



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Planning Director
Joseph Costello, Deputy Planning Director

Date: May 28, 2024

Subject: Consideration of text amendments to the Unified Development Ordinance as it pertains to digital sign displays for fueling stations.

Jordan Harrell of Jernigan Oil Company, Inc. has submitted a request to amend the Unified Development Ordinance to allow digital, LED signage for displaying fuel prices at gas stations within the Town. Mr. Harrell has noted that the primary reason for this request is to enhance the safety of staff and customers. With advancements in technology and LED price signs, you can remotely change price signs, eliminating the need for employees to manually change fuel prices using a pole suction cup in the parking lot, which can be hazardous during busy times. In addition, the high winds in this area frequently damage signs and dislodge the plastic digit replacements.

Currently Section 10.22.6.17 of the Unified Development Ordinance states, "*LED and digital signs are prohibited*".

Pursuant to Appendix A, of the Unified Development Ordinance, the definition of "digital sign" is as follows:

Sign, digital means any sign featuring electronic display or moving images created by incandescent, LCD, plasma, LED or projected images for any purposes other than traffic control devices. This definition is intended to include any sign containing incandescent lights or exposed light bulbs used as a message or reader board, or to project images. This definition does not include LED technology used only for the purpose of illuminating a structural sign face.

The language of Section 10.22.6.17 and the definition of digital sign were adopted on January 4, 2012. At their November 15, 2011 meeting, the Planning Board reviewed various documents and put forward a recommended ordinance for a complete prohibition of all digital and LED signage. The staff report and minutes associated with this meeting are included for the Planning Board's consideration. It is noted that fuel price displays were specifically mentioned, and not all members were opposed to digital signage for this purpose, provided it was regulated appropriately. The Board of Commissioners first discussed this proposed amendment at their December 7, 2011, meeting before voting to adopt the proposed prohibition on digital and LED signage at their January 4, 2012, meeting. Minutes from both the December 2011 and January 2012 Board of Commissioners meetings are attached. The primary concern appears to be potential proliferation of signage, especially those that flash, rotate, move, or are animated. There were aesthetic concerns regarding whether this type of signage maintains the town's visual appeal and character, contributes to light pollution, affects night sky visibility, and potentially distracts drivers.

At their meeting on March 19, 2024, the Planning Board reviewed and recommended the adoption of proposed text amendments to the UDO that would permit the use of LED digital signage exclusively for displaying fuel prices, provided certain supplemental regulations are met. Following the Planning Board's March 19th meeting, the Town's attorney expressed concerns after reviewing the amendments, particularly in light of the Supreme Court decision in Reed v. Town of Gilbert,

576 U.S. 155 (2015). This ruling has significantly influenced how local governments regulate signage, emphasizing the need for content-neutral sign codes that do not favor one type of speech over another. In response to this decision, the Town previously undertook a comprehensive revision of its sign regulations. An article from the North Carolina School of Government has been included in your packet for further information on this case.

Attorney Leidy noted that the Town's current prohibition on LED and digital signs is a valid content-neutral regulation of speech, as it does not differentiate based on the content of the speech. However, creating an exemption specifically for fuel price displays would likely introduce content-based discrimination, as it would allow certain messages while continuing to restrict others conveyed through LED and digital signs. Such an amendment could lead to First Amendment challenges from those still restricted by the ordinance, with the exemption for fuel price signs potentially serving as evidence of content-based regulation.

In light of these concerns, staff, in consultation with the attorney and the applicant, has proposed an alternative approach. The revised ordinance language would incorporate the LED digital display standards into the use regulations for fueling stations within Section 7.20 of the UDO. These standards would govern the maximum dimensions of the display, the number of character panels, and the frequency of rotation.

Based upon information provided by the applicant, the minimum display area needed for the use of 16-inch digits is approximately 42-inches x 19-inches. This allows for three characters/digits and a panel for the fraction which is commonly used. In applying this restriction, staff believes that it meets the needs of the applicant while maintaining content neutrality. It is important to note that this provision would technically allow a gas station to display a word within the four panels blocks, or an image. Although staff believe this is unlikely, it is worth mentioning. Additionally, the proposed amendment would restrict the display within this designated area from changing more than once in a 24-hour period.

As previously mentioned by staff, the town has valid concerns about signs with rotating, flashing, moving, or alternating lights. However, it may be worth revisiting the possibility of allowing digital signs exclusively for fuel price displays. Although we cannot specify that the display area is solely for gas price digits, we have proposed a set of narrow restrictions, expecting that they will primarily be used for fuel pricing. With the recommended supplemental standards, staff believes the proposal is generally consistent with the Town's adopted Comprehensive Plan, however Policy LU-19 does state that the Town will not permit signs that are digital.

POLICY CONSIDERATIONS

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:

- A visible dark sky night maintained by lighting that is minimal and carefully designed.
- Commercial development that serves the needs of residents and visitors but respects the goals of the community related to design and appearance.

LU-16 – Preserve the dark sky night through implementation and enforcement of quality lighting fixtures and codes, dark sky education, and citizen support.

LU-18 – Encourage signage designed to serve the needs of residents and visitors but respects the goals of the community related to design and appearance.

LU-18a – Develop appropriate freestanding sign standards based on the desired character of each area, particularly along roadway corridors.

LU-18b – Ensure that future revisions to signage regulation remain content neutral.

LU-19 – Support signage that provides adequate communication but does not dominate the landscape. The town will not permit signs or attention getting devices that flash, spin, rotate, blink, or are digital. Signs shall not be directed to or face the ocean beach or sound waters.

PLANNING BOARD RECOMMENDATION

At their April 16, 2024, meeting the Planning Board voted 5-1 to recommend adoption of the text amendment as proposed and requested that staff provide additional restriction on lighting levels for the digital characters. Gary Ferguson cast the Nay vote stating a concern that if gas stations are allowed to have digital signs other businesses will likely follow.

Following their request for additional information concerning lighting levels for the digital characters, staff prepared and presented a presentation to the Planning Board at their May 21, 2024 meeting. Staff outlined how most jurisdictions regulate LED digital sign brightness/illuminance using units of measurements called "footcandles" or "nits".

A footcandle is a measure of illuminance onto a surface, whereas a nit measures illuminance from a luminous source, perpendicular to the rays of the source. While a nit is the scientific manner of measuring light energy being emitted from an internally illuminated sign, it does not factor into ambient light and how the human eye sees illuminance from a point at a certain distance. For this reason, measuring illuminance by footcandles is typically the more restrictive and preferred by regulatory agencies. Staff relied heavily on a document produced by the Outdoor Advertising Association of America (OAAA) and has included this for the Board's consideration. The Outdoor Advertising Association of America recommends that digital signs not exceed 0.3 footcandles above ambient lighting as a standard. At their May 21, 2024 meeting the Planning Board voted 5 – 1 to include this language as a regulatory measure regarding increased illuminance from the digital characters themselves. To apply this, any fueling station wishing to install LED Digital characters will be required to coordinate with staff to conduct illuminance measurements at specific times of the day, under various daytime and nighttime conditions with the digital display off to record the ambient light as a baseline measurement of the surrounding light without the digital signs influence. When the digital display is then turned on, staff will need to conduct the same illuminance measurements at the same or similar times of the day, under the same or similar conditions to ensure that illuminance levels are no greater than 0.3 footcandles higher at the same fixed locations.

Additionally, staff would note that any fueling station must adhere to the minimum and maximum photometric requirements as already set forth in Section 10.37 of the UDO, Parking Lot Lighting Standards with a maximum maintained footcandle of 10.0 fc and a minimum footcandle of 0.7 fc.

STAFF ANALYSIS & RECOMMENDATION

The Town of Nags Head has long expressed legitimate concerns regarding any type of digital, led signage that employs rotating, flashing, moving, or alternating lighting. Should the Board of Commissioners desire to revisit or reconsider the allowance of digital signs for fuel price displays only, staff would submit that with proposed content-neutral regulations regarding the size, number of characters, frequency of rotation, and brightness, the proposed amendment is likely consistent with the Town's adopted Comprehensive Plan.

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).

(DRAFT)

AN ORDINANCE AMENDING THE TOWN CODE AND UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO SUPPLEMENTAL REGULATIONS FOR FUELING STATIONS AND LED, DIGITAL DISPLAYS.

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Nags Head (the “Town”) may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160D-702, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160D-103, which allows the Town to combine certain land development ordinances into a unified ordinance;

WHEREAS, Section 2.4.4.3 of the Unified Development Ordinance provides that the powers and duties of the Planning Board include developing and recommending policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

WHEREAS, Section 3.5.1. of the Town Code makes clear that a zoning ordinance text amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town;

WHEREAS, Mr. Jordan Harrell of Jernigan Oil Company, Inc. has submitted a text amendment request as it pertains to the use of LED and Digital displays for the purpose of displaying fuel prices only.

ARTICLE II. Construction.

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

ARTICLE III. Amendment of the Unified Development Ordinance.

PART I. That **Section 7.20, Supplemental Regulations for Fueling Stations** shall be amended as follows:

Section 7.20 - Fueling Station.

Fueling stations are permitted in accordance with [Section 6.6](#), Table of Uses and Activities, provided that the following additional requirements and conditions are met:

7.20.1. No petroleum pumps shall be nearer than fifty (50) feet to any right-of-way or property line.

7.20.2. All underground fuel storage tanks shall be equipped with leak detection devices. The type of detection device shall be approved by and subject to periodic inspections by the Town.

7.20.3. In addition to the buffering requirements of [Section 10.93](#), Landscaping, Buffering, and Vegetation Preservation, a ten-foot wide commercial transitional protective yard shall be placed along the frontage of any street right-of-way.

7.20.4. Fueling Stations shall have no more than four (4) fuel dispensers.

7.20.5. Convenience store use associated with a fueling station shall not exceed 3,500 sf. of habitable building area.

7.20.6. As of (insert ordinance adoption date) no new fueling station, with or without a convenience store, shall be constructed on a lot having frontage on NC 12.

7.20.7. Signage for fueling stations. Businesses engaged in the retail sale of gasoline may use manual changeable copy displays or digital/electronic displays on their approved freestanding sign. If utilizing an electronic display the following conditions shall apply:

7.20.7.1 A maximum of two elements of the approved freestanding sign shall be digital display.

7.20.7.2 No single digital display element may exceed 42 inches in length and 19 inches in height. The total digital display of all elements combined shall not exceed 11 square feet.

7.20.7.3 Within each digital display element, no more than four (4) characters are permitted. The characters shall not exceed a height of 16-inches.

7.20.7.4 The digital display shall be two-color LED technology only (e.g., red display for regular fuel; green display for diesel fuel).

7.20.7.5 The digital display shall have automatic dimming capabilities and shall automatically dim in response to ambient light. In no instance shall the digital display cause light trespass onto adjacent residential districts or uses.

7.20.7.6. The digital display shall be fixed and shall not change or rotate more than twice in a 24-hour period.

7.20.7.7. The digital display shall provide illumination at a level no greater than 0.3 footcandles over ambient lighting levels.

PART II. That **Section 10.22.6, Prohibited Signs**, be amended as follows:

10.55.6.17. LED and digital signs are prohibited, except for those specified in Section 7.20, Fueling Stations.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ___ day of ____ 2024.

