



***DRAFT* MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
WEDNESDAY, MARCH 6, 2024**

The Nags Head Board of Commissioners met in the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, March 6, 2024 at 9:00 a.m. for a Regular Meeting.

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

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Amy Miller; Kelly Wyatt; David Ryan; Perry Hale; Chris Montgomery; Randy Wells; Nancy Carawan; Joe Costello; Roberta Thuman; James Phillips; Dilyana Gnafakis; Dylan Berry; Paige Griffin; Debbie Swick; Peggy Saporito; Molly Vaughan; Donna Creef; Duke Geraghty; Brittany Phillips; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 a.m. A moment of silence was followed by the Pledge of Allegiance. Mayor Cahoon asked everyone to remember the family and friends of the local, well-known fishermen recently lost in a boating accident – Charlie Griffin and Chad Dunn.

**ADOPTION OF AGENDA**

MOTION: Mayor Pro Tem Siers made a motion to approve the March 6<sup>th</sup> agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

**RECOGNITION**

Police Chief Perry Hale introduced Police Officers Dylan Berry and Dilyana (Dee Dee) Gnafakis who were welcomed by the Board to Town employment.

Fire Chief Randy Wells introduced Fire Engineer/EMT James Phillips who was recognized by the Board for five years of service.

Police Chief Perry Hale introduced Dep Police Chief Chris Montgomery who was recognized and congratulated by the Board for 25 years of service. Dep Police Chief Montgomery was presented a plaque and engraved tie-tac for his years of service.

Mayor Cahoon stated that employees' longevity speaks to our staff, our management and our community that leads to this kind of service.

#### PRESENTATION – Arts & Culture Committee

Events Coordinator Paige Griffin summarized her report which read in part as follows:

"Planning Staff and members of the Nags Head Committee for Art and Culture will be providing a brief presentation to the Board of Commissioners at their March 6, 2024 meeting. The intent of the presentation is to highlight efforts by the Committee during the 2023/2024 Season, and to provide information on what the Committee would like to achieve during the upcoming 2024/2025 Season.

##### '2023 Season

The 2023 Farmers Market season was yet another successful one. The online application was open for just under two weeks and we received approximately 130 applications. To manage parking and minimize concerns and conflicts, the Committee for Art and Culture decided to select only 60 vendors for participation in the 2023 Summer Market. However, we ended up with an average of 66 vendors participating. Out of these, 37 were given preference because they specialized in consumables such as fresh fruit, vegetables, cheeses, baked goods, fermented foods, and sauces.

'While many vendors were local, we also had participants from as far as Currituck, Swan Quarter, Creswell, Columbia, Hertford, Edenton, and Elizabeth City. Their presence at the market is crucial to its success, and we are grateful to have them.

'The market saw its highest visitation in July, with upwards of 1,000 visitors. This was during the Fourth of July weekend and unfortunately led to parking issues. Despite this, all markets were well attended throughout the season, averaging approximately 650 visitors each.

'The 2023 Summer Concert Series was also successful, with 10 bands scheduled and 9 performing. Additionally, our first season offering Family Fun Nights was a hit.

'We organized four Holiday Markets, three on Saturday mornings and one on a Thursday evening. These markets featured approximately 78 vendors and saw over 350 visitors per market, with an increase in vendor participation compared to the previous season. Fortunately, these markets did not conflict with Nags Head Elementary School, as sometimes happens during our summer markets. The festive atmosphere, holiday music, and lights were well-received by visitors, locals, and vendors alike.

'The 3rd Annual Tree Lighting Ceremony on November 25th was a success, with many returning visitors. Santa Claus also made an appearance, adding to the festive spirit. The event was made possible by collaborative efforts from various town departments, ensuring both safety and success. This is an event we hope to continue and expand upon, potentially adding more lighting and decorations to the park.

'On December 14th, we hosted the 2nd annual Flashlight Candy Cane Hunt at Dowdy Park. Learning from the previous year, we divided participants into two age groups, which was well-received. The event was a quick but enjoyable experience for the locals.

'The Winter Markets are still occurring, however the first two (January 13<sup>th</sup> and February 10<sup>th</sup>) were very successful and visitors have expressed so much appreciation for the ability to continue to pick up fresh foods from our wonderful vendors in the off-season.

'Social media response continues to be positive and encouraging, reflecting the community's ongoing support for these events.

#### '2024 Season

The Committee for Art and Culture has been actively discussing the upcoming 2024 Season Events. To address parking concerns, we have scheduled markets from June 13<sup>th</sup>, 2024, through August 15<sup>th</sup>, 2024, aligning with the period when Nags Head Elementary School is not in session. This timeframe allows for ten (10) markets, as we are unable to hold markets during the week once school resumes.

'As the market's popularity grows, it becomes challenging to maintain a manageable number of vendors while accommodating both seasoned participants and new artisans. Paige has informally surveyed previous market vendors, of which there is anticipated to be approximately 24 returning vendors specializing in perishables and consumables, 36 returning artisans, and potentially 13 new perishable vendors, leaving little to no space for new artisans to be accepted.

'The 2024 Summer Concert Series is set to begin on June 12<sup>th</sup> running through August 21<sup>st</sup>, featuring performances each Wednesday evening from 6:30 to 8:00 pm. Event Coordinator Paige Griffin is putting together an exciting lineup of bands spanning various genres. While we regret the absence of the 82nd Airborne Division Band in 2024, we are optimistic about the possibility of welcoming the Military Rhythm and Blues band this season.

