



DRAFT MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, DECEMBER 6, 2023

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, December 6, 2023 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-Elect Megan Lambert

Board members Absent: Comr. Renée Cahoon

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Amy Miller; David Ryan; Perry Hale; Randy Wells; Nancy Carawan; Joe Costello; Michelle Gray; Brittany Phillips; Roberta Thuman; Taylor Midgett; Alan Beatty; Shannon Beatty; Trever Tilley; Bob Muller; Susie Walters; Brian Rubino; 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 welcomed former mayor, Bob Muller, former commissioner, Susie Walters, and Comr-Elect Megan Lambert in the audience.

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was not present.).

RECOGNITION

Public Services Director Nancy Carawan introduced Facilities Maintenance Technician Taylor Midgett who was welcomed by the Board to Town employment.

Public Services Director Nancy Carawan introduced Water Distribution Technician Alan Beatty who was recognized by the Board for five years of service.

Fire Chief Randy Wells introduced Fire Lieutenant Trever Tilley who was recognized by the Board for five years of service.

RETIREMENT – Town Clerk Carolyn F Morris introduced Dep Town Clerk Michelle Gray who was recognized and congratulated by the Board on her upcoming retirement after over 27 years of service to the Town.

REORGANIZATION OF THE BOARD

Report on Results of Election
Oaths of Office
BREAK

Selection of Mayor Pro Tem and Oath of Office

Town Clerk Carolyn F Morris summarized the results of the election from the summary sheet which read in part as follows:

“At the December 6th Board of Commissioners meeting, the following procedure will be followed to reorganize the Board after the recent election:

‘Town Clerk Carolyn F. Morris will report on the results of the November 7, 2023 election. Official election results from the Dare County Board of Elections office are attached.

<u>Candidate</u>	<u>Votes</u>
Megan Lambert	705
Kevin Brinkley	585
T-Mike Morrison	241
Keith Sawyer	111
Write-In (Miscellaneous)	7

‘Oaths of office given to Comr. Kevin Brinkley and Comr.-Elect Megan Lambert

‘BREAK (to allow for seating changes)

‘The Board will vote on the Mayor Pro Tem

‘Oath of office given to the Mayor Pro Tem”

Megan Lambert was sworn in as Commissioner by Town Clerk Carolyn Morris.

Kevin Brinkley was sworn in as Commissioner by Town Clerk Carolyn Morris.

After a break for a photo opportunity, Comr. Lambert was seated at the council dais.

MOTION: Comr. Brinkley made a motion to nominate Mike Siers as Mayor Pro Tem. The motion was seconded by Comr. Sanders which passed unanimously.

Mayor Pro Tem Mike Siers was sworn in as Mayor Pro Tem by Town Clerk Carolyn F Morris.

The oaths of office, as taken during today’s meeting, are attached to and made a part of these minutes as shown in Addendum “A”.

PUBLIC COMMENT

There being no one present who wished to speak during Public Comment, Attorney Leidy closed Public Comment at 9:26 a.m.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

- Consideration of Tax Adjustment Report
- Approval of minutes
- Consideration of Adopt-A-Bench Policy / updated Fee Schedule
- Consideration of Trafera Computer Lease agreement
- Consideration of resolution authorizing entering into a contract with NCDEQ for a Public Beach & Coastal Waterfront Access Grant
- Consideration of resolution approving Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement

- Consideration of resolution accepting an Offer of Funding and to make the applicable assurances contained therein - American Rescue Plan funding from the State Fiscal Recovery Fund in the amount of \$244,000 for an Asset Inventory and Assessment (AIA) Study

- Consideration of annual appointment of Director on Nags Head Leasing Board

MOTION: Mayor Pro Tem Siers made a motion to remove item #4 titled "Consideration of Trafera Computer Lease agreement" from the Consent agenda. The motion was seconded by Comr. Brinkley which passed unanimously.

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

Town Manager Garman explained that agenda item #4 was not needed as staff decided to not lease, and instead to purchase, the computer equipment.

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

A copy of the Adopt-A-Bench Policy / updated Fee Schedule, as approved, is attached to and made a part of these minutes as shown in Addendum "C".

The resolution authorizing entering into a contract with NCDEQ for a Public Beach & Coastal Waterfront Access Grant, as adopted, read in part as follows:

"WHEREAS, The Town of Nags Head (the "Town") has been awarded a public access grant for the Governor Street Public Beach Access improvements; and

'WHEREAS, The Town is advised that a proposed contract between the Town and the North Carolina Department of Environmental Quality (DEQ) for Public Beach and Coastal Waterfront Access grant funds is being presented for the project known as Governor Street Public Access, and discussed; and

'WHEREAS, That, under the terms of the said contract, the total project cost is \$130,048; and

'WHEREAS, The Town will pay a total local cash contribution of \$28,460 and local in-kind contribution of \$12,275

as its local share of the total project costs; and

‘WHEREAS, The total grant assistance requested is \$89,313.

‘BE IT THEREFORE RESOLVED as follows:

1. That a contract between the Town of Nags Head and the North Carolina Department of Environmental Quality be and the same is hereby approved.
2. That the Manager is hereby authorized to sign and execute the said contract for and on behalf of the Town of Nags Head and forward the same to the North Carolina Department of Environmental Quality.
3. That upon final execution, a copy of said contract be filed with the minutes.”

The resolution approving Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement, as adopted, read in part as follows:

‘WHEREAS, the North Carolina State Budget Act of 2021 (SL 2021-180, as amended by SL 2021-189, and SL 2022-6) provided to the NC League of Municipalities (League) grant funds provided to the State of North Carolina by the U.S. Treasury pursuant the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319, American Rescue Plan Act of 2021 (ARP); and

‘WHEREAS, the League received two Award Agreements (OSBM-NCLM-65) from the Office of State Budget and Management (OSBM) and the North Carolina Pandemic Recovery Office (NCPRO); and

‘WHEREAS, the first Award Agreement is identified as OSBM-NCLM-65. This grant enables the League to provide “financial software and assistance programs for units of local government for expenses related to the COVID-19 pandemic...” This grant is referred to as the Municipal Accounting Services and Cybersecurity Grant; and

‘WHEREAS, the second Award Agreement is identified as OSBM-NCLM-66. This grant enables the League “to provide guidance and technical assistance to units of local government in the administration of funds from the Local Fiscal Recovery Fund, as established in Section 2.6 of S.L. 2021-25, and in the administration of projects funded through the State Fiscal Recovery Fund, as established in Section 2.2 of S.L. 2021-25.” This grant is referred to as the Guidance and Technical Assistance Grant; and

‘WHEREAS, the Municipal Accounting Services and Cybersecurity Grant and the Guidance and Technical Assistance Grant are collectively referred to herein as the “League Grants”.