Benjamin Cahoon, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

Coates' Canons NC Local Government Law

Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

Published: 07/21/15

Author Name: Adam Lovelady

Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of *Reed v. Town of Gilbert*, 576 U.S. ___ (2015), and its impact on local sign ordinances.

Context of Free Speech Caselaw

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

Content-Neutral Sign Regulations. Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other

things. These regulations are allowed, provided they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

Content-Based Sign Regulations. Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens’ blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson* test is unclear.

Case Summary

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn’t fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were

based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depende[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town’s distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town’s distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

Impact of Local Ordinances

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert’s sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the

impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

Content-Based Distinctions. In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street numbers associated with private houses.

Content-Neutral Distinctions. The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs*
- And time restrictions on signs advertising a one-time event*

* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

Open Questions

Content-ish Regulations

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring

in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas' hard line. Thus, Alito's opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito's list points to some room for defining signs based on function.

And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

Commercial and Noncommercial Speech. In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (*See, generally, Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision. Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

Conclusion

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.

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<https://canons.sog.unc.edu/2015/07/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/>
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Explanation of OAAA Recommended Brightness Guidelines

There are at least two ways to evaluate the brightness of a LED digital display. A preferred method uses a footcandle meter to determine the amount of light that reaches various points in front of the digital display. A second method uses a luminance meter (frequently called a nit gun) to determine the amount of light emitted by a light source.

Explanation of Footcandles vs. Nits

A brightness standard measured in nits (candelas/square meter) typically contains a maximum value for daytime and nighttime. The footcandle standard has only one value but is measured from different distances based on display size.

An LED sign generates luminance at the source (measured in nits), but this raw source is not what the human eye sees from a distance. The human eye sees illuminance (measured in foot candles) from a point at a certain distance from the LED sign. Illuminance is greatly affected by ambient light and surrounding conditions. As such, it is usually preferred by regulators.

Q: What is the definition of Luminance¹?

lu·mi·nance/'lumənəns/ [loo-muh-nuhns]—noun

1. The state or quality of being luminous.
2. Also called luminosity, the quality or condition of radiating or reflecting light: the blinding luminance of the sun.
3. Optics - The quantitative measure of brightness of a light source or an illuminated surface, equal to luminous flux per unit solid angle emitted per unit projected area of the source or surface.

Q: What is the definition of Illuminance?

/i'lumənəns/ Compare irradiance E v, Sometimes called: illumination the luminous flux incident on unit area of a surface. It is measured in lux²

Q: What is a foot candle?

n. (Abbr. fc or ft-c)

[foot-kan-dl]

noun Optics.

A unit of illuminance or illumination, equivalent to the illumination produced by a source of one candle at a distance of one foot and equal to one lumen incident per square foot. Abbreviation: FC³

Also:

A unit of illuminance on a surface that is everywhere one foot from a point source of one candle⁴

¹ Dictionary.com <http://dictionary.reference.com/browse/luminance?s=t>

² Dictionary.com <http://dictionary.reference.com/browse/illuminance?s=ts>

³ Dictionary.com <http://dictionary.reference.com/browse/foot+candle?s=t>

⁴ TheFreeDictionary.com <http://www.thefreedictionary.com/Footcandle>

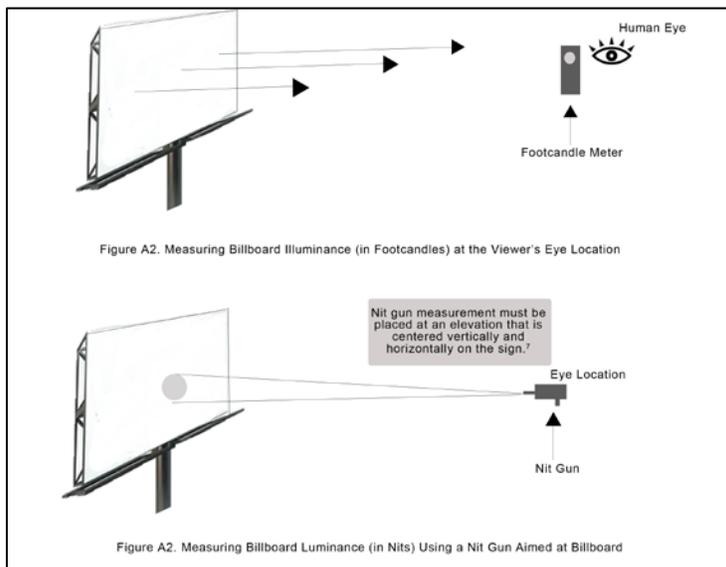
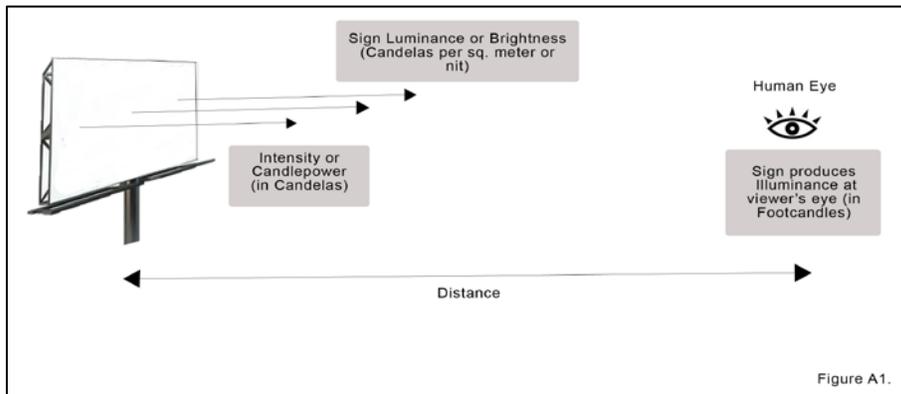
Q: What is a nit?

A:

noun Physics.

a unit of luminous intensity equal to one candela per square meter. Abbreviation: nt^5

-A unit of illuminative brightness equal to one candle per square meter, measured perpendicular to the rays of the source.⁶



⁵ Dictionary.com <http://dictionary.reference.com/browse/nits?s=t>

⁶ TheFreeDictionary.com <http://www.thefreedictionary.com/nit>

⁷ Nit gun readings are most accurate when the readings are taken directly perpendicular from the light source. As a result, the best place to take Nit gun readings is from an elevated height perpendicular to the digital display. If this is not possible, moving back from the digital display 350' to 500' on the center line will minimize the loss of accuracy. However, the distance away from the digital display cannot cause the nit gun measurement circle to fall outside the lighted digital billboard face.

-Source: Dr. Ian Lewin, Ph.D. Lighting Sciences, Inc. Digital Billboard Recommendations and Comparisons to Conventional Billboards.

Why use Foot candles over Nits as a unit of measurement?

- Foot candles measure the variance from ambient light. This assures a government that the sign will not be too bright for conditions. At different parts of a day the ambient lighting can be significantly different with clouds or fog. Conversely, the same can be true about nighttime conditions when an adjacent commercial lot turns on or off their parking lot lighting. Regulation using Nits merely sets a maximum and minimum level for day and night time conditions. Using the foot candle standard will not allow the sign to be too bright under a variety of conditions. (See Figure A2)
- Nits measure the brightness of the light at its source, without regard to ambient light. Establishing a lighting standard that ignores the brightness of the area (ambient light) allows the digital billboard to be too bright in dark environments and too dim in highly illuminated areas. In other words, fixed nit standards can allow the digital to operate at significantly higher luminance than is needed over the course of a 24 hour period.
- Nits: To measure nits you need to be directly perpendicular to the sign to measure, and get an accurate measurement. This is factored horizontally and vertically. There is a little bit of leeway on angle. Nits are directional in nature and billboard signs are usually aimed directly at the middle of the roadway. This in many cases puts the person performing the measurement in the travel lanes. In addition, due to the height of the average digital billboard a truck with a man-lift may be required. There is no specified distance you must be away from the sign to measure. (See Figure A2)
- Footcandles: With the footcandle standard you should be as perpendicular to the face as you can, but you do not have to be, to get a valid, accurate measurement. Footcandles can be measured multi directionally. You can take measurements at an angle to the sign face and receive valid measurements. The distance from which to measure is set at 250 ft away from the sign face for 14 x 48 size. This gives a regulator more options on places to stand.
- This makes the footcandle standard superior in ease of implementation. But even if we assumed they are both different, but similar in this regard, other more important factors tip the scales.
 - The footcandle standard is more restrictive in terms of lighting allowed, in a variety of conditions. As such, is usually preferred by regulators once they are educated on the differences.
 - The industry footcandle standard is tied to a required light sensor and dimming software.
 - Footcandles measure what the driver sees through their windshield in terms of light, where his car is.
 - Nits measure the light emanating from the sign face, typically a few hundred feet away. Not necessarily what the driver is seeing.
- It also can benefit a government to use foot-candles instead of Nits as Nit guns are very expensive (estimated cost \$3,000.00). Light meters can cost as little as \$250.00.

There are 3 necessary components to insure a digital billboard will never be too bright for conditions.

1. Maximum brightness limits incorporating a footcandle standard
2. An ambient light sensor installed on the sign structure
3. Dimming software

The ambient light level of a digital billboard will not vary significantly from that of a traditional billboard display and, in many cases it will be less. The light output levels will be set to be appropriate for the surroundings.

OAAA recognized/member companies utilize a photocell on digital billboards so that the display will easily be seen by motorists under changing light conditions. Sophisticated dimming software constantly changes the brightness of the display in response to changing ambient lighting conditions. This insures a digital billboard will never be too bright for conditions.

The range of brightness varies greatly between daytime and nighttime conditions. In bright daylight, the unit must have higher intensity in order to be seen. During darkness conditions, the brightness can be set low and still be easily seen by motorists.

Why was 0.3 Footcandles chosen as the limit?

The 0.3 footcandle maximum illuminance level was carefully derived from a report completed by a former president of the IESNA.⁸ The recommended technique is based on accepted IESNA practice for “light trespass.”

The Outdoor Advertising Association of America (OAAA) commissioned Dr. Ian Lewin, in 2008 a principal at Lighting Sciences, Inc., Scottsdale, AZ, to recommend criteria for brightness levels on digital billboards⁹. The standards are designed to minimize the risk of glare or unreasonable driver distraction.

Footcandle measurements are commonly used throughout the United States. Footcandle measures are widely used in the lighting industry, photography, film, television, conservation lighting, and construction related engineering and building code regulations¹⁰. In addition, footcandles are frequently cited in OSHA regulations. The OAAA believes that these lighting standards reflect the best practices of the Out of Home Industry.

⁸ IESNA – Illuminating Engineering Society of North America

⁹ Digital Billboard Recommendations and Comparisons to Conventional Billboards, by Dr. Ian Lewin Ph.D., FIES, L.C. Lighting Sciences, Inc., 7826 East Evans Road, Scottsdale, Arizona 85260

¹⁰ wikipedia.org/wiki/Footcandles

Appendix

OAAA Recommended Brightness Guidelines

Criteria #1 - Lighting Standards – Measurements:

The industry recommended criteria follows the lighting standards established by the Illuminating Engineering Society of North America (IESNA). The OAAA and member companies voluntarily adhere to the following guidance.

Recommended regulatory criteria:

Lighting levels should not exceed 0.3 foot candles (over ambient levels) as measured using a foot candle meter at a pre-set distance.