'In addition to the four (4) Holiday Markets, the committee intends to continue offering Family Fun Nights. These monthly evening events, held from June through September, each revolve around a theme. We are exploring themes such as storytelling, an evening with the Corolla Wild Horse Fund (and Riptide) among others. Vendors that complement each theme will be invited, providing local artisans with further engagement opportunities.

'We plan to host Winter/Off-Season Markets again in the coming season, building upon their positive reception last season. These markets exclusively feature producers and consumables, offering continuous opportunities for vendors and visitors to purchase fresh meat, eggs, produce, and prepared foods.

'Thanks to the acquisition of our own movie equipment, facilitated by Art and Culture Committee member Jeremy Russell, we can now schedule and screen movies more frequently, pending the acquisition of our annual movie licensure. We hope to be showing several movies in the coming year.

'Furthermore, we aim to continue offering weekly fitness opportunities, family-friendly movie screenings, organizing Kids Day at the Park, and expanding next year's Tree Lighting Ceremony and Flashlight Candy Cane Hunt. Despite limited participation in the Holiday Decorating Contest over the past two years, we are exploring new strategies to reignite interest in the event moving forward.

'The committee remains committed to the Art Mast Project, with local artists Kate Lawrence and Jackie Koenig currently working on art panels slated for installation this summer.

'Additionally, we are considering several new projects and events for the upcoming year, including a public art and pedestrian safety initiative to paint an intersection within the town, collaborating with a local artist to create a mural at the skate park, and organizing a "Paint & Skate" gathering to engage the community in collaborative mural creation. Other ideas include establishing a nature loom at Barnes Street Park, potentially screening

movies at the park, and brainstorming new concepts and ideas for Whalebone Park following upcoming improvements.

'As always, the Committee for Art and Culture will participate in the 35th annual Artrageous Kids Art Festival on Saturday, May 11th, from 10 am to 2 pm at Dowdy Park, with the theme "Creativity Starts Here"!

'As the interest in our community events continues to surge, we are actively exploring sponsorship opportunities each season.

'With the increased workload and responsibilities, our staff, particularly Paige Griffin, is feeling the strain of managing effectively while maintaining the unique atmosphere and safety of our events. Therefore, we are requesting that the Board of Commissioners consider including funds for seasonal part-time help at the market. We envision this position being needed for approximately 10 hours/week through the height of the season offerings (approximately 10 weeks). The total request would not exceed \$5,000.

'Members of the Planning Staff, Event Coordinator Paige Griffin, and representatives from the Committee for Art and Culture will be available following the presentation to address any questions and seek input from the Board of Commissioners."

Ms. Griffin thanked the volunteers for the number of hours volunteered, especially Peggy Saporito and Molly Vaughan. She also expressed her appreciation for the support of the community for the park activities.

Mayor Cahoon stated that he appreciates the management of Dowdy Park and said that Dowdy Park stands out for its quality and maintaining that balance is not easy.

Board members spoke in favor of the Dowdy Park activities and thanked the Arts & Culture Committee members and Ms. Griffin for all the hard work.

## **PUBLIC COMMENT**

### PUBLIC COMMENT – DEBBIE SWICK

Debbie Swick, Southern Shores resident; creator of Ban Balloon Releases in NC; a proposal was recently sent to the Board concerning legislation that would ban balloons – she is also working with the State Senate for legislation; this is a very necessary item for the environment and for the wildlife; she has the support of the NEST organization, the Dunes of Dare, the Outer Banks Women's Club, the NC Beach Buggy Association, the National Park Service, the NC Association of Realtors, the NC Aquariums, and several other agencies; she asked the Board to endorse her proposed ordinance banning balloons; she is educating all she can and speaking at organizations and would like to be able to have legislation to back up what she is discussing.

There being no one else present who wished to speak, Attorney Leidy concluded Public Comment at 9:38 a.m.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Consideration of Budget Amendment #9 to FY 23/24 Budget  
Consideration of Tax Adjustment Report  
Report of Tax Delinquent List

Approval of minutes (February 7, 2024 Board of Commissioners meeting minutes)  
Consideration of revised Ocean Rescue Lifeguard Pay Plan (From Feb 7<sup>th</sup> Board meeting)  
Consideration of text amendments to Town Code Chapter 6 *Animals* - Definitions  
Consideration of amendment to Traffic Control Map re: *No Parking Here to Corner* on Vansciver Drive  
Consideration of cart rollback contract for May – Oct 2024

Request for Public Hearing to consider text amendments submitted by Albemarle & Associates, PE on behalf of Golasa Holdings, LL to allow the long-term rental of units within existing hotels and motels

Request for Public Hearing to consider text amendments to prohibit driving over and/or parking on septic systems when adjacent to driveway, drive aisles, and parking areas

**MOTION:** Comr. Brinkley made a motion to approve the Consent Agenda with the removal of agenda item #8 entitled "Consideration of cart rollback contract for May – Oct 2024 for further discussion. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Consent Agenda Item #E-8 – Consideration of cart rollback contract for May – Oct 2024

Comr. Brinkley asked for an overview of the cart rollback program. Town Manager Garman explained that this program came about as a result of carts not being pulled back and trash being blown out, etc. Between May and the end of October the Town hires a company, twice weekly and paid for by the property owner, to move the carts out to the right-of-way and move the carts back to the property. The fees pay for the entire cost of the contract.