‘WHEREAS, the League Grants are deemed part of US Treasury Expenditure Category: 6, Revenue Replacement and shall only be spent on governmental services; and

‘WHEREAS, pursuant to US Treasury Guidance, units of local government that receive services that are funded by one or both of the League Grants are beneficiaries of one or both of the League Grants, respectively, and such services are provided at no cost to these local governments; and

‘WHEREAS, the League has established a Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement pursuant to the terms of the League’s Municipal Accounting Systems and Cybersecurity Grant and the Guidance and Technical Assistance Grant; and

‘WHEREAS, this Municipal Accounting System, Cybersecurity and Technical Assistance Memorandum of Agreement will offer local municipalities:

- (1) Services rendered by the League (League Services) including but not limited to capital expenditures for special purpose software and computer equipment as set forth in §2 C.F.R. 200.439; and
- (2) Services rendered by one or more service providers (Contractor Services), retained by the League on behalf of the Municipality, who are members of a particular profession or possess a special skill as set forth in §2 C.F.R. 200.459; and
- (3) Equipment, including information technology systems, and supplies, including computing devices, as set forth in §2 C.F.R. 200.439 and §2 C.F.R. 200.453; and

'WHEREAS, the Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement, is attached hereto as Exhibit A; and

'NOW, THEREFORE BE IT RESOLVED BY THE CITY/TOWN COUNCIL/BOARD OF THE TOWN OF NAGS HEAD:

1. That, the Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement is hereby approved.
2. That the Manager/Clerk is authorized to execute the attached Memorandum of Agreement (or one substantially equivalent thereto) and such other agreements and actions as necessary in accordance with the League's Municipal Accounting Services and Cybersecurity Grant and the Guidance and Technical Assistance Grant."

The resolution accepting an Offer of Funding and to make the applicable assurances contained therein - American Rescue Plan funding from the State Fiscal Recovery Fund in the amount of \$244,000 for an Asset Inventory and Assessment (AIA) Study, as adopted, read in part as follows:

"WHEREAS, the American Rescue Plan (ARP) funded from the State Fiscal Recovery Fund was established in S.L. 2021-180 to assist eligible units of government with meeting their water/wastewater infrastructure needs; and

'WHEREAS, the North Carolina Department of Environmental Quality has offered American Rescue Plan (ARP) funding in the amount of \$244,000 to perform an Asset Inventory and Assessment study detailed in the submitted application; and

'WHEREAS, the Town of Nags Head intends to perform said project in accordance with the agreed scope of work.

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

1. That the Town of Nags Head does hereby accept the American Rescue Plan (ARP) offer of \$244,000.
2. That the Town of Nags Head does hereby give assurance to the North Carolina Department of Environmental Quality that any Conditions or Assurances contained in the Award Offer will be adhered to.
3. That Andy Garman, Town Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required by the Division of Water Infrastructure."

The summary sheet re: the annual appointment of Town Manager Andy Garman as Director on the Nags Head Leasing Board, as approved, read in part as follows:

“Appointment to Nags Head Leasing Corporation

‘Nags Head Leasing Corporation is a non-profit, wholly owned subsidiary of the Town of Nags Head – it is not a Town Board/Committee. The corporation is used as a holding company and has saved considerable taxpayer money over the years.

‘At the December 6th Board of Commissioners meeting, in accordance with the corporation’s by-laws, request that the Board appoint Town Manager Andy Garman as the President/CEO of Nags Head Leasing. One of the directors of the corporation is to be appointed by the Board of Commissioners on an annual basis. The remaining Directors are elected by the Board of Directors at their annual meeting – held each May.”

PUBLIC HEARINGS

Public Hearing to consider a Subdivision Waiver submitted by Quible and Associates, PC on behalf of Ronald and Sabrina Mikita, for one (1) proposed two-lot Minor Subdivision of Parcel 007323000, PIN 071811556240. The requested waiver is from Section 10.47 of the Unified Development Ordinance as it pertains to limiting access to US 158, US 64/264, NC 12, and SR 1243

Attorney John Leidy introduced the Public Hearing to consider a Subdivision Waiver submitted by Quible and Associates, PC on behalf of Ronald and Sabrina Mikita, for one (1) proposed two-lot Minor Subdivision of Parcel 007323000, PIN 071811556240. The requested waiver is from Section 10.47 of the Unified Development Ordinance as it pertains to limiting access to US 158, US 64/264, NC 12, and SR 1243. The time was 9:25 a.m.

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

“Brian Rubino, of Quible and Associates, P.C. has submitted this Preliminary Plat on behalf of the property owners, Ronald and Sabrina Mikita, for the purposes of considering a Subdivision Waiver from the requirements of Section 10.47 as it pertains to driveways.

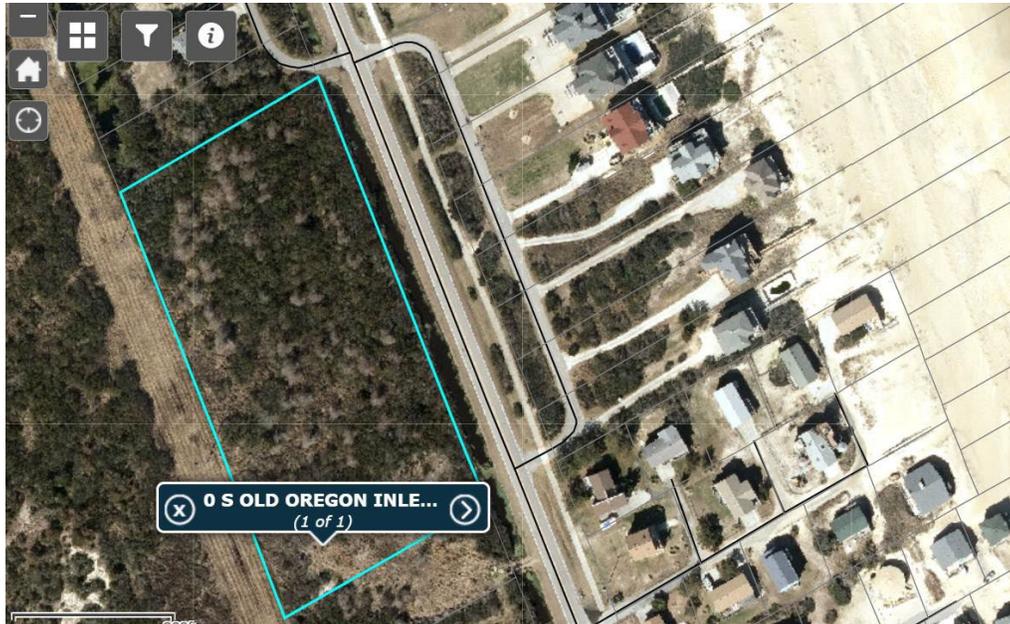
‘Appendix A, Section A.4, Definitions within the Unified Development Ordinance defines *Minor Subdivision* as, “any subdivision containing not more than four lots fronting on an existing street, not involving any new street or road extension of municipal facilities, not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the master plan, official map or this UDO’. The UDO Administrator has determined that the proposed two-lot subdivision is generally consistent with the requirements of the UDO, with the exception of Section 10.47 for which a waiver is being requested.