Pre-set distances to measure the foot candles impact vary with the expected viewing distances of each size sign. Measurements should be taken as close to perpendicular to the face as practical.

Measurement distance criteria:

Nominal Face Size	Distance to Measure From
12' x 24'	150'
10'6 x 36'	200'
14' x 48'	250'
20' x 60'	350'

Each display must have a light sensing device that will adjust the brightness as ambient light conditions change.

Criteria #2 - Alternate Regulatory Criteria

The brightness of light emitted from a changeable message sign should not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') feet for those sign faces less than or equal to three hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200 ft.), for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250 ft.), for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350 ft.) for those sign faces greater than six hundred eighty square feet (680 sq. ft.)

Or use Alternate Table:

Sign Face Size	Distance of Measurement
681-1200 square feet	350 feet
385-680 square feet	250 feet
300-385 square feet	200 feet
200-300 square feet	150 feet

Each display must have a light sensing device that will adjust the brightness as ambient light conditions change.

Criteria #3 - Optional Regulatory Addendum - (If standardized distances cannot be achieved in compliance with MUTCD roadside work, or if the site conditions will not allow measurements from the previous distances.)

In the event it is found not to be practical to measure a digital billboard at the set distances prescribed above, a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth below. In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed footcandle level above ambient light shall not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the following tables (A), (B), (C), and (D), as applicable:

(A) For changeable message signs less than or equal to 300 square feet:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	0.68
125	0.43
150	0.3
200	0.17
250	0.11
275	0.09
300	0.08
325	0.06
350	0.06
400	0.04

(B) For changeable message signs greater than 300 square feet but less than or equal to 385 square feet:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	1.2
125	0.77
150	0.53
200	0.3
250	0.19
275	0.16
300	0.13
325	0.11
350	0.1
400	0.08

(C) For changeable message signs greater than 385 square feet but less than or equal to 680 square feet:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	1.88
125	1.2
150	0.83
200	0.47
250	0.3
275	0.25
300	0.21
325	0.18
350	0.15
400	0.12

(D) For changeable Message Sign greater than 680 square feet: Alternative Measuring Distance:
Prescribed Foot Candle Level:

Alternative Measuring Distance	Prescribed Foot Candle Level
100	3.675
125	2.35
150	1.63
200	0.92
250	0.59
275	0.49
300	0.41
325	0.35
350	0.3
400	0.23
425	0.2
450	0.18
500	0.15

202400146

Unified Development Ordinance (UDO) Text Amendment \$750
Zoning Map Amendment \$750 +
\$500/acre or fraction thereof

UNIFIED DEVELOPMENT ORDINANCE TEXT/
ZONING MAP AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Jernigan Oil Company Inc / Duck Thru Food Stores

Mailing address PO Box 688, Ahoskie NC 27910

Explanation of request

- Unified Development Ordinance (UDO) - Section(s) 10.22.6.17
Attach amendment in ordinance form.
- Zoning Map
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

See Attached.

Reason for request

See Attached.

Jordan M. Harrell
Applicant

01/23/2024
Date

Nature of Request:

Jernigan Oil Company Inc., parent company of Duck Thru Food Stores, owns and operates 56 convenience store locations throughout Northeast North Carolina and Southside Virginia. Duck Thru operates five locations on the Outer Banks: two locations in Manteo, one location in Wanchese and two locations in Nags Head. Of our 56 Duck Thru locations, the two locations in Nags Head are the only remaining locations that do not have an LED price sign. Jernigan Oil Company is requesting a text amendment to The Town of Nags Head to consider amending Section 10.22.6.17 (LED and digital signs are prohibited). For illustrative purposes, I have attached an image of an existing LED price sign at another Duck Thru location as well as the current price sign at one of the Nags Head locations. Please note the request is for LED price signs only, which would include NUMBERS only and not any text, words, or images. The LED price sign would only display the gasoline and diesel prices and would not scroll, roll, or flash in any way. The LED numbers would display our gasoline price in a 16-inch red font block digit and would display our diesel price in an 8-inch green font block digit. Lastly, it's important to note all LED price signs will automatically dim at night, and day/night brightness levels can be adjusted to meet the Town of Nags Head lighting requirements. I have attached the spec sheet from our LED supplier, ABLE.

Reason for request

Jernigan Oil Company Inc. requests this text amendment for many reasons but the safety of our staff and customers is one concern and always our top priority. In June 2023, Jernigan Oil Company made a large investment to automate our gas price change processes across our locations for the safety of our staff and customers. With advancements in technology and LED price signs, we are able remotely change price signs without having an employee out in the parking lot, physically changing signs. As you can see in the attached photo of the current Nags Head price sign, the only way to change our price sign is to have an employee visit the parking lot and manually change the price on the sign with a pole suction cup. Unfortunately, when our employees visit the parking lot during busy times of day, our employees take the risk of being struck by a vehicle. Secondly, with the high winds in the Outer Banks area, digits frequently blow from signs, potentially striking customers, or their vehicle. With this change, we would eliminate both safety risks by keeping employees out of the parking lots and driveways and removing the risk of plastic digits being blown from signs.

ARTICLE 10. PERFORMANCE STANDARDS

10.22.6.2. No sign shall be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER."

10.22.6.3. No sign or commercial sign shall be erected which contains, employs or utilizes lights or lighting which rotates, flashes, moves or alternates; except that time and temperature displays, as defined, are permitted but must be included in computing allowable signage. Continuous printout, running or ticker-tape type message panels or signs are prohibited.

10.22.6.4. No sign shall be erected which contains rotating sign panels.

10.22.6.5. No sign shall obstruct visibility at an intersection or driveway as regulated in Section 10.92.2.2.8, Vision Clearance (C).

10.22.6.6. No sign shall be posted on any telegraph, telephone, or electrical light pole or on any tree along any street.

10.22.6.7. No sign shall be permitted that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building. Signs shall not be placed in a manner that obstructs architectural building features such as dormers, cupolas, windows, rooflines or other building elements.

10.22.6.8. No sign shall be permitted that violates any provision of any law of the state relative to outdoor advertising.

10.22.6.9 All outdoor advertising signs or structures are prohibited.

10.22.6.10. Signs supported in whole or in part by water, air or gas are prohibited.

10.22.6.11. No sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.

10.22.6.12. All pennants are prohibited.

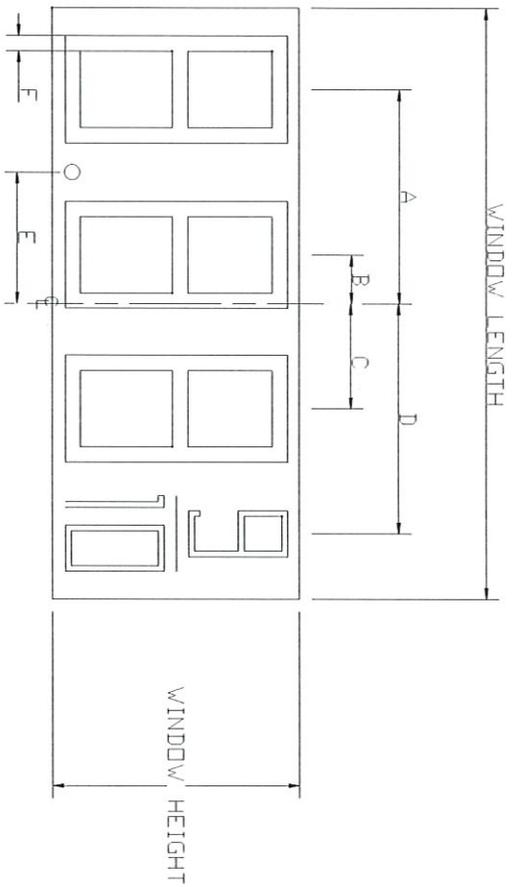
10.22.6.13. Use of exposed neon, argon, krypton, or similar gas tube lighting shall be prohibited in all manners except as provided in subsection 10.24.2.5.

10.22.6.14. Tourist-oriented directional sign (TODS).

10.22.6.15. Three-dimensional sculptured objects and pictorial devices attached to and extending more than twelve (12) inches beyond any wall or roof of a building in business use are prohibited. Attached sculptured objects and pictorial devices extending twelve (12) inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this UDO pertaining to such signs.

10.22.6.16. Roof signs within the SPD-C, Village at Nags Head C-1, C-2, hotel and institutional districts are prohibited.

10.22.6.17. LED and digital signs are prohibited.

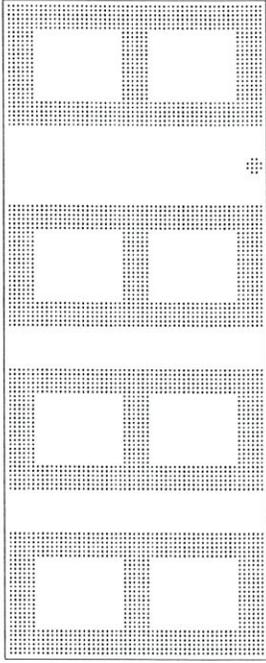


Section	Nominal Rows	LED qty	Pitch	Min Window Width	Min Window Height	Dim A	Dim B	Dim C	Dim D	Dim E	Dim F
6" DIGIT	2	74	0.46"	7.2"	16"	6.0"	1.32"	2.79"	6.41"	3.72"	0.46"
8" DIGIT	1	54	0.39"	8.8"	23.5"	9.06"	1.72"	4.42"	9.72"	5.36"	0.48"
8" %	2	71	0.39"	13.7"	33.1"	12.87"	2.93"	5.97"	13.05"	7.89"	1.15"
12" DIGIT	3	177	0.58"	13.7"	33.1"	12.87"	2.93"	5.97"	13.05"	7.89"	1.15"
12" %	2	137	0.48"	18.5"	41.7"	15.74"	3.57"	7.74"	16.96"	9.65"	1.28"
16" DIGIT	3	219	0.64"	20.4"	45.3"	17.59"	4.15"	8.34"	18.79"	10.91"	1.28"
18" %	2	222	0.48"	25.8"	62.7"	23.33"	6.33"	9.77"	24.07"	14.84"	2.22"
24" DIGIT	4	360	0.75"	31.9"	77.2"	30.12"	7.97"	13.22"	31.66"	19.03"	2.92"
24" %	3	555	0.72"	31.9"	77.2"	30.12"	7.97"	13.22"	31.66"	19.03"	2.92"
30" %	3	3	0.98"	4.4"	10.4"	4.104"	7.51"	19.89"	44.16"	24.27"	3.67"
42" DIGIT	6	6	0.78"	4.4"	10.4"	4.104"	7.51"	19.89"	44.16"	24.27"	3.67"
42" %	3	3	0.62"	4.4"	10.4"	4.104"	7.51"	19.89"	44.16"	24.27"	3.67"
SH DECIMAL	-	4	0.46"								
MD DECIMAL	-	7	0.57"								
LG DECIMAL	-	12	0.75"								