**MOTION:** Comr. Brinkley made a motion to approve the cart rollback contract with Trash Detail, LLC as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Budget Amendment #9, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

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

The Tax Delinquent List summary, as approved, read in part as follows:

"At the February 7<sup>th</sup> Board of Commissioners meeting, Board approval was received to advertise tax liens in the newspaper on Wednesday, March 20, 2024 in accordance with NCGS 105-369.

'Attached please find the preliminary tax delinquent listing as of Thursday, February 29, 2024.

'(Property owners have until Friday, March 15, 2024 to pay and be removed from the tax delinquent listing before the advertisement is posted.)"

The Ocean Rescue Lifeguard Pay Plan (From Feb 7<sup>th</sup> Board meeting) summary, as approved, read in part as follows:

"Per the decision of the Board of Commissioners at its February regular meeting, the starting rate for Ocean Rescue Staff will increase to \$19.00 for the 2024 season to align with the presentation that Ocean Rescue Captain Chad Motz provided at the February 7, 2024 Board of Commissioners Meeting. This change will be effective for the remainder of FY 2024 and for FY 2025.

'Please find attached a revised Pay Plan to include the updated pay for lifeguards.  
(To include budget amendment with item E-1.)'

The summary re: text amendments to Town Code Chapter 6 *Animals* – Definitions, as approved, read in part as follows:

'Attached for Board review and adoption is a proposed ordinance amending Town Code Chapter 6 *Animals* re: Definitions.

'Staff would like to modify the Town Code, per recommendation of the existing Dangerous Animal Appeal Board, to include the Town Manager as one member of the five (5) member board along with four (4) Town residents.

'In addition, staff recommends changing the term limits from two (2) years to three (3) years to be consistent with other Board appointments.'

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

The summary sheet re: amendment to Traffic Control Map re: *No Parking Here to Corner* on Vansciver Drive, as approved, read in part as follows:

'Please find attached a memo from Police Chief Perry Hale requesting to amend the Traffic Control Map to designate a portion of W Vansciver Drive north from its intersection with Deering Street as "No Parking Here to Corner". Residents have noted that issues of people parking on their properties and parking too close to the Stop Sign have increased due to the growth of this area.

'Attached please find a map designating the area as well as an ordinance amending the Traffic Control Map for Board review and consideration.'

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

The Request for Public Hearing to consider text amendments submitted by Albemarle & Associates, PE on behalf of Golasa Holdings, LL to allow the long-term rental of units within existing hotels and motels, as approved, read in part as follows:

'John Delucia of Albemarle & Associates, PE has submitted a text amendment request on behalf of Golasa Holdings, LLC, which if adopted, would amend the Unified Development Ordinance to allow the long-term rental of units within existing hotel and motel units. The Planning Board discussed the requested amendments with the applicant and planning staff at their December 19, 2023, January 16, 2024, and February 20, 2024 meetings.

'As a result of these meetings, an ordinance has been drafted which would allow the conversion of existing hotel units intended for transient occupancy, to be converted to long-term rental occupancy units with the following supplemental regulations:

- This would apply to hotels/motels within the C-2, General Commercial zoning designation constructed prior to November 10, 1972. When applying these parameters, eligible properties include Seahorse Inn, Owens Motor Court, Tarheel Motel, First Colony, and Nags Head Beach Inn.

- The conversion of hotel units to long-term rental would be approved via the Special Use Permit process. Reverting to hotel units may be done administratively if there has been no site or structural improvements resulting in an increase in the degree of nonconformity.
- All units within the hotel development shall be converted to long-term occupancy, a hotel structure could not have both long and short-term occupancies co-mingled.
- Long-term occupancy shall mean occupancy for a period of 90 consecutive days or more.
- A percentage of the units shall be dedicated to workforce housing.
- Interior space dimensions of each unit shall meet the minimum requirements of the NC Building Code.
- The hotel development shall meet current NC Fire Prevention code requirements.
- A minimum of two (2) parking spaces shall be required for each unit.
- Utility meters for individual units are prohibited and the hotel must operate under a single-unified management operation.
- All goods, material, equipment, etc. shall be stored in an approved location, not visible from public rights-of-way or neighboring properties.”

The Request for Public Hearing to consider text amendments to prohibit driving over and/or parking on septic systems when adjacent to driveway, drive aisles, and parking areas, as approved, read in part as follows:

“At their October 24<sup>th</sup>, 2023 meeting, the Septic Health Advisory Committee (SHAC) discussed the importance of prohibiting, or at a minimum discouraging, driving over and/or parking on top of active septic and drain field areas on residential properties. While providing the Planning Board with an update on the SHAC at their November 2023 meeting, it was the consensus of the Planning Board to initiate the text amendment process to provide protection of septic systems from vehicle parking and driving. Staff has drafted language which would require a that physical barrier be put in place when the septic system area is adjacent to any portion of a parking space, turnaround area, driveway, or drive aisle. Acceptable barriers include, but are not limited to, fencing, posts with rope, raised planters or landscape beds, landscape timers or other treatments as approved by the Unified Development Ordinance (UDO) Administrator. As proposed, this amendment would only apply to new construction or substantial improvement to residential properties. Staff recognizes that there will be outreach needed in advance of implementing this ordinance should it be adopted.

‘Recognizing the potential impact of this amendment on property owners who do not currently have issues with parking on their septic areas and noting that such parking often occurs at rental homes, staff is actively exploring alternative options to ensure septic area safety. One approach under consideration is the inclusion of language expressly prohibiting parking on septic areas. In cases where a violation is noted, a Notice of Violation would be issued, at which time the placement of a physical barrier to preclude any future violations could be required. This approach would address parking on septic on systems via a formal violation of the Unified Development Ordinance with a specified remedy, as opposed to the draft language which is more proactive but may unnecessarily impact property owners who do not currently have a problem.