‘Section 4.1, Table 4.1, Development Review Procedures within the UDO sets forth the review process for Minor Subdivision as first requiring review and recommendation by the Technical Review Committee (TRC) with the ability for the UDO Administrator to then approve the final plat for recordation should all requirements be met. See excerpt below:

TABLE 4.1: DEVELOPMENT REVIEW PROCEDURES
 D = DECIDE R = RECOMMENDATION

Procedure	UDO Administrator	Building Inspector	Technical Review Committee	Planning Board	Board of Commissioners
Minor Subdivision	D		R		

Proposed Lot 1 is approximately 1.55 acres in area and currently has an active building permit for the construction of a single-family dwelling on it. Proposed Lot 2 is approximately 2.11 acres. Both lots contain a significant area of 404 Wetlands as shown on the proposed Preliminary Plat, the USACE Wetlands Jurisdictional Determination, and the accompanying Wetland Exhibit provided by the applicant. The image below is to identify the property.



In review of Article 10, Part V, Subdivision Regulations, it was noted that this proposed two-lot subdivision would not meet the requirements of Section 10.47, Limiting Access to US 158, US 64/264, NC 12, and SR 1243, provided below.

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.

Any future development of a dwelling on Lot 2 would require the installation of a driveway onto SR 1243/S. Old Oregon Inlet Road, thus creating the need for a waiver from the above Section of the UDO. The applicant has included a statement in their application noting that any future siting of a dwelling on Lot 2 would be done so in such a way to utilize existing uplands on the site and a shared driveway option would create significantly more wetland impacts than the careful location of a second stand-alone driveway. This is the basis for their subdivision waiver request from the requirements of Section 10.47.

Section 4.28 of the UDO, Subdivision Waivers, states the following:

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.

As previously noted, a request of this nature would typically be considered a Minor Subdivision and approved Administratively, however, the need for a Subdivision Waiver elevates this request to a Quasi-Judicial process. As noted from Table 3.1 below, this requires review and recommendation by the Planning Board and a Public Hearing to be held by the Board of Commissioners.

TABLE 3-1: REVIEW PROCEDURES D = DECISION R = RECOMMENDATION < > = PUBLIC HEARING				
Procedure	UDO Administrator	Planning Board	Board of Commissioners	Board of Adjustment
Amendment				
Special Use Permit	R	R	<D>	
Appeal	R			<D>
Variance	R			<D>
Subdivision Waiver	R	R	<D>	

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 on October 3, 2023 to prepare a preliminary plat to be submitted to the Planning Board.
- It has been determined by the UDO Administrator that the plan for the proposed subdivision **generally** 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 during the October 3rd Technical Review meeting; comments of note are included below:
 - In accordance with Section 10.51.1.4 topographic data in spot elevations or contour lines drawn to sufficiently close intervals to show drainage flow patterns and existing and finished elevations. Limited existing spot elevation data has been provided and without any finished grade information submitted. Should this application proceed forward toward individual lot development, additional existing grade and proposed grade elevation data will be required as part of the individual site development application approval process as outlined in the UDO.
 - Appropriate water and utility easements shall be provided to each of the properties to permit utility

service connections in accordance with Sections 10.64.2.2 and 10.62.5

- Section 10.52 outlines requirements for the Final Plat to include utility easements and utility locations.
- For future residential stormwater permitting, direct discharge of runoff from the proposed impervious surfaces into the "404" jurisdictional wetlands is not permissible. Passive or active treatment of runoff should be provided in the form of a filter strip or other approved stormwater control measure.

'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:

- Section 10.51.1.4., *Contents of Preliminary Plat*. Topographic data in spot elevations or contour lines drawn at sufficiently close intervals to show drainage flow patterns and existing and finished elevations. Elevations of existing streets that abut the subdivision and any streets proposed as part of the subdivision shall be shown.

'The applicant has provided limited existing spot elevation data, no finished grade elevations or information has been submitted. Should the application proceed forward with the necessary waiver, towards individual lot development, additional existing and proposed grade elevation data will be required as part of the individual site development application approval process as outlined in the Unified Development Ordinance.

- Section 10.51.1.7, *Contents of Preliminary Plat*. The location and width of all easements of right-of-way, both existing and proposed, for pedestrians and for the construction and maintenance of cable television lines, utilities, including water lines, mains and fire hydrants, sewer lines and mains, and including all connections to existing lines, surface and subsurface electric and telephone lines and conduits and pedestrian walkways.

'Section 10.62.5. *Required Improvements Enumerated*. Easements of right-of-way for utilities, where such are not within the street right-of-way;

'Section 10.64.2. *Utility Easements*. All easements which are not within a street right-of-way shall have the following widths as appropriate.

10.64.2.1. If designed to include only one utility, the width shall be not less than ten (10) feet;

10.64.2.2. If designed to include more than one utility, the width shall not be less than twenty (20) feet.

'Following Planning Board review on October 17, 2023, the applicant submitted a revised Preliminary Plat with the required drainage and utility easements shown. This revised plat is included for the Board of Commissioners consideration.

- Section 10.51.2. *Compliance with State Law*, states that any AEC (area of environmental concern) shall be shown on the Preliminary Plat and Final Plat. There shall be a certification placed on the plats showing AEC's: "Some lots in this subdivision are located in areas of environmental concern at the date of approval. Individual permits may be required before any development may take place within those areas."

'This certification has been provided on the proposed preliminary plat.

- Section 10.68 *Lots*, reiterates zoning requirements frontage and lot area.

'Proposed Lot 1 and 2 are compliant with the dimensional requirements for the zoning districts in which they are located.

'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 site is located within the *Residential* designation. Page 3-226 notes that the intent of this designation is to accommodate low density, single family residential.

'STAFF RECOMMENDATION

Staff is of the opinion that the requested subdivision waiver is consistent with Section 4.28.1, Waivers Generally and is consistent with the goals of the Comprehensive Plan to maintain and protect natural areas and ecosystems to the greatest extent possible. Lastly, if the Subdivision Waiver is granted, the development of Lot 2 would remain consistent with the Comprehensive Plan Residential designation with low-density single-family development.

'Additionally, staff is of the opinion that the proposed Preliminary Plat, with the attachment of the following conditions, complies with all applicable requirements.