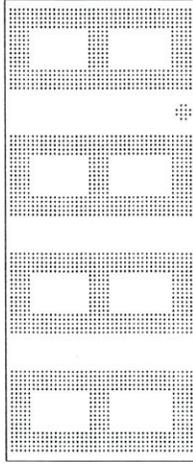
Diesel →

Gas →

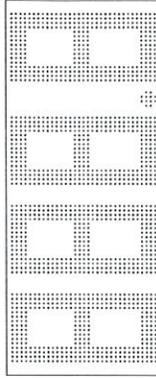
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				2 DECIMAL PLACES XXXX -0.00					
				3 DECIMAL PLACES XXXX -0.005					
				4 DECIMAL PLACES XXXXX -0.0005					
				ANGLES +/- 0.00001					



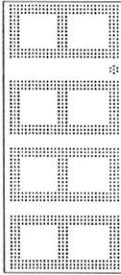
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 HD-425 SMALL 9
 HD-425 10 1/2
 HD-DP03 DECIMAL



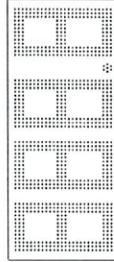
30"
 HD-300 DIGIT
 HD-305 3/8
 HD-DP2 DECIMAL



24"
 HD-240 DIGIT
 HD-245 3/8
 HD-DP2 DECIMAL



18"
 HD-180 DIGIT
 HD-185 3/8
 HD-DP1 DECIMAL



15"
 HD-150 DIGIT
 HD-155 3/8
 HD-DP1 DECIMAL



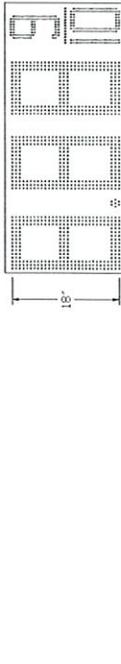
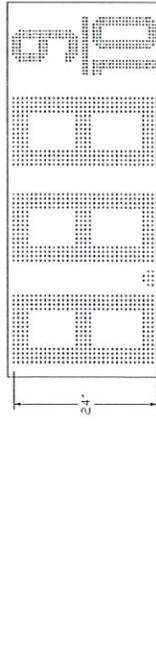
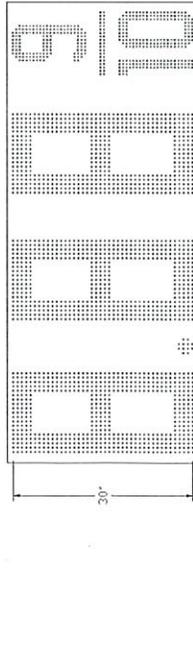
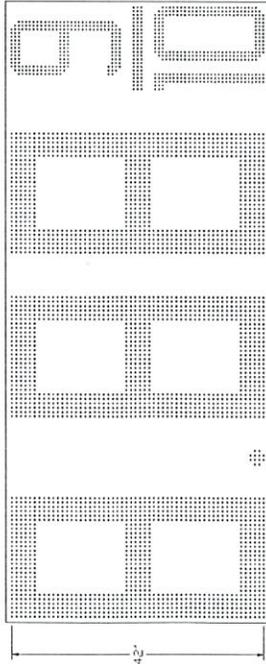
12"
 HD-120 DIGIT
 HD-125 3/8
 HD-DP1 DECIMAL



8"
 HD-0820 DIGIT, 3/8
 & DECIMAL
 HD-0840 DIGIT &
 DECIMAL



6"
 HD-0630 DIGIT, 3/8
 & DECIMAL



Gas →



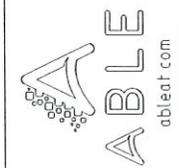
Diesel →



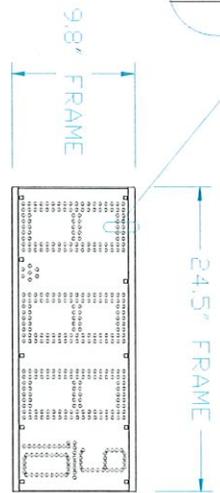
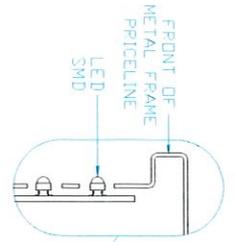
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				HD LED LAYOUTS	ABL8002-L2	1/14/24	EDG	A

TOLERANCE UNLESS SPECIFIED
 1 FRACTIONAL 1/164
 2 DECIMAL PLACES X.XX ±0.00
 3 DECIMAL PLACES X.XXX ±0.005
 4 DECIMAL PLACES X.XXXX ±0.0005
 ANGLES 5/16 DEGREE

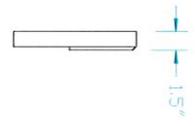
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Diesel Digits

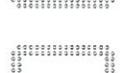
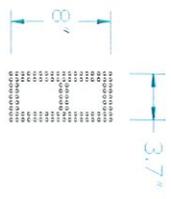


FRONT VIEW



END VIEW

WINDOW



NOTES

GENERAL

DIGITS ARE 8" NOMINAL HEIGHT

MECHANICAL

AAT USA LLC IS NOT RESPONSIBLE FOR THE MOUNTING STRUCTURE OR FOR THE ADEQUACY OF ATTACHMENT TO THE STRUCTURE STRUCTURE AND ATTACHMENT MUST CONFORM TO ALL APPLICABLE BUILDING CODES

WEIGHT SLABS

ELECTRICAL

PROVIDE A 90-265V AC, 15 AMP CIRCUIT FOR POWER
EACH PRICELINE CONFORMS TO CLASS 2 AND LIMITED TO LESS THAN 100W AND 15VDC TO 24VDC

LISTED IN UL SAHS MANUAL

SERVICE AND ELECTRICAL HOORUP ACCESS IS THROUGH THE BACK OF THE DISPLAY ONLY

IF THE POWER TO THE DISPLAY IS TEMPORARILY INTERRUPTED, DISPLAY FUNCTIONS WILL BE RETAINED IN MEMORY TO CONTINUE OPERATION WHEN POWER IS RESTORED

PCU DIGITS AND WIRING ARE CONFORMAL COATED FOR USE IN DAMP CONDITIONS

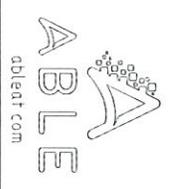
ON BOARD MEMORY FOR PRICE AND SETTINGS

DIMMING, BLINK AND DIAGNOSTIC FUNCTIONS BUILT-IN AND ADJUSTABLE FROM REMOTE CONTROL

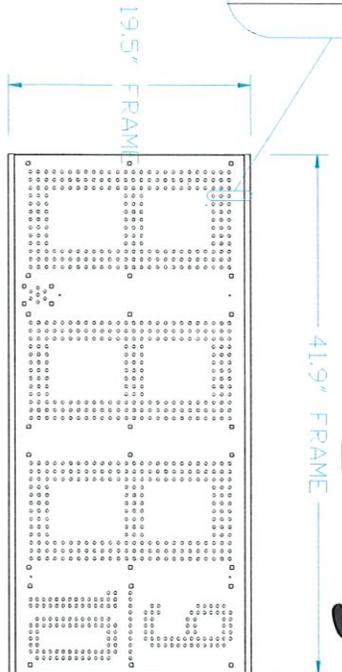
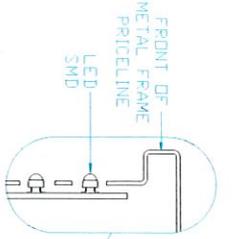
THERMAL

PCU TEMPERATURE -40 TO +85°C POWER SUPPLY -20° TO +85°C

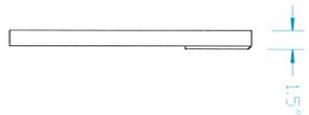
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				2. DECIMAL PLACES XXX -0.010					
				3. DECIMAL PLACES XX -0.050					
				4. DECIMAL PLACES X -0.005					
				ANGLES 1/2 DEGREE					



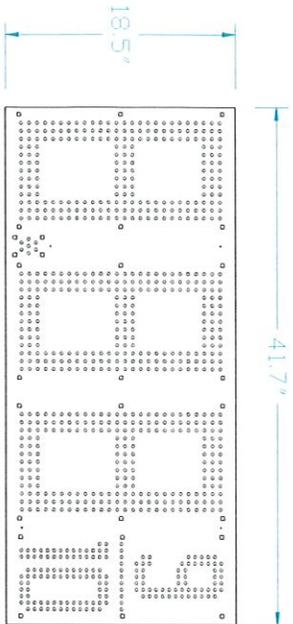
Gas Digits



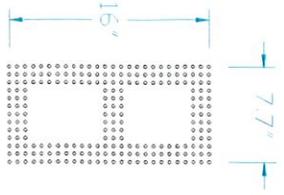
FRONT VIEW



END VIEW



WINDOW



NOTES

GENERAL

DIGITS ARE 16" NOMINAL HEIGHT

MECHANICAL

AAT USA LLC IS NOT RESPONSIBLE FOR THE MOUNTING STRUCTURE OR FOR THE ADEQUACY OF ATTACHMENT TO THE STRUCTURE STRUCTURE AND ATTACHMENT MUST CONFORM TO ALL APPLICABLE BUILDING CODES

WEIGHT 10LBS

ELECTRICAL

PROVIDE A 90-265V AC, 15 AMP CIRCUIT FOR POWER
EACH PRICELINE CONFORMS TO CLASS 2 AND LIMITED TO LESS THAN 100W AND 15VDC TO 24 VDC

LISTED IN UL SAMS MANUAL

SERVICE AND ELECTRICAL HOORUP ACCESS IS THROUGH THE BACK OF THE DISPLAY ONLY

IF THE POWER TO THE DISPLAY IS TEMPORARILY INTERRUPTED, DISPLAY FUNCTIONS WILL BE RETAINED IN MEMORY TO CONTINUE OPERATION WHEN POWER IS RESTORED

PCU DIGITS AND WIRING ARE CONFORMAL COATED FOR USE IN DAMP CONDITIONS

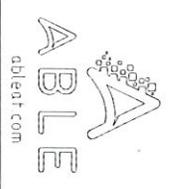
ON BOARD MEMORY FOR PRICE AND SETTINGS

DIMMING, BLINK AND DIAGNOSTIC FUNCTIONS BUILT-IN AND ADJUSTABLE FROM REMOTE CONTROL

THERMAL

PCU TEMPERATURE -40 TO +85°C POWER SUPPLY -20° TO +85°C

DATE	REV	DESCRIPTION	INITIAL	DESCRIPTION	DRAWING NO	DATE	DRAWN BY	REV
				TOLENTANCE UNLESS SPECIFIED 1 DECIMAL PLACES X.XX -1.00 2 DECIMAL PLACES X.XX -1.00 3 DECIMAL PLACES X.XXX -1.005 4 DECIMAL PLACES X.XXXX -1.0005 ANGLES 1/2 DEGREE	ABL8002-16A	1/14/24	EDG	A
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Existing Price Sign



LED Price Sign



STAFF REPORT

TO: Planning Board
FROM: Kim Allen, Code Compliance Officer
Elizabeth Teague, Planning Director
DATE: November 9, 2011
SUBJECT: Zoning Text Amendment to Prohibit Digital Signs

SUBJECT OR MOTION(S):

1. Motion to recommend adoption of Zoning Ordinance Text Amendment request
2. Motion to recommend adoption of a Statement of Consistency.