‘Planning Staff and Planning Board Recommendation

Planning staff recommends adoption of this text amendment as proposed while continuing to draft additional/alternative language to address the concern.

‘At their February 20, 2024, meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendment as presented. Planning Board members also noted that additional consideration should still be given to limiting the impact of this ordinance to those properties that do not have a history of parking on their septic system.”

## **PUBLIC HEARINGS**

### Public Hearing to consider text amendments to the Unified Development Ordinance re: prohibiting drive-through restaurants

Attorney John Leidy opened the Public Hearing to consider text amendments to the UDO re: prohibiting drive-through restaurants. The time was 9:43 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, February 21, 2024 and on Wednesday, February 28, 2024, as required by law.

Dep Planning Director Joe Costello summarized his report which read in part as follows:

“At their January 3rd meeting, the Board of Commissioners voted unanimously to direct staff to initiate the text amendment process to eliminate the use of “Restaurant, Drive Through” as a permissible use within the Unified Development Ordinance (UDO) to create consistency between the UDO and the 2017 Comprehensive Land Use Plan’s guidance.

‘Currently drive-through restaurants are only allowed in the following instances:

Within the C-2, General Commercial Zoning District via the Special Use Permit process with supplemental regulations that are described in Section 7.29 of the Unified Development Ordinance.

‘Within the Village at Nags Head Special Planned Development District, Commercial-1 and Commercial-2 Zoning District via the Special Use Permit process with supplemental regulations that are described in Section 9.37.5 of the Unified Development Ordinance.

‘Detailed policy considerations and analysis were provided to the Planning Board and Board of Commissioners during their ongoing review of a text amendment application submittal made by the Outlets Nags Head to expand the use of “Restaurant, Drive Through,” to be included within Commercial Mixed-Use developments.

‘The most recent staff report was provided to the Board of Commissioners at their January 3, 2024, meeting and is included as an attachment for reference. The attachment provides context as to why the Board of Commissioners initiated a text amendment process to remove the use of “Restaurant, Drive Through” from the UDO. The Village at Nags Head POA reviewed the proposed text amendment at their January meeting and was supportive of removing the use of Restaurant, Drive Through from the Village’s Special Planned Development Ordinance. The timeline below details the major events leading up to the Board of Commissioners recommendation to remove the use of “Restaurant, Drive Through” as an allowable use within the Unified Development Ordinance.

‘Timeline of Events

- April 13, 2023: Text Amendment Application submittal.
- May 16, 2023: The Planning Board considered a text amendment application and Starbucks sketch plan. The Planning Board voted unanimously to recommend denial of the text amendment.
- June 7, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment.
- July 18, 2023: The Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.
- September 11, 2023: Text Amendment Application third submittal received.
- August 2, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment unanimously.
- October 17, 2023: Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.

- December 3, 2023: Board of Commissioners requested the Planning Board resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.
- December 19, 2023: Planning Board considered text amendment application and how to resolve the conflict between the UDO and the Comprehensive Land Use Plan. The Planning Board voted unanimously to recommend denial of the text amendment.
- January 3, 2024: The Board of Commissioners considered a text amendment application and how to resolve the conflict between the UDO and the Comprehensive Land Use Plan. The Board of Commissioners denied the text amendment application and made a motion that directed planning staff to initiate a text amendment process removing the use of Restaurant, Drive Through from the UDO.
- January 16, 2024: The Planning Board voted unanimously to recommend approval of the text amendments as proposed to remove the use of Restaurant, Drive Through from the UDO.

Staff believes that the proposed amendments reflect the Board of Commissioner's guidance. Please note that this amendment specifically pertains to the removal of drive-through restaurant use from the Unified Development Ordinance. Other uses commonly associated with drive-through facilities, such as banks and pharmacies, are not affected by this proposed amendment.

Planning staff will be available at the Board of Commissioners March 6, 2024, meeting for further discussion. If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements."

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 9:45 a.m.

Comr. Lambert stated that drive-throughs are not seen in her vision of Nags Head. She supports the text amendment as presented.

MOTION: Comr. Lambert made a motion to adopt the ordinance amending the Unified Development Ordinance prohibiting drive-through restaurants. The motion was seconded by Comr. Sanders.

Mayor Cahoon said that previously he was the lone vote to allow drive-throughs in shopping centers as the properties around the shopping center did have drive-throughs – however, his intent is to support the ordinance.

CONTINUATION OF MOTION: The motion passed unanimously.

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

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

### Update from Planning Director

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

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on March 6th, 2024.