1. Should this application proceed forward toward individual lot development, additional existing grade and proposed grade elevation data will be required as part of the individual site development application approval process as outlined in the UDO.

2. For future residential stormwater permitting, direct discharge of runoff from the proposed impervious surfaces into the "404" jurisdictional wetlands is not permissible. Passive or active treatment of runoff should be provided in the form of a filter strip or other approved stormwater control measure.

'PLANNING BOARD RECOMMENDATION

At their October 17, 2023 meeting, the Planning Board voted unanimously to recommend approval of the Subdivision Waiver for the Mikita Minor Subdivision Preliminary Plat to the Board of Commissions, including the conditions recommended by staff."

Brian Rubino from Quible & Associates spoke representing the applicant, he stated that the property owners would like to move here permanently and build a 2-3 bedroom home.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 9:40 a.m.

MOTION: Comr. Brinkley made a motion to approve the Subdivision Waiver from Section 10.47 of the Unified Development Ordinance as submitted by Quible and Associates on behalf of Ronald and Sabrina Mikita for one proposed two-lot Minor Subdivision of Parcel 007323000, PIN 071811556240 as presented - to include staff's two conditions as follows:

1 - Should this application proceed forward toward individual lot development, additional existing grade and proposed grade elevation data will be required as part of the individual site development application approval process as outlined in the UDO.

2 - For future residential stormwater permitting, direct discharge of runoff from the proposed impervious surfaces into the "404" jurisdictional wetlands is not permissible. Passive or active treatment of runoff should be provided in the form of a filter strip or other approved stormwater control measure.

The motion was seconded by Mayor Pro Tem Siers.

Mayor Cahoon stated that the resolution seems to be a reasonable solution to this challenge.

CONTINUATION OF MOTION: The motion passed unanimously.

Public Hearing to consider text amendments to the Unified Development Ordinance as it pertains to including the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use

Attorney Leidy introduced the Public Hearing to consider text amendments to the Unified Development Ordinance as it pertains to including the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use. The time was 9:41 a.m.

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

"Consideration of text amendments to the Unified Development Ordinance submitted by SRE Mustang, LLC (Outlets Nags Head) to include the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments and to amend the Supplemental Regulations associated with drive-through restaurants within the Town.

'Section 7.32, General Provisions of the Unified Development Ordinance, specifies the uses that are allowed to be included as part various types of Commercial Mixed-Use designations. The Commercial Mixed-Use designation includes Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Center. Presently, "Restaurant, Drive Through" defined as "an establishment where drive lane facilities are provided for the serving of prepared food, frozen desserts or beverages directly to a customer in a motor vehicle by means which eliminates the need for the customer to exit the motor vehicle" is not included as one of the allowable uses within a Commercial Mixed-Use Development.

'Currently drive-through restaurants are only allowed in the C-2, General Commercial Zoning District with

supplemental regulations that are spelled out in Section 7.29 of the Unified Development Ordinance.

'In addition to applicant's request to amend Section 7.32 of the Unified Development Ordinance to list the use "Restaurant, Drive-Through" as a permissible use within Commercial Mixed-Use designations, the applicant has also proposed to amend the supplemental regulations found within Section 7.29 of the UDO. The proposed revised language is provided below:

'Section 7.29 - Restaurant, Drive-Through.

Restaurant, drive-through, is permitted in accordance with [Section 6.6](#), Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.29.1. In addition to the buffering requirements of [Section 10.93](#), Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in [Section 10.93](#).

7.29.2. The drive-through restaurant must be situated in a retail shopping center development which (a) consists of at least twenty (20) acres of land with frontage on the US 158 right-of-way, (b) has signaled access to and from US 158, and (c) the structure with a drive-through is less than 3,000 square feet. The Town Board may, in its discretion, approve an alternative site layout with the front of a drive-through restaurant located in the C-2, General Commercial District on US 158 oriented differently (i.e., front façade not facing US 158) as part of the Special Use Permit process.

7.29.3. Where the front façade of the restaurant with drive-through is not oriented toward US Hwy 158, the Town Board may approve such alternative site layout provided that the buffer yard requirements set forth in UDO Section 10.93 are satisfied.

'Staff would note that while text amendment requests are not site specific, it is helpful to understand that this request is being made in an effort to allow development of a drive-through restaurant (Starbucks) within an existing shopping center/group development (Outlets Nags Head). The applicant is aware that any site-specific site plan approval is contingent upon the adoption of this text amendment.

'POLICY CONSIDERATIONS

The 2017 Comprehensive Land Use sets forth various character areas throughout the Town. These are districts that have their own unique characteristics, have the potential to evolve into unique areas with intentional guidance of future development through planning and implementation, or require special attention due to unique development issues. These areas provide both the vision and policy direction for the desired use, design, infrastructure, and other elements that new development must consider. Within each Character Area the plan references a general list of appropriate land uses within the Character Area. These character areas include the Gallery Row- Community Center Character Area, Historic Character Area, Village Municipal Service Character Area, South Nags Head Character Area and the Corridors Character Area. In each of these areas, the list of generally appropriate land uses specifically spells out that "drive-thru restaurants" are not desirable (see below). In addition, the following Land Use Policies may be applicable:

- LU-1 – Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by:
 - Buildings with a residential scale and appearance with low heights and small footprints that are designed to reflect the heritage of Nags Head.
 - Commercial development that serves the needs of residents and visitors but respects the goals of the community related to design and appearance.
- LU-23 – Require sufficient parking for commercial businesses with parking area design regulations that

limit impacts on neighbors and surrounding land uses. Page 3-31 states, “as future ordinance revisions occur, the town should maintain consistency between permitted land uses and its parking tables and evaluate changes as necessary to correlate parking standards with actual parking demand based on best available data and information.