BACKGROUND: The first digital sign was allowed in 2003. They were all allowed as an alternative to the traditional changeable copy reader boards where letters or numbers are changed by hand. Messages remain for days or weeks at a time. Given the general parameter that digital reader boards mimic changeable copy reader boards, there are currently four digital signs in Town. However, there is nothing in the zoning ordinance that specifically allows them and no regulations to limit the size, color or brightness. Recognizing the increasing interest in digital signs, staff believes they should be prohibited or reasonable conditions be placed on them with a future text amendment. At the September Planning Board meeting, the Board suggested to prohibit them.

STAFF RECOMMENDATION:

Planning staff recommends adoption of the proposed zoning ordinance text amendment as presented in conjunction with the attached Statement of Consistency on the grounds that digital signs detract from the visual integrity of the Town.

ATTACHMENTS:

- A. Draft Text Amendment
- B. Draft Statement of Consistency

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that Chapter 48, Zoning, of the Code of Ordinances shall be amended as follows:

PART I. That **Section 48-282(6) Signs and Outdoor Advertising Structures, Prohibited Signs** be amended as follows:

- (6) Prohibited signs.
 - a. No sign shall be located within a public right-of-way except for street identification signs and official traffic control signs.
 - b. No sign shall be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER."
 - c. No sign, business sign or outdoor advertising structure shall be erected which contains, employs or utilizes lights or lighting which rotates, flashes, moves or alternates; except that time and temperature displays without electronic advertising matter are permitted but must be included in computing allowable signage. Continuous printout, running or ticker-tape type message panels or signs are prohibited.
 - d. No sign shall be erected which contains rotating sign panels.
 - e. No sign shall obstruct visibility at an intersection or driveway as regulated in section 48-79.
 - f. No sign shall be posted on any telegraph, telephone or electrical light pole or on any tree along any street.
 - g. No sign shall be permitted that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building.
 - h. No sign shall be permitted that violates any provision of any law of the state relative to outdoor advertising.
 - i. All outdoor advertising signs or structures are prohibited.
 - j. Signs supported in whole or in part by water, air or gas are prohibited.
 - k. No real estate sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.
 - l. All pennants are prohibited, effective December 6, 1995.
 - m. Use of exposed neon, argon, krypton, or similar gas tube lighting shall be prohibited in all manner except as provided in section 48-284(2) e.
 - n. Tourist-oriented directional sign (TODS).

- o. Three dimensional sculptured objects and pictorial devices attached to and extending more than 12 inches beyond any wall or roof of a building in business use. Attached sculptured objects and pictorial devices extending 12 inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this chapter pertaining to such signs.
- p. Roof signs within the SPD-C, Village at Nags Head C-1, C-2, hotel and institutional districts.

g. LED and Digital signs. except for monochromatic time temperature displays, maximum ten sq. ft. in area.

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ___ day of _____ 2011.

Robert O. Oakes, Jr., Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

**TOWN OF NAGS HEAD
STATEMENT OF CONSISTENCY
WITH THE LAND USE PLAN FOR A ZONING TEXT AMENDMENT**

BE IT HEREBY RESOLVED by the Board of Commissioners for the Town of Nags Head, that in accordance with provisions of North Carolina General Statute 160A-383, the Board of Commissioners hereby finds and determines that the adoption of the requested zoning text amendment to prohibit digital signs.

Is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest because it addresses an emerging concern related to community appearance (p. 104)

READ, APPROVED AND ADOPTED by a vote of _____ to _____, this, the December_____, 2011.

Robert O. Oakes Jr., Mayor

ATTEST:

Carolyn Morris, Town Clerk

Cliff Ogburn, Town Manager

Mr. Demers pointed out that the Federal Wireless law requires a streamlined process for handling applications for construction of antenna and questioned if the Town was in compliance with this requirement. After some discussion it was agreed that the Town's processes related to conditional use applications meet the intent of the law because it's not different from any other conditional use process used in other situations.

Chairman Edwards moved to recommend adoption of the zoning ordinance text amendment as amended by the Town Attorney. Tom Haddon seconded the motion. The motion carried by unanimous vote.

Marvin Demers amended the motion to revise the wording under part V section 7 to add 360 degree concealment of the antenna instead of 180 degrees. Angelina Lowe seconded the motion. The motion carried by unanimous vote.

Motion to Adopt Statement of Consistency

Planning Director Elizabeth Teague presented the Statement of Consistency which reads in part:

"The adoption of the requested zoning text amendments to Town Code... is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest."

Ms. Teague explained that the proposed amendments reflect the heritage of Old Nags Head architecture by requiring that antennas and/or antenna arrays be concealed so that they are not visible by ordinary observation from the ground.

Clyde Futrell moved to recommend adoption of the Statement of Consistency as presented. Susie Walters seconded the motion. The motion carried by unanimous vote

Motion to recommend adoption of a zoning ordinance text amendment to Town Code Section 48-324, Prohibiting LED Signage.

Code Compliance Officer Kim Allen presented a zoning text amendment Prohibiting LED Signage. Mr. Allen explained that the first digital sign was allowed in 2003 for Resort Realty and there are three other businesses that currently have these types of signs: the Outer Banks Hospital, East Carolina Bank and most recently the Sunoco gas station. These signs were all allowed as an alternative to the traditional changeable copy reader boards where letters or numbers are changed by hand and messages remain for days or weeks at a time.

Mr. Allen further explained that there is nothing in the zoning ordinance that specifically allows these signs and no regulations to limit the size, color or brightness. Recognizing the increasing interest in digital signs, Staff believes they should be prohibited or reasonable conditions be placed on them with a future text amendment. For the purpose of comparison, Mr. Allen stated that the Town of Kitty Hawk prohibits them in all shapes and sizes while the Town of Kill Devil Hills allows them with conditions.

Planning Staff recommends adoption of the proposed zoning ordinance text amendment as presented in conjunction with the attached Statement of Consistency on the grounds that digital signs detract from the visual integrity of the Town.

Mr. Demers inquired if there was a way to include language that could control the appearance of LED signs such as the brightness and frequency of change, instead of prohibiting them.

Mr. Allen stated that the City of Virginia Beach struggled with finding language that would restrict but still allow the signs and ended up prohibiting them as well. Mr. Allen stated that it would be difficult to measure compliance.

Mr. Futrell expressed concern over possible traffic safety issues that might develop with large, bright and frequently changing digital signs, such as the one in Currituck, which might be distracting to drivers. Mr. Futrell stated he did not have an objection to small digital signs that note temperature, time and changing gas prices.

Mr. Allen confirmed for Ms. Walters that if the text amendment is adopted, any existing signs would become non-conforming.

Ms. Walters stated that she finds these types of signs distracting and not aesthetically pleasing. Mr. Edwards agreed stating that they were not in keeping with the Nags Head style.

Mr. Demers stated that he did not have an objection to LED signs, if they could be controlled in some way. By putting limits in terms of the brightness or intensity of the light, the size of the font, the frequency of change, these signs can provide an advantage to a business not only by drawing attention to the business but also reducing the need to have someone out there manually changing a sign. These types of signs also allow the use of emerging technology while controlling it to an acceptable degree. Mr. Demers felt that by prohibiting these types of signs they would be creating a division between those that already have digital signs and those who don't. He would prefer to see Staff come back with an alternate which would maybe limit but not prohibit LED signs.

Ms. Lowe agreed with Mr. Demers and stated that by allowing this technology they would be aiding small business owners by offering them another option.

Mr. Haddon expressed concern about the light pollution. He believes that crafting an ordinance that addresses limitations to the technology might get too technical and hard to enforce. He also was concerned that by allowing these types of signs, even with limitations, they will proliferate.

Tom Haddon moved to recommend adoption of the zoning ordinance text amendment as presented with the exception that item "q" under Section 6, Prohibited signs, be amended to read: "LED and Digital Signs." Susie Walters seconded the motion. The motion passed with a vote of four to two with Marvin Demers and Angelina Lowe casting the Nay votes.

Motion to Adopt Statement of Consistency

Planning Director Elizabeth Teague presented the Statement of Consistency which reads in part:

"Adoption of the requested zoning text amendment to prohibit digital signs is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest.."

Ms. Teague stated that in this particular instance there is a specific goal in the Town's Land Use Plan that talks about keeping up with technology but being mindful of community appearance.

Tom Haddon moved to recommend adoption of the Statement of Consistency as presented. Clyde Futrell seconded the motion. The motion passed by a vote of four to two with Marvin Demers and Angelina Lowe casting the Nay votes.

Discussion

Encouraging use of Solar Power

Planning Intern Amanda Tucker gave a power point presentation regarding the use of Solar Power Systems and the benefits of encouraging their use within the town.

Ms. Tucker talked about the many advantages of Solar Power both environmental and economic. Ms. Tucker gave as an example a typical beach box, which could see a \$391 saving per year with a solar power system and a lifetime savings of approximately \$10,000.

Ms. Tucker stated that the Town of Nags Head is a great candidate for this type of energy and should invest in "green" energy to preserve its lifeline, the beach. Ms. Tucker suggested that the Town look into the installation of a solar power system on a Municipal building, which could serve as an educational tool for the Town's citizens as well as an economically beneficial investment.

Ms. Lowe noted that the focus on the Outer Banks seemed to be more on wind energy and wondered if vendors were marketing these types of systems more aggressively than solar powered systems. Ms. Tucker explained that a big obstacle for solar energy is the lack of education and stated that while the focus has been on wind power, solar power can work in conjunction and act as a supplement to wind energy. Ms. Tucker agreed with Ms. Lowe that solar arrays might also be more aesthetically pleasing than turbines.

Ms. Walters inquired if Staff had looked at alternative energy systems for Town Hall as part of the repairs to the roof that was recently damaged due to Hurricane Irene. Ms. Teague stated a vendor is currently putting together some cost estimates for both Town Hall and the Harvey site.

Mr. Demers inquired about insurance cost implications related to placing solar panels on roofs. Ms. Teague confirmed that they would not create any additional liability and stated that they would have to meet all building codes including coastal wind loads.

Mr. Futrell stated that this is an area where there is a lot of renewable energy that is currently available but not being used and he could see how the two types of energy, wind and solar, could work well together.

stated that in any case the antennas don't stick out any more than six – eight inches from the building. She thanked staff for their help.

There being no one present who wished to comment, Attorney Leidy closed the Public Hearing at 9:53 a.m.

MOTION: Comr. Cahoon made a motion to adopt the ordinance amendment to permit the installation of concealed building mounted antenna as a conditional use in the CR and C-2 Districts, as presented. The motion was seconded by Mayor Pro Tem Remaley.

Comr. Walters asked if Comr. Cahoon's motion included Sprint Com comments and the Planning Board's provision. Comr. Cahoon said that her motion did include comments made by Ms. Teague/Ms. Murphy.

CONTINUATION OF MOTION: The motion passed 4 – 0 (Comr. Sadler was not present.).

MOTION: Comr. Cahoon made a motion to adopt the Statement of Consistency between the ordinance and the Land Use Plan as presented. The motion was seconded by Comr. Walters which passed 4 – 0 (Comr. Sadler was not present.).

A copy of the ordinance to permit installation of concealed building mounted antenna, as adopted, is attached to and made a part of these minutes as shown in Addendum "D".

Public Hearing to consider adoption of Zoning Ordinance Text Amendments to Town Code Section 48-8, Definitions and Town Code Section 48-324, Prohibiting LED and Digital Signage

Attorney John Leidy introduced the Public Hearing concerning LED and digital signage at 9:56 a.m.

