



**DRAFT MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
RECESSED MEETING  
WEDNESDAY, DECEMBER 11, 2019**

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, December 11, 2019 at 9:00 a.m.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Webb Fuller; and Comr. Kevin Brinkley

Board members Absent: Comr. Renée Cahoon

Others present: Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; Amy Miller; Stephanie Westheiden; Danielle Puleo; and Town Clerk Carolyn Morris

**CALL TO ORDER**

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

**ADOPTION OF AGENDA**

**MOTION:** Comr. Fuller made a motion to approve the December 11<sup>th</sup> agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was not present.).

**PUBLIC COMMENT**

No one present wished to speak during Public Comment; Attorney Leidy declared it closed at 9:02 a.m.

**NEW BUSINESS**

Consideration of contract award for multi-use path bid and associated contract

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

"Sealed Bids for the PH8A W. Side Multi-Use Path project were received/opened on Thursday, Dec. 5<sup>th</sup>. The project was bid under the formal bid guidelines due to the planning level costs projected to exceed the formal bid threshold of \$500,000. The scope of work was separated into two parts: Base Bid-consisting of construction of approximately 4,007 l.f. of 10' wide concrete multi-use pathway plus

incidental work along the west side US Hwy 158 in association with construction of 760 l.f. of 6' wide concrete pathway along the east side of US Hwy 158 plus incidental work, Add Alternate #1- consisting of 1,500 l.f. of 12" dia. water main with appurtenances. RPC Contracting Inc. submitted the lowest responsive, responsible bid with a total bid amount of \$472,340.00.

**Staff Recommendation:**

Staff recommends that the Board authorize the Town Manager to issue a Notice of Award to the lowest responsive, responsible bidder, RPC Contracting Inc. and to proceed forward with the execution of the construction contract. Contract execution will be conditioned upon Town Attorney review and issuance of required State permits. A 10% construction contingency is being proposed which will adjust the total proposed construction budget to \$520,000."

Town Manager Ogburn noted that staff is awaiting one permit – from NCDOT – the proposed date for construction to begin is January 13, 2020.

**MOTION:** Comr. Brinkley made a motion to approve/issue a Notice of Award and proceed with execution of the construction contract with RPC Contracting, Inc. for Phase 8A of the Multi-Use Path – conditioned on the Town Attorney's contract review and issuance of the required State permits, as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was not present.).

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

Attorney Leidy stated that he will be obtaining further information re: the Friend of the Court item under the Mayor's agenda concerning signing into a court case with Oceana to protect against harmful seismic air gun blasting used to search for offshore oil and gas. At this time Attorney Leidy indicated that he has nothing further to provide other than what is in the Board materials.

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

Town Manager Ogburn - Consideration of Budget Adjustment #6 to FY 19/20 Budget

Finance Officer Amy Miller summarized Budget Adjustment #6; the summary sheet read in part as follows:

"Budget Adjustment 6.1 – Upon completion of the FY 2019 audit and CAFR, it was found the correct way to record the General Fund's annual repayment of the Water Fund's purchase of real property is to record a land purchase as an expenditure in the General Fund and a sale of fixed asset in the Water Fund. This land sale does not reflect a transfer or contribution between funds. The original budget reflected a transfer between funds, which is incorrect. This budget amendment has no budgetary impact, it just will allow proper recording to be reflected as indicated in the financial statements per Generally Accepted Accounting Principles (GAAP)."

"Budget Adjustment 6.2 – Due to liquidated damages for the FY 18/19 stormwater project, the final escrow account for the loan proceeds totaled \$27,508 upon project completion. The escrow account was closed, and since the loan proceeds were not needed for project funding, the loan requirement is for unspent proceeds to first pay out any outstanding accrued interest on the loan (\$12,669) and the rest be applied to pay down the loan principal (\$14,839). The lender generated a new amortization schedule, and the final debt payment in fiscal year 2023 will reflect the interest and principal pay down as a correlating reduced payment. Essentially FY 2023 will see a reduced final debt payment to offset the principal and interest prepayment as a result of unspent funds. There is no prepayment penalty, and final budgetary impact will be a reduction in interest expense. Due to accumulated interest and unspent funds from prior

years, there is enough money in the Stormwater Capital Reserve to pay for this prepayment without impairing the Town's ability to perform any scheduled stormwater projects for FY 20."

**MOTION:** Comr. Fuller made a motion to approve Budget Adjustment #6 to the FY 19/20 Budget as presented. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was not present.).

Budget Adjustment #6, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

## **BOARD OF COMMISSIONERS AGENDA**

### Comr. Fuller – Town representative on the Dare County Tourism Board - Boardwalk at Event Site

Comr. Fuller explained that at a recent workshop to discuss plans for the future of the Soundside Event Site, the Tourism Board discussed putting a boardwalk through the event site property. Comr. Fuller wanted to make sure the Nags Head Board was aware. The approximate time that the DCTB is to begin looking at development of that boardwalk is 2021. Comr. Fuller feels that this would dovetail with the Town's Harvey Soundside Access site work discussed in a previous Board meeting. He suggested that the Town and the DCTB meet, possibly around the February 2020 timeframe, with a public meeting to discuss the Harvey site in conjunction with the boardwalk – to at least discuss conceptually what is being planned.