- EC-6 – Support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

Table 2.6.2.A: Appropriate Land Uses in the Whalebone Junction Character Area

Whalebone Core [1]	Soundside [1]
<ul style="list-style-type: none"> - Single-Family Residential (5,000 sq. ft. or less) - Hotel/Boutique Hotel - Mixed Use - Accessory residential to residential - Commercial (10,000 sq. ft. or less) - Accessory residential to commercial - Office as an accessory use - Retail - Equipment rentals - Restaurant (Walk-up, sit down, no drive-thrus) - Gallery/Museum - Institutional (Parks, School, Non-Profit) - Personal Service Establishment - Cottage Court 	<ul style="list-style-type: none"> - Multi-Family - Hotel/Boutique Hotel - Accessory residential to commercial - Mixed Use - Commercial - Office as an accessory use - Retail - Restaurant (Walk-up, sit down, no drive-thrus) - Personal Service Establishment - Indoor entertainment - Indoor/Outdoor Recreation - Water Dependent Uses (i.e. pier/boardwalk) - Accessory water dependent use to commercial use, mixed use, or hotel (i.e. pier/boardwalk) - Outdoor Events, Festivals, and Amusements

Table 2.8.2.A: Appropriate Land Uses in the Corridors Character Area [1]		
US 158 / US 64	NC 12	SR 1243
<ul style="list-style-type: none"> - Commercial (40,000 sq. ft. or less for individual buildings, excluding hotels) [2] - Accessory Commercial or Residential to Commercial or Office - Mixed Use - Retail - Office - Restaurant (Walk-up, sit down, no drive-thrus) - Banking Institution - Personal Service Establishment - Gymnasium/Fitness Studio - Indoor Entertainment - Gallery/Museum 	<ul style="list-style-type: none"> - Single-Family Residential (5,000 sq. ft. or less) - Accessory Residential to Residential - Mixed Use - Commercial (10,000 sq. ft. or less) - Accessory residential to commercial - Office - Retail - Equipment rentals - Restaurant (Walk-up, sit down, no drive-thrus) - Gallery/Museum - Institutional (Parks, School, Non-Profit) - Personal Service Establishment 	<ul style="list-style-type: none"> - Single-Family Residential (5,000 sq. ft. or less) - Accessory Residential to Residential - Cottage Courts - Hotel/Motel (northern end only) - Fishing Piers with accessory restaurant

STAFF RECOMMENDATION

As referenced throughout the 2017 Comprehensive Land Use Plan, the Town of Nags Head generally has concerns with the development of drive-through restaurants to include their appropriateness within various character areas within the town, including the US Hwy 158 corridor. As such, drive-through restaurants are currently only permitted via the special use permit process in the C-2, General Commercial District as a standalone principal structure. Staff submits that numerous concerns are likely to arise as a result of proposing a new drive-through restaurant as part of an existing mixed-use development. Those concerns include but are not limited to conflicts with internal traffic circulation, traffic congestion, potential reduction of necessary parking spaces, potential vehicular backups and drive aisle conflicts, pedestrian safety, and public safety concerns such as obstruction of emergency vehicle and fire lane access.

Based upon the staff analysis above, staff would recommend denial of the proposed text amendment to allow drive-through restaurants as an acceptable use within commercial mixed-use developments, including shopping centers.

PLANNING BOARD RECOMMENDATION

At their October 17, 2023 meeting the Planning Board heard this request and voted unanimously to recommend denial of the text amendment as proposed.

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

Mayor Cahoon confirmed with Ms. Wyatt that currently the area around the Outlets is zoned C-2 and if the applicant desired, they could place the location for the drive-thru adjacent to the Outlets.

Mayor Pro Tem Siers confirmed if not part of an existing shopping center – such as where KFC/Taco Bell is allowed – it is legal. If we allowed it, it would be as a special use; the Board would always see the site plan.

Crouse Gray, attorney for the Outlets; he spoke on behalf of the applicant; the property is at the Outlets Mall; this is a "use" issue to him not a "design" issue; the C-2 district does not allow drive-thru's but there are other restrictions; he knows that the Board is concerned that this, if approved, could open up the Town to other similar businesses so they included restrictions limiting where it can be placed; this is a special use permit. He read from the Land Use Plan. He feels the C-2 district is the correct location for this type of business. He feels this is a good thing for the Board to adopt as it is good for everyone.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 10:04 a.m.

Comr. Sanders stated that he is conflicted on this item at this time.

In response to Comr. Brinkley, Attorney Leidy said that this is not a site specific item – he pointed out that the Board also has to find that this amendment is consistent with the Land Use Plan.

Comr. Lambert mentioned concern among the Planning Board for this use in this specific area; Mayor Pro Tem Siers feels this may need more discussion.

Mayor Cahoon indicated that Nags Head has never been in favor of drive-thru establishments.

Comr. Sanders said that it could be more of an issue when looking at redevelopment.

MOTION: Mayor Pro Tem Siers made a motion to table this item concerning "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments and to return it to the Planning Board for additional review, due to today's discussion - and to schedule a Public Hearing for the January 3rd or February 7th Board meeting – whatever works for the Planning Board. The motion was seconded by Comr. Sanders.

Mayor Pro Tem Siers said that the way he looks at it, there is a conflict with the UDO and it is not allowed. Mayor Cahoon commented that he is not sure what the Planning Board would recommend – other than changing the Land Use Plan.

CONTINUATION OF MOTION TO TABLE: The motion passed 4 – 1 with Mayor Cahoon casting the NO vote.

Public Hearing to consider text amendments to Sections 6.5, Classification and Review of Unlisted Uses, Section 6.6, Table of Uses and Activities, and Article 7, Supplemental Regulations as it pertains to the appraisal and purchase of precious metals and antiques and collectibles as an acceptable temporary and accessory use to retail jewelry shops

Town Attorney John Leidy introduced the Public Hearing to consider text amendments to Sections 6.5, Classification and Review of Unlisted Uses, Section 6.6, Table of Uses and Activities, and Article 7, Supplemental Regulations as it pertains to the appraisal and purchase of precious metals and antiques and collectibles as an acceptable temporary and accessory use to retail jewelry shops. The time was 10:24 a.m.

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

"At their October 4, 2023 meeting the Nags Head Board of Commissioners adopted an ordinance which would allow existing brick and mortar retail jewelry stores to host temporary events whereby precious metals dealers can locate and operate within the store for a period not to exceed 90 days within any calendar year. In addition to this amendment, it was the consensus of the Board of Commissioners that staff draft the necessary revisions

needed to expand the items acceptable for appraisal and purchase beyond that of just precious metals to other items as well.

'North Carolina General Statute Article 45, Section 66-387 defines various types of business transactions related to the purchase of secondhand goods from the public. As defined by the statute, "Currency Converter" also called "Cash Converter" would encompass the activity that has been requested for consideration by the Board of Commissioners at their October 4th meeting.

'The entirety of Article 45 is attached for review and the definition of currency converter is provided below for the Board of Commissioners consideration:

'Currency converter. – Either (i) a person engaged in the business of purchasing goods from the public for cash at a permanently located retail store or (ii) an itinerant merchant as defined in G.S. 66-250(1) who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

- a. *Pawnbrokers, except with regard to the purchase of a gift card or merchandise card.*
- b. *Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.*
- c. *Precious metals dealers, to the extent that their transactions are regulated under Part 2 of this Article.*
- d. *Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, provided (i) the amount paid for the individual item purchased is less than fifty dollars (\$50.00) and (ii) the individual item purchased is not a gift card or merchandise card of any value.*
- e. *Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, provided (i) the amount paid for the individual item purchased is less than fifty dollars (\$50.00) and (ii) the individual item purchased is not a gift card or merchandise card of any value.*

'Cash – Lawful currency of the United States.