Code Compliance Officer Kim Allen summarized his memo which read in part as follows:

"BACKGROUND: The first digital sign was allowed in Nags Head in 2003 by way of a zoning interpretation: they were allowed only as an alternative to the traditional changeable copy reader boards where letters or numbers are changed by hand. The parameter placed on this allowance was that the digital boards had to effectively mimic non-digital reader boards, and messages were to remain static. There are currently four working digital signs in Town (at the Hospital, Sunoco, Resort Realty, and East Carolina Bank) and one that is not in operation (Taco Bell).

There is nothing in the zoning ordinance that specifically allows or provides specific guidelines on digital signage (color, brightness, moving vs. static images, etc.). Recognizing the increasing interest in digital signs and the emerging technologies of LED, LCD and plasma screens, staff believes that all digital signage should be prohibited or reasonable parameters for their use be placed on them with a text amendment. At the September Planning Board meeting, the Board initiated a text amendment at staff's request.

PLANNING BOARD RECOMMENDATION:

At their November Meeting the Planning Board took up discussion of the staff recommendation to add the following to the "prohibited signs" list:

'LED and Digital signs. except for monochromatic time temperature displays, maximum ten sq. ft. in area.

'Discussion resulted in amendments to the staff text to prohibit *all* forms of digital signage, and to include a definition that covers all types of digital signs being used as reader or message boards or incorporated into commercial signage. The Planning Board also recommended adoption of the Statement of Consistency.

'The Planning Board membership raised concerns that once one business installs one, others will follow resulting in a proliferation of digital imagery that is not in step with the character of Nags Head, as well as that the signs could distract drivers and become a safety issue (minutes attached).

STAFF RECOMMENDATION:

Planning staff recommends adoption of the proposed zoning ordinance text amendment which amends the original staff recommendation with Planning Board input. Staff also recommends adoption of the attached Statement of Consistency on the grounds that digital signs detract from the visual integrity of the Town."

Notice of the Public Hearing was published in the *Coastland Times* on Tuesday, November 22, 2011 and on Tuesday, November 29, 2011 as required by law.

Lois Williams, Outer Banks Mall, said that the signage would only be changed once per day; she would like the opportunity to try the digital signage.

Steve Howington, Carolina Signs; he said that digital signs are an effective way for businesses to advertise during this economy; it would be an attractive way for the Outer Banks Mall shopping center to add to the upgrades already done; the signs are programmable. He displayed photographs of digital signs.

Rick Lawrenson; he asked if the Town, if the ordinance is adopted, would do away with its own digital sign; Code Compliance Officer Kim Allen pointed out that the Town's sign is exempt from the ordinance.

John Ratzenberger, resident; he stated that he has never seen an attractive type of digital signage; on a personal note, in his previous position on the Town's Citizens Advisory Committee, they looked at ways to help businesses in the Town and signage was discussed; the Outer Banks Mall has a strip side that cannot be seen until driven by; he feels that the Planning Board and staff need to meet to discuss all signage in the Town to see what can be done to benefit businesses – especially look at those without a lot of visibility.

Mayor Pro Tem Remaley asked Code Compliance Officer Kim Allen how many applications for these types of signage have been received; Mr. Allen stated that applications are received very

infrequently for these types of signs - recently three (3) requests have been received. This type of signage becomes multi-faceted because of its ability to change.

Mayor Oakes confirmed that currently there are four (4) types of digital signs in the Town.

Planning Director Teague stated that the Planning Board wanted to make sure parameters were identified so a traffic issue would not be created.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 10:21 a.m.

Comr. Walters, who was on the Planning Board in review of this ordinance, feels that the larger businesses/chains are more likely to have these signs than the smaller businesses; the majority of the Planning Board was not in favor of the proposal.

Comr. Cahoon said that she would not be objectionable to allowing LED's with conditions/parameters; she felt it was not right that the Town exempted itself from the ordinance.

Mayor Pro Tem Remaley feels that the signage ordinance in the Town needs to be completely revisited and looked at more in-depth for ways to help people especially because of the current economy.

Mayor Oakes said that he feels static lights would be okay but he is concerned about the plasma signs; a message that changes more frequently than daily should be prohibited.

Comr. Cahoon confirmed with Code Compliance Officer Allen that currently no one can erect a plasma sign. She feels more work should be done on this proposal – some language could be added concerning brightness, frequency of movement, etc.

MOTION: Comr. Cahoon made a motion to table the digital sign proposal for 90 days for additional staff review and for citizen input – for consideration at the March 2012 Board meeting. The motion was seconded by Mayor Oakes.

Comr. Walters asked what takes place if the Town receives applications for digital signage. Ms. Teague stated that the current ordinance will apply. Ms. Teague also stated that she would like to put together a group to include the Planning Board and local businesses that can address new sign technology and prepare a proposal that the Planning Board can support and that will benefit local businesses.

Attorney Leidy explained that the process to adopt a moratorium includes a Public Hearing; he pointed out that the Board would not be able, at today's meeting, to adopt a moratorium.

WITHDRAW MOTION: Comr. Cahoon withdrew her motion and Mayor Oakes withdrew his second to that motion.

Board members discussed various types of changes to the ordinance such as striking the "LCD" and "LED" and leaving other definitions of signage intact in order to keep what currently exists but not allow expansion.

Mayor Oakes requested that the ordinance be modified for Board review and consideration later in today's meeting.

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

Review of effects of zoning ordinance text amendment adopted in second reading at May 4, 2011 Board of Commissioners meeting which permitted onsite rental of beach chairs and umbrellas from within the private beach bathhouse located at 4929 S. Virginia Dare Trail

MOTION: Comr. Cahoon made a motion to recuse Mayor Oakes from the discussion concerning the Village Beach Club rentals due to conflict of interest (Mayor Oakes is President of Village Realty, Inc.). The motion was seconded by Mayor Pro Tem Remaley which passed 4 – 0 (Comr. Sadler was not present.).

Mayor Oakes left the meeting; Mayor Pro Tem Remaley conducted the discussion.

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

"This zoning ordinance text amendment adopted on May 4, 2011 (attached) added Town Code Sec 48-869, Recreation District to permit the onsite rental of beach chairs and umbrellas at the Village at Nags Head Private Beach Access and Bathhouse. At the time of its adoption, the Board of Commissioners placed a sunset provision on this ordinance requiring that it be revisited and either re-adopted or allowed to lose effect at the December 2011 meeting.

'Though few problems were experienced with the operation at the Village at Nags Head Private Beach Access, numerous concerns arose at the Comfort Inn and Surfside Hotel locations throughout the summer. This ordinance is difficult to enforce with regard to the location and storage of rental equipment and acceptance of money on the public beach.

'Staff Recommendation: Staff recommends allowing the sunset provision on this ordinance to lapse and also recommends that the previously adopted ordinance, adopted on March 2, 2011, (attached) which permitted beach chair and umbrella rentals as an accessory use to Hotels within the CR, Commercial Residential Zoning District – be reconsidered."

MOTION: Comr. Cahoon made a motion to allow the sunset provision to lapse (with the Village at Nags Head Beach Club rentals) and to have staff bring back a proposal combining all goals. The motion was seconded by Comr. Walters.

Planning Director Teague said she would like the next 60 – 90 days to prepare a proposal and to return with a revised ordinance; an ordinance that provides clear guidance to potential vendors and to the public. A proposal that would provide an opportunity for a family in Nags



**TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR SESSION
January 4, 2012**

The Town of Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 South Croatan Highway at 9:00 a.m. on Wednesday, January 4, 2012.

COMRS PRESENT: Mayor Bob Oakes; Comr. Anna Sadler; Comr. Renée Cahoon
and Comr. Susie Walters

COMRS ABSENT: Mayor Pro Tem Doug Remaley

OTHERS PRESENT: Town Manager Cliff Ogburn; Town Attorney John Leidy; Kevin Brinkley; Steve Kovacs; Dave Clark; Ralph Barile; Kelly Wyatt; Dabni Shelton; Angela Welsh; Roberta Thuman; Justin Kupfer; Ryan Dodson; Chase Tadlock; Bobby Gentry; Meade Gwinn; Michael Reed; Dave Wigginton; Marvin Demers; Elizabeth Demers; Barbara Gernat; Sheila Davies; Brendan Strum; Richard Murphy; Cameron Saville; Mike Kelly; John DeLucia; Ralph Buxton; Bob Muller; Dennis Mabe; Doug Langford; Jim Boyd; and Town Clerk Carolyn Morris

CALL TO ORDER/PRAAYER/PLEDGE OF ALLEGIANCE

Mayor Oakes called the meeting to order at 9:00 a.m. Public Works Director Dave Clark provided the prayer which was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

Comr. Sadler asked the Board to amend the agenda and to move the resolution concerning Property Owners Association and taxing benefits to the beginning of the agenda to accommodate those in the audience. It was Board consensus to agree with Comr. Sadler and to move the resolution to just prior to the public hearings.

MOTION: Comr. Sadler made a motion to adopt the January 4th agenda as amended - to move agenda item # 21 re: property owners association and taxing benefits to just prior to the start of the

public hearings. The motion was seconded by Comr. Walters which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

AUDIENCE RESPONSE – MEADE GWINN

Meade Gwinn, President of the Village Property Owners Association; he addressed the resolution re: non-profit property owners associations; he understands the Town's concern and feels that the resolution may be trying to correct a problem before a problem exists; there is no alien property owners association owning property in the Town as of today; the language may mislead homeowners living in Nags Head but not living in the Village to think Village residents may be receiving a tax benefit others are not allotted; he asked the Board to explore other options instead of making legislative changes; he feels that there are better ways to address this issue and he asked the Board to table action on this resolution.

RECOGNITION OF EMPLOYEES

Police Chief Kevin Brinkley introduced Police Officer First Class Justin Kupfer who was recognized by the Board for obtaining his certification as a National Drug Recognition Expert.

Fire Chief Kevin Zorc introduced Firefighter/EMT Ryan Dodson who was recognized by the Board for five years of service.

Police Chief Kevin Brinkley introduced Police Officer Chase Tadlock who was recognized by the Board for five years of service.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

- Consideration of Budget Adjustment #7 to FY 11/12 Budget Ordinance
- Consideration of Tax Adjustment Report
- Approval of Minutes
- Annual Certification of Firefighters
- Consideration of amendment to Verizon Wireless contract for antenna modification

MOTION: Comr. Cahoon made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Budget Adjustment #7, as adopted, is attached to and made a part of these minutes as shown in Addendum "A".

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

The agenda summary sheet for the Annual Certification of Firefighters, as approved, read in part as follows:

"North Carolina General Statute 58-86-25 requires that all certified fire departments submit a complete roster of all eligible firefighters on an annual basis – the certified list determines eligibility for the \$50,000 line-of-duty death benefit as well as eligibility for Pension Fund Credit.

'Attached please find a roster of Town firefighters eligible for certification for Board reconsideration at the January 4th Board of Commissioners meeting."

The roster of Town firefighters eligible for certification, as approved, is attached to and made a part of these minutes as shown in Addendum "C".

