourism Impact Grant which "is designed to help Governmental Units and Nonprofit organizations located in Dare County with programs or services needed due to the impact of tourism." Information about the program can be found here: https://assets.simpleviewinc.com/simpleview/image/upload/v1/clients/outerbanks/TOURISM_IMPACT_GRANT_RQ_053c6670-c55a-42b3-9df6-d0edb61bfcb9.pdf

It is important to note that several aspects of this program have changed from prior years. For this cycle, projects under $50,000 require no match. Projects where the award amount is $125,000 or less require a minimum 25% match. Projects where the award amount is greater than $125,000 would require a minimum 50% match. Staff would ask the Board to consider authorizing the following projects as part of this grant cycle:

- Sidewalk from US 158 to Wrightsville Avenue at Admiral Street, (Shoppes at 10.5, north side of driveway access, see attached map). This is the highest ranked project in the town's pedestrian plan and is currently under design. The estimated cost would be $40,000 and therefore would not require a town match.
- Skate Park renovations – this project was included in the current year CIP. This would involve redesign and reconstruction of the wooden elements of the skate park. (see attached CIP sheet). The project cost is estimated at $180,000. The town would request $125,000 in grant funds. At 25%, the minimum match amount would be $31,250. If the grant is awarded, staff would recommend that the Board provide $55,000 in town matching funds which would be $23,750 above the minimum required match.

Number of Attachments: 2

Specific Action Requested:
No formal action is necessary to apply; Staff would request Board direction on candidate projects.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:
If the grant is awarded, any necessary budget amendments would come from fund balance or Manager's contingency, based on Board guidance.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:
N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:
Provided for Board information and direction on candidate projects.

Signature: Greg Sparks Date: August 26, 2020

Town of Nags Head Capital Improvement Program Request Fiscal Years 2020-2021 through 2024-2025

1. Project:	Skate Park Renovation - Design and Construction	2. Department	Planning & Development	3. Rank (Completed by TM)	

4. Project Description

This project involves renovating the skate park the YMCA and includes design and construction focused on the west side of the facility, not including the bowl/pool elements. A second phase to include the bowl is included in FY 2023.

5. Type of Project or Acquisition

- ☐ Replacement
- ☑ Renovation
- ☐ Equipment
- ☐ New
- ☐ Expansion
- ☐ Land

6. Project Justification

Implementation of *Town of Nags Head Parks and Recreation Plan*; facilities are in need of repair, improvement, and renovation due to maintenance needs and evolving preferences. Grant opportunities to offset costs will be explored and considered.

7. Implementation/Acquisition Schedule

Project Category	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Beyond 2025
Planning and Design	☑	☐	☐	☐	☐	☐
Land and Land Acquisition	☐	☐	☐	☐	☐	☐
Construction	☑	☐	☑	☐	☐	☐
Equipment Acquisition	☐	☐	☐	☐	☐	☐
Miscellaneous	☐	☐	☐	☐	☐	☐

8. Operating Budget Impact

	Personnel:	Capital/One Time Costs	Maintenance/ Operating Costs:	Other:	Total:
FY 2021:		$180,000			$180,000
FY 2022:					$0
FY 2023:		$60,000			$60,000
FY 2024:					$0
FY 2025:					$0
Beyond FY 2025:					$0

9. Additional or Alternate Funding Sources

	FY 2021:	FY 2022:	FY 2023:	FY 2024:	FY 2025:	Beyond 2025:	Total:
Reserve:							$0
Grants:	$90,000		$30,000				$120,000
General Fund:	$90,000		$30,000				$120,000
Other:							$0
Other:							$0
Total:	$180,000	$0	$60,000	$0	$0	$0	$240,000

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1"=200'
CROATAN HWY
ADMIRAL ST
ADAMS LN
ANCHOR LN
S WRIGHTSVILLE AVE
S MEMORIAL AVE

Agenda Item Summary Sheet

Item No: **L-1**
Meeting Date: **September 2, 2020**

Item Title: Mayor Ben Cahoon – Future of Nags Head - from the Jan 23-24, 2020 Board Retreat

Item Summary:

One of the topics of discussion at the January 2020 Board of Commissioners Retreat concerned envisioning the future of Nags Head.

While this item will remain as a standing agenda item, discussion will continue once the Board can resume normal meetings.

Number of Attachments: 0

Specific Action Requested:

Provided for Board discussion.

Submitted By: Administration Date: August 26, 2020

Finance Officer Comment:

Insufficient information to determine fiscal impact.

Signature: Amy Miller Date: August 26, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: August 26, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Greg Sparks Date: August 26, 2020