'Staff would note that while the initial text amendment request was made on behalf of a business owner operating within the Town of Nags Head, seeking to do business with an entity who appears to be a highly reputable vendor (National Rarities), text amendments are not site specific, rather they become available to any business meeting the adopted criteria (ex: existing retail jewelry stores). When moving beyond the parameters outlined for Precious Metals Dealers, staff does not have the ability to regulate the types of items being brought in by the public for appraisal and potential purchase. On their website National Rarities states that they currently buy fine jewelry, scrap gold and silver, diamonds, watches, coins, currency, and bullion, rarities, fine art and luxury goods, firearms and "so much more". While staff cannot regulate the types of items that may be taken to such an event for appraisal and purchase; and while staff must enforce any activity of this nature through the statutory requirements of "Currency Converters", we can apply the terminology of "Antique and Collectibles Dealer" as it pertains to the proposed text amendment, if so desired by the Planning Board and Board of Commissioners respectively.

'Currency/cash converters may also be referred to as secondhand goods dealers. While pawn shops and cash converters are both businesses that deal with secondhand goods, there are differences in the two regarding their business operations. Primarily, pawn shops provide collateralized loans, taking temporary ownership of

an item and holding it until the customer repays the loan. If the loan is not repaid, the pawnshop may then sell the item. Currency/cash converters do not provide loans, they focus on immediate purchase transactions.

Staff has provided a draft ordinance for consideration. Please note that revisions to the previously reviewed language, such as deletions and additions to the text have been highlighted in yellow in the draft ordinance. Staff believes the draft reflects the Board of Commissioners request and will be available at the Boards December 6th, 2023 meeting for continued discussion.

PLANNING BOARD RECOMMENDATION

At their October 17, 2023 meeting the Planning Board voted unanimously to recommend denial of the ordinance amendment as drafted. The Planning Board made clear that they were in no way concerned with how the applicant would operate this type of use. They did however have several concerns with the amendment as text amendments are not site and vendor specific and would apply to any jewelry shop within the town, and any secondhand item purchasing operation.

It was the consensus of the Planning Board that should the Board of Commissioners be inclined to adopt the proposed text amendment that additional consideration be given to the following:

- The 90-day limitation on operation of such a business. Planning Board members expressed concern that 90 days, especially if one chose to operate a cash conversion event for 90 continuous days, could become problematic and likely abused. Some members felt as though limiting it to no more than a few weekends in a calendar year would be more palatable, others felt as though the use was problematic regardless of limiting the days of operation.

- The ability for such a business to accept and purchase firearms. Planning Board members expressed concern that firearms could be brought in for appraisal and purchase, noting the gray area that exists between what one considers antique and collectible and accepting inoperable firearms versus operational firearms and any licensing or registration associated with the transfer of firearms.

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

Comr. Brinkley questioned why it would matter that an antique firearm was operable or not. Police Chief Hale agreed stating that, from his understanding, there would still need to be a background check.

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 10:33 a.m.

Mayor Cahoon confirmed that the ordinance does what the Board asked; Comr. Lambert said that she would be happy to consider fewer than the 90 days for an event to be allowed to be held.

Comr. Brinkley confirmed that Chief Hale had no concerns about the precious metal deals with antique weapons; Chief Hale said he has no concerns with this company and this business – he stated further that the type of event requested does not bring in people looking to sell illegal firearms.

MOTION: Mayor Cahoon made a motion to adopt the ordinance pertaining to the appraisal and purchase of precious metals and antiques and collectibles as an acceptable temporary and accessory use to retail jewelry shops as presented with the exception that the 90 days be reduced to 14 days. 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 "D".

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

Update from Planning Director

Planning Director Kelly Wyatt summarized her 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 December 6th, 2023.

`Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for October 2023*. 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, November 1st, Board of Commissioners Meeting
- Thursday, November 2nd, CRS Users Group Meeting
- Tuesday, November 7th – Technical Review Committee Meeting
- Wednesday, November 8th – Committee for Arts and Culture Meeting
- Thursday, November 9th – Board of Adjustment Meeting (no hearings scheduled)
- November 15th – Board of Commissioners mid-month meeting (if needed)
- November 16th & 17th – Board of Commissioners Retreat
- Tuesday, November 21st – Planning Board Meeting
- Saturday, November 11th & 25th from 9am – noon – Dowdy Park Holiday Markets
- Saturday, November 25th from 5pm – 7pm – 3rd Annual Tree Lighting Ceremony
- Tuesday, November 28th – Meeting w/ Donna Creef re: OBAR and Over-occupancy
- Wednesday, November 29th – Climate Adaptation for Onsite Wastewater Presentation

`Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, November 21st, 2023, and primarily focused on continued discussion of multi-family development.

`The Planning Board's next meeting is scheduled for December 19th, 2023. At this time, the agenda is expected to include a request to initiate the text amendment process for amendments to the UDO requiring that septic systems and all other components be surrounded by a barrier to prevent vehicle parking and continued discussion on the multi-family dwelling ordinance.

`Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in November 2023.

`Additional Updates

- DWMP/Septic Health Advisory Committee – Following the Board of Commissioners' November meeting and the Septic Health Advisory Committee meeting update, Government Affairs Director for OBAR, Donna Creef requested a meeting with town staff to discuss community survey concerns related to over occupancy and

potential outreach and education efforts with property managers. After a brief discussion, and gaining an understanding of the staff's concerns, Mrs. Creef noted that she would arrange to have Environmental Planner, Conner Twiddy, attend an upcoming OBAR meeting to present the Septic Health Program and discuss concerns and address questions that others may have. Additionally, staff met with Josh Coltrain, Dare County Environmental Health Supervisor, to get an update on new on-site wastewater regulations that go into effect on January 1st, 2024. Town Manager Garman has been communicating with Dare County and will be updating the Board of Commissioners on the next steps. Staff continue to work on draft ordinance language prohibiting parking on the septic and drainfield areas.

- Electric Vehicle Action Plan – Staff is currently working with Daniel Parsons of LoWire Technologies to finalize a quote for the acquisition, installation, and future maintenance of the EvoCharge equipment. Staff is also working to identify contractors to construct ADA accessible parking spaces and to fabricate and install signage in accordance with the DEQ grant requirements. Staff will continue to update on this item.
- Sand Relocation and Dune Management Cost Share Program – As of December 1st, \$129,000 of the \$320,000 allocated to the Dune Management Cost Share Program has been encumbered. Additionally, we have received 47 Sand Relocation Applications of which 37 have authorization letters and work is being done.
- Permitting Update 1st Quarter – See below the total number of permits accepted and the average turnaround time. These numbers do not include trade permits.