The amendment to the Verizon Wireless contract as described in the agenda summary sheet, as approved, read in part as follows:

"Verizon Wireless is requesting to amend their lease in order to supplement their antenna array on the Town Monopole. This request will add three (3) Antel BXA-70063/8CF antennas and six (6) one and five-eighths (1-5/8") inch coaxial cable lines to its existing equipment and increase their rent to \$2,900.00 per month. A structural study confirming that the tower can sustain additional load has been submitted and approved by the chief building inspector. No other mechanical equipment will be installed on the ground and no additional zoning requirements will apply in this case. Attorney Brock Mitchell has reviewed the lease and the "PAL" letter and concurs that the Town manager may sign both upon approval by the Board.

'From the Finance Officer: The current lease calls for monthly rental income of \$2,600. With the proposed contract change, annual rental income from this lease will increase by \$3,600."

Mayor Pro Tem Remaley – Out of Town

Mayor Oakes noted that Mayor Pro Tem Remaley was currently on a two-week vacation celebrating his recent retirement from Dare County as Fire Marshal.

Comr. Sadler - Consideration of resolution requesting legislative changes re: property tax exemptions for certain homeowner association property – moved from end of agenda

The agenda summary sheet concerning property tax exemptions for certain property owner associations read in part as follows:

"At the January 4, 2012 Board of Commissioners meeting, Comr. Sadler will present for Board discussion and consideration the attached proposed resolution concerning taxation of property of non-profit homeowners associations.

'The proposed resolution was patterned after a similar one adopted by the Town of Holden Beach which is also attached.'

Comr. Sadler stated that she learned of the issue while at the most recent NCBIWA conference - coastal towns share some of the same problems. She stated that she would rather the Town be proactive rather than re-active.

Town Attorney Leidy added the following at the end of the last WHEREAS statement: "So long as legislative change does not result in the double taxation of any property owned by a non-profit homeowners association".

In response to Mayor Oakes, Town Manager Ogburn stated that he will make sure the NCLM is aware of the issue and aware of the proposed resolution – since it affects all municipalities.

Mr. Meade Gwinn who spoke during Audience Response expressed his concern that the intent of the resolution is not the problem – if changed, it could conceivably migrate to other types of non-profits and not just property owned by Property Owners Associations.

MOTION: Comr. Sadler made a motion to adopt the resolution concerning the taxation of property of non-profit homeowners associations as amended by Attorney Leidy. The motion was seconded by Comr. Walters.

It was noted that Town Manager Ogburn is to forward the resolution to the League of Municipalities and to NCBIWA officials as well.

CONTINUATION OF MOTION: The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

The resolution concerning taxation of property of non-profit homeowners associations, as adopted, read in part as follows:

'WHEREAS, it has come to the attention of the Town of Nags Head that North Carolina General Statute 105-277.8 concerning property taxation of property of non-profit homeowners associations creates inequities and unfairness in the assessment and administration of the local property tax system; AND

'WHEREAS, certain property could be located in the Town of Nags Head, but owned by nonprofit homeowners' associations outside the jurisdiction of the Town of Nags Head and escapes taxation by the entity due to the strict application of NCGS 105-277.8; AND

'WHEREAS, the Town of Nags Head seeks remedies to the unfairness brought about by NCGS 105-277.8 when applied to nonprofit homeowners associations located outside the taxing jurisdiction.

'NOW, THEREFORE, BE IT RESOLVED by the Town of Nags Head Board of Commissioners that they seek changes to NCGS 105-277.8 for property owned by nonprofit homeowners' associations where the association membership's property is outside the Town of Nags Head's taxing jurisdiction so as to apply the local property tax system equally and fairly so long as legislative change does not result in

the double taxation of any property owned by a non-profit homeowners association; and that the Town of Nags Head requests its member representatives to the North Carolina General Assembly introduce legislation correcting this inequity and unfairness in the property tax system; and that other local governments and agencies take similar action in support of the Town of Nags Head concerning this issue of fairness.”

PUBLIC HEARINGS

Public Hearing to consider comments related to the Town of Nags Head Parks and Recreation Plan

Attorney John Leidy introduced the Public Hearing concerning the Town of Nags Head Parks and Recreation Plan at 9:35 a.m.

Planning Director Elizabeth Teague recognized those present that served on the Committee; she summarized her report which read in part as follows:

“BACKGROUND:

In March of 2011 the Board of Commissioners appointed 11 citizens of Nags Head to serve on the Town’s Parks and Recreation Committee to create a Parks and Recreation Plan for the purpose of providing guidance in developing the Town’s recreational opportunities. The Plan was presented to the Board at the October 2011 Meeting and has been available on the Town Website and through the Planning and Development Department since then. Planning Board members were also given copies of the Plan and asked for their input.

‘Adoption by the Board of Commissioners will assure that goals and recommendations in the Plan will be considered in future decision-making, including those related to capital improvements and grant applications. Adoption of the Plan at this meeting will also help the Town in qualifying for additional points in the scoring criteria for the Parks and Recreation Trust Fund in the current call for grant proposals.

‘STAFF RECOMMENDATION:

Staff recommends adoption of the Draft Parks and Recreation Plan.”

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011, as required by law.

Ralph Buxton, Nags Head resident and Chair of the Committee; he said that the Plan is the culmination of efforts by the Committee that was appointed by the Board of Commissioners in February 2010; it represents a variety of interests as represented by nine meetings in eight months; there has been considerable resident and visitor input; several subcommittees focused on specific areas and their comments are included in the final Plan.

Mr. Buxton identified the items that it is requested that the Board take action on as soon as possible:

- Develop communication system with Dare County to inform Nags Head citizens of programs and resources

- Coordinate a community calendar
- Provide maps to indicate where beach/sound accesses are located
- Partner with the YMCA on a skate park task force
- Provide illuminated tennis courts and update Kelly's tennis courts agreement
- Apply to NCDOT for comprehensive pedestrian plan grants
- Apply to Safe Routes to School grant for multi-use trails
- Adopt the Recreation Plan

Mr. Buxton said that he assumes that the repair of existing facilities is already being addressed by the Town.

Comr. Cahoon asked Mr. Buxton if he felt that the Recreation Committee would approve private carnival endeavors – Mr. Buxton agreed as he felt the committee would be in favor of “amusements”.

John Ratzenberger, Nags Head resident; he felt that an excellent job was done on the Plan and he hopes the Land Use Plan will be formatted similarly to reflect where to go and how to get there; he commended the skate park appendix; he recommended the Plan be adopted as soon as possible to assist with grant applications; he would like the following to be reviewed: “moral class”; there was difficulty in finding South Nags Head and he never knew that NC12 and the Beach Road went all the way to the last milepost; he suggested that the Town get with Dare County and the other Towns and do an assessment of all things available such as ball fields, etc.; he suggested adding this endeavor to the “immediate” list of things to be done; he urged to NOT include the amendment on page 17 re: Dare County Tourism Board rejection of a carnival.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 9:52 a.m.

Comr. Walters thanked the Committee for their work on the document which she feels is a very comprehensive document and she appreciates staff’s work and the comments received.

MOTION: Comr. Walters made a motion to adopt the Recreation Plan with the recommended changes as it is a living document that will change. The motion failed for lack of a second.

Comr. Sadler thanked everyone who participated in the making of the document; she feels that a Workshop should be scheduled to discuss the Plan as she has a number of concerns – she noted that she did not see many activities for older children/adults.

Comr. Cahoon thanked everyone who participated in the making of the document; she said that she wants to make sure others can come in and do things - it should be nebulous as to private vs government; she feels that the document is too specific; she stated that she would support a workshop concept to include the Recreation Committee.

It was Board consensus that a Recreation Plan Workshop be scheduled for Wednesday, January 18, 2012 at 5:00 p.m. with Board of Commissioners and Recreation Plan Committee members; in addition, that the Board’s mid-month meeting be held on January 25, 2012.

Comr. Walters asked if Board members would be interested in approving just the “immediate” portion of the Recreation Plan at this time.

It was Board consensus to approve the "immediate" section of the Plan as presented in order for staff to move forward. The "immediate" section of the Recreation Plan read in part as follows:

- To develop communication system with Dare Co to inform NH citizens of programs / resources;
- Coordinate a community calendar with local partners such as DCTB, YMCA, Dare County
- Provide maps using Google that identify where parks and water accesses are located
- Partner with YMCA on a skate park task force
- Research feasibility, cost, site for illuminated tennis courts or work with Kelly's to update agreement
- Apply to NCDOT for comprehensive pedestrian plan grant
- Apply to Safe Routes to School Program for multi-use trail grant
- To adopt the Parks and Recreation Plan

Public Hearing to consider application to Parks and Recreation Trust Fund for grant for playground at Whalebone Park site

Planner Angela Welsh summarized her memo concerning a Parks and Recreation Trust Fund grant which read in part as follows:

"PARTF has opened the 2011-2012 grant cycle and applications are due by January 31, 2012. The North Carolina General Assembly established the Parks and Recreation Trust Fund (PARTF) in 1994 to fund improvements in the state's park system, to fund grants for local governments and to increase the public's access to the state's beaches. Grants are provided on a dollar for dollar local match. Staff recommends application for a PARTF grant to add recreational elements into Whalebone Park by using funding allocated to Whalebone Park by the Board of Commissioners and the Tourism Board as match (\$325,000).

'As a result of input from the Parks and Recreation Committee and discussions that went into the Parks and Recreation Plan, staff is requesting the Board's authorization to pursue additional funding through PARTF to provide a children's playground and additional benches and picnic tables. The Playground will replace/be located within the area designated as volley ball courts. The children's playground area will target needs and goals identified in the Parks and Recreation Plan by providing an area for shade and play for children and families off of the beach. The capacity of the playground area will be approximately 42 children and will serve ages of 2 to 12. It will incorporate features which meet ADA guidelines and allow inclusive play children regardless of physical, mental or sensory abilities. Features of the playground will include slides, ramps, steps and small "rock" climbing walls. Various panels for imaginative play will help children develop fine motor and social skills as well as provide visual and sensory stimulation. A multi-sensory area with sound and physical stimulation equipment will also be located in the play area. The surface area will be installed to maximize accessibility.

'Once installed, this facility will be used by school groups and families parking and/or staging visits to the beach and Jeanette's Pier; use by families with special needs children such as those served by the annual "Surfing for Autism" event, and by the general public using the parking, picnic and trail facilities already planned for the park.

'The play area facilities include (subject to pricing at time of purchase):

- Play structures, border, mulch, surface and weed liner, at estimated cost of \$42,000.00.
- Shade structures designed to withstand 150 mph winds, provide UV protection, resist fading, mildew and rot and to be taken down easily, estimated cost of \$8,000.
- Park and Picnic benches, estimated cost of \$4,000
- Installation of the playground facilities including play equipment, benches, picnic tables and surfacing is approximately \$17,500.00.

'Staff also recommends budgeting a \$3,500 contingency (or 5% in accordance with PARTF guidelines), which would total \$75,000.

'Application to the PARTF requires a public hearing on the grant request. This grant request is in support of recommendations within the Parks and Recreation Plan, and the 2010 Land Use Plan speaks in support of this application. It states, "The Town shall actively plan and seek funds for the development of traditional recreation uses, to meet the needs of Town residents of all ages, as the needs are identified and shall consider acquiring and developing small neighborhood recreation areas as funds become available."

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011 as required by law.

Attorney Leidy asked if any present were interested in commenting. The time was 10:18 a.m.