Monthly Activity Report

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

- Tuesday, February 6th - Technical Review Committee Meeting
- Wednesday, February 7th - Board of Commissioners Meeting
- Thursday, February 8th - CRS Users Group Meeting
- Thursday, February 8th – Board of Adjustment Meeting (Harvey Appeal)
- Saturday, February 10th – Winter Market from 9am - noon
- Wednesday, February 14th – Committee for Arts and Culture Meeting
- Thursday, February 15th – Townwide Staff Meeting
- Tuesday, February 20th – Planning Board Meeting
- Wednesday, February 21st – Board of Commissioners mid-month meeting (if needed)

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

The Planning Board's most recent meeting was held on Tuesday, February 20th, 2024, and included the following:

o Consideration of text amendments that if adopted would allow the long-term rental of units within existing hotels and motels. The Planning Board was unanimously supportive of this text amendment, however requested a few revisions be presented at their March 19<sup>th</sup> meeting. It was the consensus to send this item forward for the Board of Commissioners consent agenda in March and Public Hearing in April 2024.

o Consideration of text amendments to prohibit driving over and/or parking on septic systems when adjacent to driveways, drive aisles, and parking areas. The Planning Board voted unanimously to recommend adoption of the proposed text amendment as presented. Planning Board members also noted that additional consideration should still be given to limiting the impact of this ordinance to those properties that do not have a history of parking on their septic system.

o Nomination of Planning Board members Meade Gwinn and Molly Harrison to serve on the Multi-Family Dwelling Taskforce.

o Presentation of a map delineating areas of protected vegetated buffers. This is a map for internal use to bring awareness to areas within the Town with protected buffers such as those installed as part of the 2003 NCDOT Enhancement Planting project and those that required as part of a subdivision plat approval and noted on the recorded plat.

The Planning Board's next meeting is scheduled for Tuesday, March 19th, 2024. Currently, the agenda is expected to include consideration of a text amendment submitted by Jernigan Oil Company to allow the use of LED digital signage, and final consideration of the draft ordinance to allow the long-term rental of existing hotel units.

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

At their February 8, 2024, meeting the Board of Adjustment heard an Appeal of Administrative Decision submitted by Bryan Harvey with regard to the issuance of a Notice of Violation for utilizing a detached accessory structure as an unpermitted second dwelling unit. The subject property is located at 309 W. Soundside Road, Nags Head. The Board of Adjustment voted unanimously to affirm planning staff's issuance of the Notice of Violation; however they did ask that staff, the Planning Board and Board of Commissioners consider revisions to the UDO as necessary to provide more clarity on uses such as accessory structures, accessory uses, and accessory dwelling units. Staff anticipates this to be addressed during the process of drafting potential ordinance language as it relates to Accessory Dwelling Units (ADU's) as was requested as part of the 2024 Strategic Plan.

#### 'Additional Updates

- DWMP/Septic Health Advisory Committee – Staff has drafted and presented to the Planning Board ordinance language that would require the placement of a physical barrier to be put in place when a dwellings septic system area is adjacent to any portion of a parking space, turnaround area, driveway, drive-aisle. This was proposed following discussions by the Septic Health Advisory Committee in an effort to prohibit people from driving over and/or parking on septic systems and potentially damaging them. At their February 20<sup>th</sup> meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendment believing this was a step in a positive direction but noted that additional consideration should be given to limiting the impact of this ordinance, if possible, to those properties to seem to have the most issues with parking on septic areas.

'Recognizing the potential impact of this amendment on property owners who would not/do not currently have issues with parking on their septic areas and noting that such parking often occurs due to excess or overflow parking associated with the over-occupancy of rental homes, staff is actively exploring alternative options to ensure septic area safety. One approach under consideration is the inclusion of language expressly prohibiting parking on septic areas. In cases where a violation is noted, a Notice of Violation would be issued, at which time the placement of a physical barrier to preclude any future violations could be required. This approach would address parking on septic on systems via a formal violation of the Unified Development Ordinance with a specified remedy, as opposed to the language currently drafted which is a more proactive approach but may unnecessarily impact property owners in some instances.

- Estuarine Shoreline Management Plan – Town staff continues to focus on applying for the necessary grants to continue the implementation of the Estuarine Shoreline Management Plan. An update on this has been provided as part of the Board of Commissioners FY 24/25 Budget Workshop being held on March 6, 2024.

- Electric Vehicle Action Plan – Lowire Technologies has been contracted to order and install the Level 2 EV Chargers (EvoCharge). Lowire is scheduled to begin the underground pipe work the week of March 4th and then commence the installation of the chargers right afterwards. The EV charging units and materials have been ordered and should be arriving soon. Public Services will install safety bollards and complete the parking lot striping as appropriate. Planning has designed the necessary signage to meet the grant requirements and is prepared to have signage fabricated in the upcoming weeks.

- Sand Relocation and Dune Management Cost Share Program – As of March 1, 2024 262,500 of the \$320,000 allocated to the Dune Management Cost Share Program has been encumbered by 87 applicants. Additionally, we have received 187 Sand Relocation Applications of which 180 have been approved and issued authorization letters. Under this program, sand can be relocated through April 30th. Staff intend to stop accepting new applications for sand relocation on or around April 15th in order to begin inspecting the sand projects and closing them out.

- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – The Committee for Art & Culture will be providing the Board of Commissioners with a presentation at their March 6, 2024 meeting. This presentation will include an update on the previous season and their vision for the upcoming season including markets, summer concerts and family fun nights. In addition, the next Winter Market will be held on Saturday, March 9th from 9am – noon at Dowdy Park.

#### 'Upcoming Meetings and Other Dates

- Tuesday, March 5th - Technical Review Committee Meeting
- Wednesday, March 6th - Board of Commissioners Meeting
- Saturday, March 9th – Winter Market at Dowdy Park from 9am – noon
- March 11th – 15th – Joe Costello at NFIP Training
- Wednesday, March 13th – Committee for Art and Culture Meeting
- Thursday, March 14th – Board of Adjustment Meeting (no hearings)
- Thursday, March 14th – CAMA Land Use Planning Webinar

- Tuesday, March 19th – Planning Board Meeting
- Wednesday, March 20th – Board of Commissioners mid-month meeting (if needed)”

## **OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS**

From Feb 7<sup>th</sup> Board Meeting – Public Hearing held Feb 7<sup>th</sup> – Appointment to Multi-Family Ordinance Working Group

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

“After several months of diligent work, the Planning Board has put forth an ordinance to re-establish multi-family as an allowable use within the Town and to create appropriate multi-family development standards which further town goals. As a result of the workshop held between the Board of Commissioners and the Planning Board last summer, the draft ordinance restricts multi-family development to a combination of long-term and workforce housing with the goal of preventing additional short-term rentals in the form of higher density development. The draft ordinance also creatively sets forth new standards for small multi-family projects.