Town Manager Ogburn reported that approximately six years ago the Town looked at a boardwalk in that area;. Engineer George Wood prepared a diagram outlining the wetlands and the area for a boardwalk but no easements were procured and nothing more was done as interest waned after that time.

## **MAYOR'S AGENDA**

### Mayor Cahoon – Friend of the Court

Mayor Cahoon presented this item; the summary sheet read in part as follows:

"At the December 11<sup>th</sup> Board of Commissioners meeting, Mayor Cahoon will discuss with Board members of an opportunity he was notified of by Randy Sturgill, Senior Campaign Organizer with Oceana to take action to protect our community from harmful seismic air gun blasting used to search for offshore oil and gas by signing on to the complaint filed in the US District Court in South Carolina as a "friend of the court" or an "amicus curiae". As a "friend of the court," we would be providing information, expertise and/or insights on issues from our town's unique perspective, which may help the court determine whether permitting seismic air gun blasting in the Atlantic violates federal law. For example, On April 22, 2019, the court granted three North Carolina towns amicus status: Oak Island, Caswell Beach and Sunset Beach.

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE; CENTER FOR BIOLOGICAL DIVERSITY;  
DEFENDERS OF WILDLIFE; NATURAL RESOURCES DEFENSE COUNCIL, INC.; NORTH CAROLINA  
COASTAL FEDERATION; OCEANA; ONE HUNDRED MILES; SIERRA CLUB; and SURFRIDER  
FOUNDATION, Plaintiffs,

v.

WILBUR ROSS, in his official capacity as the Secretary of Commerce; the NATIONAL MARINE FISHERIES SERVICE; and CHRIS OLIVER, in his official capacity as the Assistant Administrator for Fisheries, Defendants.

'The full court case is linked here - [ongoing Atlantic seismic litigation](#)

'Brian Edes, Attorney with Crossley McIntosh & Collier is serving as legal counsel for those that wish to join in this campaign. The Town has worked with Mr. Edes in the past with our interests in the Nies v. Emerald Isle

'Attorney John Leidy will be reaching out to Mr. Edes and will be able to provide further information if necessary and answer questions you might have. Other than that time there is no cost to join the case.

'Additional Information:

Seismic air gun blasting is an extremely loud and dangerous process used to search for potential oil and gas deposits deep below the ocean's surface and the first step toward expanding offshore drilling. Noise from these dynamite-like blasts is so loud that it can disturb, injure or even kill animals across the entire marine ecosystem-- from the smallest zooplankton to the largest whales. The blast zone stretches from Cape May, New Jersey all the way to Cape Canaveral, Florida. Every East Coast governor and more than **270 municipalities** in states along the East Coast, including over 90 percent of coastal communities within the blast zone, have expressed opposition to this dangerous activity. An economic analysis by Oceana found that offshore drilling activities, including seismic airgun blasting, along the Atlantic coast threaten over 1.5 million jobs and nearly \$108 billion in GDP that rely on a healthy and clean marine environment, mainly through fishing, tourism and recreation.

'NOAA (2018) Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Geophysical Surveys in the Atlantic Ocean. National Oceanic and Atmospheric Administration: 83 FR 63268. <https://www.federalregister.gov/documents/2018/12/07/2018-26460/takes-of-marine-mammals-incident-to-specified-activities-taking-marine-mammals-incident-to>

'Grassroots Opposition to Offshore Drilling and Exploration in the Atlantic Ocean and off Florida's Gulf Coast. [stophedrill.org](http://stophedrill.org)

'Oceana analysis using NOAA data (2018) New Economic Analysis Finds Trump Administration's Offshore Drilling Plan Threatens 2.6 Million Jobs and Nearly \$180 Billion in GDP. Oceana Press Releases. Available: <http://usa.oceana.org/press-releases/new-economic-analysis-finds-trump-administrations-offshore-drilling-plan-threatens-26>"

Mayor Cahoon noted that he just learned that this morning Rep. Murphy on his first seismic vote – voted against a motion to speed up the issuance of seismic testing permits.

Attorney Leidy explained that in an Amicus brief the Town could be looking at simply adding the Town's name to the brief – in other cases people have been asked to participate. Attorney Leidy is to confirm with their attorney where litigation stands with this item.

Mayor Cahoon stated that given the uncertainties mentioned today, he will withdraw this consideration until the next Board meeting when additional information is available.

**ADJOURNMENT**

**MOTION:** Comr. Brinkley made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. **Renée Cahoon** was not present.). The time was 9:20 a.m.

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

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

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