2023	Total Permits	Avg Turnaround/days
July	43	2.0
August	47	2.2
September	63	2.3

- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – The 3rd Annual Tree Lighting Ceremony was successful. Though cold, there was a good turnout and we have received numerous compliments from the community. Staff would like to thank the Nags Head Fire Department, Police Department, Public Services, and all who came together to make it a memorable evening. The Holiday Night Market was also successful, noting that it was predominantly locals who expressed a lot of appreciation for the evening market. The rescheduled Holiday Market will be on Saturday, December 2nd and our final Holiday Market will be on Saturday, December 9th from 9am – noon. The 2nd Annual Flashlight Candy Cane Hunt will be held on Thursday, December 14th at 4:45 at Dowdy Park and there is still time for residents and businesses to participate in the Town's Holiday Decorating Contest. Entries are due by December 12th and will be judged on the evening of December 19th.

Upcoming Meetings and Other Dates

- Tuesday, December 5th – Technical Review Committee Meeting
- Wednesday, December 6th - Board of Commissioners Meeting
- Thursday, December 7th - CRS Users Group Meeting
- Wednesday, December 13th – Committee for Arts and Culture Meeting
- Wednesday, December 13th – Strategic Plan Implementation Session
- Thursday, December 14th – Board of Adjustment Meeting (no hearings scheduled)
- Thursday, December 14th – Flashlight Candy Cane Hunt

- Wednesday, December 19th – Planning Board Meeting
- Wednesday, December 20th – Board of Commissioners mid-month meeting (if needed)
- Saturday, December 2nd & 9th from 9am – noon – Dowdy Park Holiday Markets”

NEW BUSINESS

Committee Reports

Shoreline Management – Comr. Sanders noted that the project was recently turned down on a grant request.

Comr. Brinkley - Jennette’s Pier Advisory Committee – Comr. Brinkley advised that the date for the next meeting has been set for December 11th.

Appointment to Town Planning Board

The summary sheet read in part as follows:

“At the December 6th Board of Commissioners meeting, request Board consideration of the following:

‘Appointment to Planning Board

Vacancy created when Megan Lambert was elected to BOC November 7, 2023.

‘Attached please find an updated Current Roster, as well as an updated Planning Board Candidate Chart.”

MOTION: Comr. Brinkley made a motion to appoint David Thompson to the vacant position on the Planning Board. The motion was seconded by Comr. Sanders which passed unanimously.

Consideration of resolution authorizing application to file for State Water Resources Development Grant

Town Engineer David Ryan summarized the agenda summary sheet which read in part as follows:

‘The attached resolution authorizes Town Manager Garman to execute and file an application with the State for a Water Resources Development Grant.

‘The Town recently received an NCDEQ LASII stormwater grant for the construction of stormwater improvements for Project Area #12 (in the proximity of Juncos St.) and Project Area #13 (in the proximity of Dare Dr.) in South Nags Head. The focus of this grant is to enhance the design components already considered for Project Area #12 and the reduction of floodwaters along S. Old Oregon Inlet Rd. The main elements of the system captured within the LASII grant are comprised of the installation of a storm pipe collection and pump system along S. Old Oregon Inlet Rd to draw down floodwaters and pump to a dune infiltration system located under the ocean front dune at the Juncos St. Beach Access.

‘The Water Resources Development Grant (WRDG) provides an opportunity to expand improvements by renovating the existing Juncos Street beach access parking lot and upfitting with pervious pavers, asphalt resurfacing, landscaping, and remote monitoring and operation for the stormwater pumping system. The additional measures included in this grant request will aid in increasing overall project performance and maximize efficiency of the pumping system.

'The additional funding request associated with this project will advance the Town's knowledge base on groundwater management systems and expand the Town's portfolio of innovative nature-based resiliency projects.

'Implements new infrastructure to collect road water runoff and then pump to other locations
Project area #12 and #13 in S Nags Head – in the area of Juncos Street''

Mayor Pro Tem Siers confirmed that this grant won't delay the project – additional permitting was already needed.

MOTION: Mayor Pro Tem Siers made a motion to adopt the resolution authorizing application to file for a State Water Resources Development Grant as presented. The motion was seconded by Comr. Sanders which passed unanimously.

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

"WHEREAS, the Town of Nags Head has need for rehabilitating the existing beach access parking lot at Juncos Street using pervious pavement and nature-based stormwater solutions; and

'WHEREAS, this site is part of a project to reduce flooding along South Old Oregon Inlet Road. The rebuilt, more resilient beach access parking lot will feature pervious parking areas and green infrastructure for stormwater management; and

'WHEREAS, this site is open for use by the public on an equal basis with no restrictions and will improve the accessibility of beach access to the general public; and

'WHEREAS, The Town of Nags Head intends to request State grant assistance for the Juncos St. public beach access at Old Oregon Inlet Road.

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

- That the Board of Commissioners requests the State of North Carolina to provide financial assistance to the Town of Nags Head in an amount not to exceed \$200,000 or 50% of nonfederal project costs, whichever is the lesser amount.
- The Board assumes full obligation for payment of the balance of the beach access costs (or non-federal portion).
- The Board has complied and will comply with all applicable laws governing the project and the award of contracts and the expenditure of public funds by local governments.
- The Town will obtain all necessary project permits.
- The Town will supervise construction of the project to assure compliance with permit conditions and to assure safe and proper construction according to approved plans and specifications.
- The Town will hold the state harmless from any damages that may result from the construction, operation and maintenance of the project.
- The Town of Nags Head will provide for efficient operation and maintenance of the beach access facilities upon project completion.

- The Town Manager, or in absence designee, of the Town of Nags Head is hereby authorized, individually and collectively, to execute and file an application on behalf of the Town of Nags Head with the State of North Carolina for a grant to aid in the project described above.
- That the Town Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application."

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman - Update on Public Services Facility

Town Engineer David Ryan provided an aerial review of the Public Services Facility improvements. He summarized building occupation dates as follows:

Water Distribution/Administration Building – end of March 2024
Larger buildings – end of May 2024
Vehicle Storage building – end of summer 2024
Equipment Storage building – spring 2024
Overall Project Completion date – October 2024

Mayor Cahoon asked to schedule a field trip for Board members to tour the Public Services site construction at the end of the February 7th Board of Commissioners meeting. Town Engineer Ryan said that he would schedule the field trip for the Board with the contractor.