‘At its February regular meeting, the Board held a public hearing on the draft ordinance and received comments that the draft ordinance may be too cumbersome as currently written to facilitate and encourage the development of workforce/long-term housing. It was also noted that the draft standards could be difficult for property owners to navigate. In light of these concerns, the Board requested that the Town establish a working group to review and make recommendations on the draft ordinance. The Board requested that staff provide a recommendation for the March meeting regarding the composition and charge for the group. Staff would suggest an ad hoc working group consisting of two members of the Board of Commissioners, two Planning Board members (the Planning Board nominated Vice-Chair Meade Gwinn and Member Molly Harrison), one town resident, one business owner, and two individuals representing the Dare County Homebuilders Association and/or Outer Banks Association of Realtors.

‘Staff would suggest the following committee charge:

- To consider the draft multi-family ordinance written by the Planning Board.
- To preserve the intent of the ordinance, to protect the character of Nags Head, and to provide new alternatives for workforce/long-term housing without increasing the stock of short-term rentals.
- To evaluate conditions/standards which would render such projects unfeasible due to financing, construction, configuration, or management.
- To suggest additional measures that would achieve the aforementioned goals.

‘The working group should invite and consider information provided by subject matter experts in multi-family financing and management, and on other relevant topics. Staff would suggest approximately three months for the group to report their findings (June 2024 BOC meeting).”

**MOTION:** Mayor Pro Tem Siers made a motion to appoint Meade Gwinn and Molly Harrison from the Planning Board to the Multi-Family Ordinance Working Group. The motion was seconded by Comr. Sanders which passed unanimously.

**MOTION:** Mayor Pro Tem Siers made a motion to appoint Comr. Brinkley and Comr. Lambert from the Board of Commissioners to the Multi-Family Ordinance Working Group. The motion was seconded by Comr. Brinkley which passed unanimously.

**MOTION:** Comr. Brinkley made a motion to appoint Town resident Basil Belsches to the Multi-Family Ordinance Working Group. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MOTION: Comr. Brinkley made a motion to appoint business owner Chris Greening of TW's Bait and Tackle to the Multi-Family Ordinance Working Group. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MOTION: Mayor Pro Tem Siers made a motion to appoint Outer Banks Homebuilders Association rep Duke Geraghty and Outer Banks Association of Realtors Government Affairs rep Donna Creef to the Multi-Family Ordinance Working Group. The motion was seconded by Comr. Brinkley which passed unanimously.

Committee members are encouraged to invite other community members such as banking representatives to discuss the financial aspect, etc. to help resolve the charge of the committee.

Mayor Cahoon stated that the Town Manager and the Planning Director will be at the disposal of the committee as needed. The chair position can be elected among the members.

MOTION: Mayor Pro Tem Siers made a motion to approve the Multi-Family Ordinance Working Group charge as recommended by staff. The motion was seconded by Comr. Brinkley which passed unanimously.

Mayor Pro Tem Siers pointed out that the Planning Board took on an enormous project and came up with a great ordinance in some aspects; he wants to make sure the Planning Board knows how much the Board appreciates their work.

CONTINUATION OF MOTION: The motion passed unanimously.

The Multi-Family Ordinance Working Group charge, as approved, read in part as follows:

- To consider the draft multi-family ordinance written by the Planning Board.
- To preserve the intent of the ordinance, to protect the character of Nags Head, and to provide new alternatives for workforce/long-term housing without increasing the stock of short-term rentals.
- To evaluate conditions/standards which would render such projects unfeasible due to financing, construction, configuration, or management.
- To suggest additional measures that would achieve the aforementioned goals.

From Feb 7<sup>th</sup> Board Meeting – Consideration of text amendments to Town Code Chapter 8 *Beaches and Waterways* re: new Ocean Rescue Flag System - swimming conditions

Fire Chief Randy Wells presented the agenda summary sheet which read in part as follows:

"At the February 7<sup>th</sup> Board of Commissioners meeting, Ocean Rescue Captain Chad Motz provided an update on the 2023 Ocean Rescue Operations. In addition, he discussed changing the Beach Warning Flag System, to align with National/International standards. Board members spoke in favor of the new flag system.

'Attached please find an ordinance amending Town Code Sec. 8-2. *Swimming; prohibited during dangerous conditions* to incorporate the new flag system for Board consideration."

MOTION: Comr. Brinkley made a motion to adopt the ordinance amending Chapter 8 *Beaches and Waterways* re: new Ocean Rescue Flag System, as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

## NEW BUSINESS

### Committee Reports

Comr. Brinkley – Jennette’s Pier Advisory Committee – He reported that an update was received from Pier Manager Mike Remige and that 2023 was the weakest visitation in the past two years - this was felt to be due to inclement weather and poor fishing; several main projects are being done such as a roof replacement, jointly with Coastal Studies Institute (CSI), which will allow for more weather monitoring; more scientific equipment has been purchased; they have also hired some additional educational instructors.

Mayor Pro Tem Siers – he noted that at the recent Dare County Tourism Board meeting an extension was granted to June 2025 for the Town’s Whalebone Park restroom project.

Comr. Lambert – the Government Education Access Channels Committee (GEACC) met and the Channel released a Septic Health Video for Dare County, an issue that Nags Head takes very seriously; she encouraged viewing of the video and she noted that it may help other towns have more of an interest in the program.

### Consideration of Board/Committee appointments

#### *Dangerous Animal Appeal Board*

**MOTION:** Mayor Pro Tem Siers made a motion to reappoint Marvin Demers and Bobby Gentry to the Dangerous Animal Appeal Board. The motion was seconded by Comr. Brinkley which passed unanimously.

**MOTION:** Mayor Pro Tem Siers made a motion to appoint two new members to the Dangerous Animal Appeal Board – Corey McNeilly and Robert Snyder. The motion was seconded by Comr. Brinkley which passed unanimously.

#### *Albemarle Regional Planning Organization – Rural Transportation Coordination Committee*

**MOTION:** Mayor Pro Tem Siers made a motion to appoint Dep Planning Director Joe Costello to represent the Town on the Albemarle Regional Planning Organization – Rural Transportation Coordination Committee, replacing Planning Director Kelly Wyatt. The motion was seconded by Comr. Brinkley which passed unanimously.

### Consideration of revised Residential Recycling Contract / Ordinance

Finance Officer Amy Miller summarized her memo which read in part as follows:

“The Town’s recycling subscription service contract with TFC ends in May. The Town recently solicited an RFQ for interested parties to submit proposals to receive an exclusive franchise for a three-year residential curbside subscription-based recycling collection service in Nags Head. This also includes collection at certain Town owned and maintained locations.

‘The request involved:

- Curbside collection on Mondays, beginning May 6, 2024, using carts provided by the Town of Nags Head.
- Transfer of materials to an approved processing site.
- Transport, brokering, and sale of selected recyclable materials from participating residential housing units.
- Reporting of cart service and capacity issues.

- Monthly reporting of tonnages and participation.
- Location of where recyclables are taken, and method of recycling required to be included in the bid.
- Demonstrating the ability of the bidder to effectively market, sell, broker, or otherwise beneficially dispose of recyclable materials in a manner other than landfilling and incineration.
- Excluding contamination, no more than 10% by weight of all recyclable materials are to be landfilled and/or incinerated without the express written permission of the Town Manager.

'The Town would like to award the contract to the proposer that it deems to be in the best interest of the Town. The Town received one responsive bid from TFC, and staff recommends continuing awarding the contract to TFC. Based on their proposal, TFC has increased their rates, from \$15.33 to \$19.85 per month per subscriber. Staff recognizes that this is a significant increase.

'The town currently subsidizes the monthly rate offered to customers at \$5 a month. TFC charges \$15.33 per month per subscriber; \$10.33 is billed to the customer, and \$5 is billed to the Town. The Board may wish to consider increasing the monthly subsidy. In order to preserve the subsidy ratio as it currently exists (the subsidy is roughly 32% of the monthly fee), the subsidy would need to increase to \$6.50 per month per subscriber. The new monthly fee is \$19.85, so increasing the subsidy to \$6.50 would result in the customer paying \$13.35 per month. For comparison purposes, recycling subscribers in Kitty Hawk currently pay \$16.20 per month. Subscribers in Colington and Kill Devil Hills pay \$13.99 per month. Increasing the subsidy to \$6.50 per month per subscriber would increase the town's current budget by \$16,200 per year. A budget amendment can be brought forward later in the fiscal year if the board would like to increase the subsidy.

'Proposed ordinance changes:

Section 30-27 Additional required services.

F. The Town of Nags Head Public Services Department shall be notified each service day when recycling collection is complete.

'Section 30-29 Length of franchise.

It is intended that the franchise be for a term of three years, beginning on or around May 1, 2024, and ending three years from the date of agreement execution. At the end of the initial term, the town may renew the contract for an additional period of time to be agreed upon by the parties.

'Sec. 30-31. - Payment for services.

(a) As compensation for performing the services required under this Ordinance, the franchisee shall be authorized to collect from subscribers reasonable fees set by Nags Head and collected from subscribers in accordance with the Town ordinance and terms of the contract. The initial fee schedule shall be in the amount of \$19.85 for the first cart per month at each participating location, exclusive of any subsidies offered by the town. Participants may subscribe for additional carts to be serviced at a cost of \$14.90 per cart per month. 'The escalation clause has not changed in TFC's proposal (they may request annual increases based on the CPI for garbage), however TFC was open to negotiations if the proposal was approved. This part of the ordinance could be brought back if TFC agreed to a change. Staff is requesting the Board to approve the proposed ordinance changes and authorize the town manager to enter into and execute a contract with TFC. Staff would also like the Board's direction on the subsidy."

Mayor Pro Tem Siers suggested negotiating with TFC Recycling to possibly do pick-ups twice per month instead of four times per month. Since they also serve the Town of Duck, being on the same schedule as Duck may save funds. He also expressed concern that the Town is subsidizing the Town of Duck – for trucks that are already here on the beach.

Town Manager Garman stated that a certain amount of money is required by the company in order to provide the service.

Mayor Pro Tem Siers also mentioned the excessive speed of the trucks has been reported to him.

Mayor Cahoon suggested a two week investigation to allow Town staff to do more due diligence.