Town Manager Garman - Request for approval of Town Hall / Fire Station Properties Master Plan

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

"Staff is requesting that the Town prepare a master plan for the Town Hall and Fire Station properties (5401 S Croatan Hwy, 5314 S Croatan Hwy, 105 W Seachase Drive). Next year we anticipate working with Dare County to design a new Fire Station (to eventually replace Station 16) along with a Dare County EMS station on Town owned property at 105 W Seachase Drive. Town staff are currently using the building at 105 W Seachase Drive as a temporary fitness facility since the old fitness building at 5401 S Croatan Hwy is closed and in need of repair. Given its age and condition, it may be prudent to consider replacement rather than repair of this facility. In addition to the fire station and replacement of the fitness facility, there are several current and potential future needs the Town will need to consider for these properties. This could include any of the following:

- Replacement of the Board of Commissioners meeting room
- Replacement of the South Wing training facility in Fire Station 16
- Replacement of the fitness facility
- Evaluation of future departmental space needs
- Replacement of the Public Services garage
- Housing for seasonal and transitional town staff
- Community meeting space(s)

'The goal of this project would be to identify desired future needs and determine how they could most efficiently be accommodated on both properties. We would seek to complete this in advance of the FY 24/25 budget in case there is a desire to move forward next year with any of the projects identified in the plan. It is anticipated

that this would be a plan that could be phased over many years. Attached is a draft scope of services from Oakley Collier Architects for your consideration. Staff reached out to Oakley Collier since they will be designing the new Fire/EMS facility under a separate contract with Dare County. They also most recently designed the Town's Public Services project."

Town Manager Garman spoke of the need for the update of existing aging Town buildings: He would like to have a new fitness facility; there will eventually be a need for a new Board Room facility; with the age of the Town's current buildings, he feels this would warrant the development of a master plan. He would like to move forward towards completion of a master plan within the next three – four months.

Comr. Brinkley said that he appreciates Manager Garman moving toward a Master Plan that would consider all the potential needs of the Town.

It was Board consensus to agree with the proposal presented by Town Manager Garman with the goal to identify desired future needs and determine how they could most efficiently be accommodated on the Town Hall / Fire Station Properties Master Plan.

Town Manager Garman - Discussion of onsite wastewater legislation update

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

"Town staff recently met with Dare County Environmental Health staff to learn about new changes to regulations that govern the construction and repair of on-site wastewater (septic) systems.

'There are several significant changes to these regulations that will go into effect on January 1, 2024. Of primary concern is that property owners will no longer be allowed to repair drainfields in their original location (which is the current practice). Systems will now be required to use the designated repair area. If the repair area designated on the original permit included a more expensive pre-treatment system, owners will be required to upgrade to that type of system. This has become commonplace in recent years. These changes will involve more vegetation clearing/tree removal as well as additional cost to homeowners who will now have to reroute disposal lines from the home and/or pump wastewater from the tank to a new location on the property. If a pre-treatment system is required, this will cost 5-6 times more than a conventional system. These systems also require a licensed operator.

'Also, for commercial properties, any property that is considered "high strength wastewater" (i.e. any food service, ice cream coffee shops, schools, assembly areas, etc.) will be required to go to a pre-treatment system for any repairs or for new systems.

'We will brief you on these regulations and our conversations with Dare County staff at the upcoming meeting."

Town Manager Garman reported that he and staff recently met with Dare County Environmental Health personnel to learn about new changes to regulations that govern the construction and repair of on-site wastewater (septic) systems. There are some fairly significant changes coming forward that staff feels may impact a lot of residents. He pointed out that Dare County has also expressed their opposition to the regulations; he will keep the Board informed.

BOARD OF COMMISSIONERS AGENDA

Mayor Pro Tem Siers - Congratulations

Mayor Pro Tem Siers congratulated Comr. Lambert on the recent election and Dep Town Clerk Michelle Gray on her upcoming retirement.

Comr. Brinkley – Thank you

Comr. Brinkley thanked staff for their work and wished them a happy upcoming holiday season. He also said that he is honored to be elected to the Board for another four years. He congratulated Comr. Lambert on the recent election and Town Clerk Michelle Gray on her upcoming retirement.

Comr. Sanders – Thank you

Comr. Sanders echoed what the other Board members said and thanked the Town for the Dowdy Park events and how nice the park looks.

Manager Andy Garman – Health insurance

In the Town's efforts to continue to be a leading employer, Manager Garman suggested a change to the Town's dependent health insurance. Currently the Town pays 75% of employee dependent health insurance for those hired prior to 2010 and 60% for those hired after 2010. The Board had expressed an interest at its recent Retreat at making a change – which could be included in the January payroll if the Board is interested. It would also mean a change in the Employee Personnel Policy.

Comr. Lambert stated that she was inclined to approve a 80%/20% split and she would encourage other municipal neighbors to do more for their employees also. Board members agreed with Comr. Lambert's comments.

MOTION: Mayor Cahoon made a motion to modify the Town's Personnel Policy by amending the Health Insurance section from a 60/40 split to an 80/20 split for all full-time employees, no matter the hire date. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MAYOR'S AGENDA

Mayor Cahoon - Consideration of 2024 BOC Meeting Calendar and FY 24/25 Budget Calendar

MOTION: Mayor Pro Tem Siers made a motion to approve the 2024 BOC Meeting Calendar and the FY 24/25 Budget Calendar as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

The 2024 BOC Meeting and the FY 24/25 Budget calendars, as approved, are attached to and made a part of these minutes as shown in Addendum "E".

Mayor Cahoon – Photo of the new Board

Mayor Cahoon asked Board members to stay for an official new Board photo after today's meeting.

Mayor Cahoon – Recent Affordable Housing article

Mayor Cahoon pointed out that an article was published last week that incorrectly stated the Nags Head Board voted down affordable housing – which was not true as the Board had never received an official proposal for voting on. Mayor Cahoon said that he reached out to the writer of that article to inform him of this.

Mayor Cahoon - Consideration of employee Christmas bonus

MOTION: Comr. Brinkley made a motion to approve a Christmas bonus of \$150 for full-time Town employees and \$75 for part-time employees. The motion was seconded by Comr. Lambert which passed unanimously.

OTHER BUSINESS

Mayor Cahoon confirmed with Board members that there is no other business to come before the Board today.

CLOSED SESSIONS

MOTION: Mayor Cahoon made a motion to enter Closed Session to consider Closed Session minutes from Jan – Nov 2023 and their disposition pursuant to GS 143-318.11(a)(1) and to consult with the Town Attorney regarding matters protected by the attorney/client privilege and to preserve that privilege, including the pending litigation re: Dare County municipalities vs the State of NC zoning authority pursuant to GS 143-318.11(a)(3). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:45 a.m.

OPEN SESSION

The Board re-entered Open Session at 12:12 p.m.

Attorney Leidy reported that during Closed Session the Board did approve Closed Session minutes and their disposition and took some other action that is not to be reported on at this time.

ADJOURNMENT

MOTION: Comr. Brinkley made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 12:13 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: _____

Mayor: _____
Benjamin Cahoon