Town Manager Garman was asked to find out if TFC Recycling would be willing to provide the recycling pickup service at twice per month, if the subscriber prefers a reduced service level.

**MOTION:** Mayor Cahoon made a motion to table the Residential Recycling Contract/Ordinance agenda item to the March 20<sup>th</sup> mid-month meeting for further discussion. The motion was seconded by Comr. Brinkley which passed unanimously.

### **CLOSED SESSION ON AGENDA NOT NEEDED**

Mayor Cahoon confirmed with Manager Garman that the scheduled Closed Session was not needed for today's meeting.

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

#### Town Manager Garman - Update on Public Services Facility

Town Engineer David Ryan provided a brief update:

- The septic system was installed this week
- Utility connections were being made with Piedmont Natural Gas, Dominion Energy, as well as other companies for telephone and communication lines.

One building had no progress last month – the vehicle storage building. This past month has seen progress with foundation work and the soon-to-start installation of metal building components.

Late April is scheduled for occupation of the Administration building followed by occupation of the Water Distribution building.

In response to inquiry from Mayor Pro Tem Siers, Engineer Ryan said that October/November 2024 is the timeframe expected for total completion of the site.

### **BOARD OF COMMISSIONERS AGENDA**

#### Comr. Lambert – Consideration of Government Education Access Channels Committee FY 24/25 Budget

Comr. Lambert presented the proposed budget for FY 24/25 for the GEACC.

**MOTION:** Comr. Lambert made a motion to approve the GEACC FY 24/25 Budget as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Mayor Cahoon expressed his appreciation for the work done by the Government Education Access Channels Committee.

The GEACC narrative and FY 24/25 budget, as approved, is attached to and made a part of these minutes as shown in Addendum "G".

Comr. Brinkley – Town’s License Plate Readers

Comr. Brinkley questioned Police Chief Hale re: comments he had seen on Facebook regarding concerns about the License Plate Readers that the Town recently installed in several locations. Comr. Brinkley asked if anyone was monitoring the cameras.

Police Chief Hale explained that the cameras take a “still” picture and cannot be monitored. He emphasized that there has to be an active investigation in order to look for something specific. He explained how the readers have already assisted greatly with obtaining the location of perpetrators of felonies. The cameras do not look into individual vehicles, they don’t note expired licenses, registration tags, etc. The cameras are unable to take this type of action.

Comr. Lambert – Duck documentary on Winged Horses

Comr. Lambert mentioned that at the last Government Education Access Channel Committee meeting, everyone was informed of an upcoming Town of Duck documentary on the Outer Banks Winged Horses. Members were asked to contact the Town of Duck if anyone had information on them or had one.

**MAYOR’S AGENDA**

Mayor Cahoon - Resolution in support of legislation re: wastewater systems

Mayor Cahoon presented a resolution in support of legislation re: onsite wastewater systems.

MOTION: Mayor Pro Tem Siers made a motion to adopt the resolution in support of the NC General Assembly modifying session law code in the 2024 short session to address onsite wastewater systems in our unique environment. The motion was seconded by Comr. Brinkley which passed unanimously.

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

“WHEREAS, Nags Head is a coastal community where the vast majority of residential dwellings utilize on site wastewater treatment and dispersal systems; AND

‘WHEREAS, Nags Head is unique in the amount and type of land available and requires all avenues for consideration to best address on site wastewater system configurations and repair options; AND

‘WHEREAS, Nags Head does not have large, standardized, uniform subdivisions and instead has countless uniquely configured properties, with many small lots (i.e. 6,000+ sq. ft); AND

‘WHEREAS, Nags Head has passed local ordinances restricting the cutting down of oak trees and other vegetation which puts enforcement of the 2023 rule changes in conflict with town ordinances; AND

‘WHEREAS, complying with the 2023 rule changes may present undue financial hardships on numerous property owners which may discourage them from applying for repair permits to address damaged systems or potentially attempting other unapproved solutions which will be much worse environmentally; AND

‘WHEREAS, the Dare County Department of Health and Human Services employs professional, qualified Registered Environmental Health Specialists who are authorized by the State of North Carolina to evaluate onsite wastewater system installations and have used Best Professional Judgement for over 40 years to

determine effective onsite system configurations and solutions.

‘THEREFORE, BE IT RESOLVED, that the Nags Head Board of Commissioners respectfully requests that the NC General Assembly modify NC 15A NCAC SUBCHAPTER 18E - WASTEWATER TREATMENT AND DISPERSAL SYSTEMS SECTION .0100 - GENERAL in the short session of 2024 by clearly stating that rules adopted in 2023 are not to be retroactive in any capacity, including malfunctions, and that the Registered Environmental Health Specialists have unrestricted Best Professional Judgement for addressing onsite wastewater system and wastewater system malfunction for which an IP, CA, OP, NOi, ATO, Certificate of Completion or any other equivalent approval has been issued prior to 01/01/24.

‘FURTHERMORE, BE IT RESOLVED, that professionals with the Dare County Department of Health and Human Services have identified a number of provisions in the 2023 rule changes which are impractical, severely restrictive, or overly cost burdensome, and that the NC General Assembly should undertake revisions to these regulations using local input in order to enable solutions that recognize the unique conditions of Nags Head and Dare County while protecting the environment and minimizing cost and land disturbance.”

**ADJOURNMENT**

MOTION: Mayor Cahoon made a motion to recess to the FY 24/25 Budget Workshop and further to a mid-month meeting on March 20, 2024 at 9 am in the Board Room. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 10:42 a.m.

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

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

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