Comr. Sadler asked about restrooms and expressed her concern about the lack of restrooms; she also suggested moving some equipment around so that toddler activities will not be so close to adult activities.

Comr. Cahoon clarified with Ms. Welsh but felt more information was needed concerning the grant – which is for children's equipment but still includes elements for horse-shores, etc.

Comr. Sadler said that when the Plan became finalized, it should be submitted to the Tourism Board because at the time the Tourism Board approved the Plan, they wanted to clarify the site plan; Planning Director Teague stated that the new grant application will allow for more playground items - a lot depends on the amount of funding received – the hibachi courts can be moved around for a buffer between different age groups; she spoke of the lack of a restroom facility and stated that initially porta-johns will probably be utilized. Ms. Teague said further that the PARTF Grant staff recommended that the Town stay with a small grant in order to have a better chance of procuring the grant.

Richard Murphy, Nags Head resident; he spoke of the 13 – 18 year age group; he has learned of the peer pressure to do things not normally do because they are idle – he was concerning that there was not as many things for this age group; he would be willing to work on a committee to make this work for the older age groups of children; he feels that this should be reviewed for the benefit of the Outer Banks.

Ralph Buxton, Nags Head resident; he supported the playground grant application to PARTF; playgrounds came up very high on the list for the Recreation Plan Committee; he encouraged the Board to move forward on the grant application as presented.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 10:41 a.m.

MOTION: Comr. Cahoon made a motion to adopt the resolution to apply for the PARTF grant for Whalebone Park as requested. The motion was seconded by Mayor Oakes which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

The PARTF grant application resolution, as adopted, read in part as follows:

“WHEREAS, the 2010 Land Use Plan states that the “Town shall actively plan and seek funds for the development of recreational uses to meet the needs of Town residents of all ages,” and shall form a recreation committee to assist in identifying recreational needs and opportunities; and

‘WHEREAS, in March of 2011the Town’s Board of Commissioners appointed Parks and Recreation Committee to give the Town guidance in developing the Town’s recreational opportunities for its citizens; and

‘WHEREAS, from the early spring until the fall of 2011, the appointed Parks and Recreation Committee drafted a Parks and Recreation Plan with information obtained from public meetings and surveys developed to gather input from Town residents; and

‘WHEREAS, at a duly advertised Regular Meeting on January 4, 2012 the Board of Commissioners held a public hearing on the draft Parks and Recreation Plan; and

‘WHEREAS, the Board of Commissioners of Nags Head, North Carolina find the goals and objectives of the draft Parks and Recreation Plan Plan to be consistent with the Town’s 2010 Land Use Plan and desired vision for the future,

‘NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Town of Nags Head, North Carolina, adopt the draft Parks and Recreation Plan document as the Town’s Parks and Recreation Plan to provide the vision, goals, and objectives for future decision-making regarding parks and recreation planning within the Town.”

Public Hearing to consider adoption of a Zoning Ordinance Text Amendment submitted by Mr. Robert Hornik of the Brough Law Firm on behalf of Overrun I, LLC (Nicholas Nuzzi) to amend Town Code Section 48-328(d), Architectural and Interior Lighting

Mayor Oakes noted that the Public Hearing will take place at today’s meeting but the applicant has requested that action taken be delayed until the January 2012 mid-month meeting when all Board members are expected to be present.

Attorney John Leidy introduced the Public Hearing concerning a text amendment for lighting at 11:02 a.m.

Code Compliance Officer Kim Allen summarized his memo which read in part as follows:

“SUBJECT OR MOTION(S):

1. Motion to Open/Close the Public Hearing
2. Motion to recommend adoption of Zoning Ordinance Text Amendment request by Nick Nuzzi, to amend Town Code Section 48-328(d), Outdoor Lighting, to increase architectural light levels and allow up-lighting walls by fixtures on roofs.
3. Motion to recommend adoption of a Statement of Consistency.

‘BACKGROUND:

Last winter, Nick Nuzzi of Overrun I, LLC renovated the interior and exterior of Dairy Queen. Exterior improvements included removing the neon lighting along the edge of the roof, covering the metal sided building with EIFS (synthetic stucco), and replacing the canvas awning with Nags Head style porches. His improvements made the building more conforming to Town Ordinances.

‘He is now requesting a zoning ordinance text amendment for two aspects of Town Code Section 48-328(d) Outdoor Lighting, specific lighting application standards. The first is to increase architectural light levels from 1 averaged footcandle level to 10. The second is to allow up-lighting walls by fixtures along the roofline which would point back at the parapet walls. The purpose behind Mr. Nuzzi’s request is to address his concern that the visibility of his business has decreased, and he would like to better illuminate his business from the US 158 roadway.

‘Currently, walls may be illuminated by fixtures mounted on the building and directed to the wall surface. Up-lighting wall surfaces may only be achieved by ground mounted fixtures to eliminate the potential of entire roofs, becoming the structure highlighting feature. Roof sign lighting is not permitted for this reason. Maximum allowable light level for walls at building entrances is currently 5 averaged footcandles. Light level for other walls is 1 averaged footcandle. Light level for porch areas is 12 averaged footcandles.

‘At the Planning Board Meeting, the Planning Board membership discussed with Mr. Nuzzi and his attorney, Mr. Hornick, their willingness to support his request for improved visibility through more lighting. However, they also wanted to support the Town’s goals of maintaining a “dark sky” to the greatest extent possible and suggested a compromise (see below).

‘STAFF RECOMMENDATION:

Staff recommends denial of the requested text amendment as presented originally by Mr. Nuzzi because the intent of the outdoor lighting ordinance is to eliminate sources of glare, minimize light levels and limit sources of light that contribute to sky glow. Some allowances for up-lighting, such as architectural lighting, are already included in the ordinance but only at minimum light levels. Increasing light levels and adding more sources of up-lighting detracts from the nighttime environment and conflicts with the definition of structural highlighting.

However, staff would be amenable to maintaining the footcandle level allowed for an entrance (5 footcandle) to also apply for parapet walls that may exist on all sides of a building to improve visibility for this type of structure. This is a compromise to Mr. Nuzzi’s original request for an increase from 1 averaged footcandle, to 10 averaged footcandle for each of the parapet walls. Staff feels that this is too high of a footcandle level and would create glare and skyglow. However, a 5 footcandle level

would mitigate that concern, but still allow Mr. Nuzzi additional illumination. Adoption of this ordinance is estimated to impact 16 other structures in Town which also have parapet walls.

'PLANNING BOARD RECOMMENDATION:

At their December 13, 2011 meeting the Planning Board voted unanimously to recommend adoption of a text amendment with revisions from the Planning Board. Mr. Nuzzi's original request and the version recommended by the Planning Board are provided separately for your review."

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011, as required by law.

Planning Board member Marvin Demers spoke; he stated that the Planning Board felt that the ordinance as written was restricting the owner from illuminating that part of the wall above the porch roof and it SHOULD be illuminated.

Mayor Oakes confirmed with Mr. Allen that driveway lighting is allowable.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 11:19 a.m.

MOTION: Comr. Cahoon made a motion to table discussion/action on the architectural and interior lighting text amendment submitted by Nick Nuzzi until the January 25, 2012 mid-month meeting when all Board members are expected to be present. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Public Hearing to consider approval of a Site Plan/Conditional Use Application submitted by James and Wendy Lewis of the Ark International Church to operate a Child Day Care Facility within the existing religious complex. The property is zoned SPD-20 and is located at 113 W. Villa Dunes Drive, Nags Head

Attorney John Leidy introduced the Public Hearing – a quasi judicial public hearing – concerning a site plan/conditional use application for a child day care facility in the Ark International Church at 11:21 a.m.

Town Clerk Carolyn Morris swore in Planning Director Elizabeth Teague, Zoning Administrator Kelly Wyatt, applicant Wendy Lewis, and Ms. Cameron, operator of the facility.

Zoning Administrator Kelly Wyatt summarized her report which read in part as follows:

'GENERAL INFORMATION

Applicant: James & Wendy Lewis of the Ark International Church

Application Request: Site Plan/Conditional Use.

Purpose: Location of a child care facility within an existing religious complex.

Property Location: 113 W. Villa Dunes Drive, Nags Head.

Existing Land Use: Religious Complex

Zoning Classification of Property: SPD-20, Special Environmental District

'Zoning Classification of Surrounding Properties: Property immediately north of the site is zoned SPD-20, Special Planned Development, additional property north directly across W. Villa Dunes Drive is zoned C-2, General Commercial (Nags Head Professional Center). Property west and south of the site is zoned SPD-20 and is vacant and developed residentially. Property to the east and directly across South Croatan Highway is zoned R-3 High Density Residential and developed as such.

'Land Use Plan Map/Policies: Land Use Plan classification for this property is Institutional/Religious. This proposal is consistent with this land use classification and additionally consistent with stated land use policies.

'SPECIFIC INFORMATION

Applicable Zoning Regulations:

- Use Regulations: Child Day Care Center as an Accessory use to Religious Complex is a conditional use within the SPD-20, Special Planned Development District (Section 48-441(c)(1)(f) attached).
- Lot Coverage- The existing facility and existing site improvements are adequate for this use, no additional lot coverage is necessary.
- Building Height- The maximum allowable height is 35 ft. from grade. The height of the existing building is compliant with this building height.
- Architecture Design Standards: Religious Complex is exempt from architectural design and there will be no changes to the exterior of the structure.
- Parking: The parking standard for child day care center is one parking space per employee, plus one parking space for each six children of licensed capacity. The hours of operation for the day care use (Monday – Friday; 7:30am – 5:30pm) will not conflict with regular church operational hours therefore, existing onsite parking will accommodate the proposed use. A condition noted in 48-441(c)(1)(f) states that pick-up and drop-off areas shall be provided separate from the drive aisles and designed so that no child is required to cross the parking lot or any other traffic areas. As shown on the attached site plan the applicant has designated the area directly in front of the building as the pick-up and drop-off area which satisfies this condition. Parking is compliant.
- Buffering/Landscaping: A condition of approval is that all outdoor recreation areas shall be buffered from adjacent residential uses and districts with a Buffer Yard C. Furthermore, the buffer shall be placed on the exterior side of any required fencing. Adequate landscaping currently exists on-site and the above condition has been met.

- Lighting: The lighting standard for religious complex is low level lighting standards. Child care facility requires medium level lighting. Planning staff will conduct a light audit at this location to determine if existing lighting is compliant.

Water and Sewage Disposal: The Dare County Health Department has reviewed and issued tentative approval this request (memo attached).

Stormwater Management: The Stormwater Management plans for this building have been previously approved and will not be affected by this request.

Traffic Circulation: Traffic circulation has been previously approved and this request should have no adverse impact on the traffic circulation.

Fire: Project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance, this includes exit doors and age appropriate restroom facilities.

Public Works: The Public Works Department has reviewed and approved the proposed plan.

ANALYSIS

The proposed use is compliant with lot coverage, building height, parking, landscaping and lighting. The Town Engineer, Fire Department and Public Works Department have reviewed and approved the proposed plan.

STAFF RECOMMENDATION

Staff recommends approval of the site plan/conditional use application as presented."

PLANNING BOARD RECOMMENDATION

At their December 13, 2011 meeting the Planning Board voted unanimously to recommend approval of the site plan/conditional use application as presented.

The Board of Commissioners is required to make the following affirmative findings of fact for this and all conditional use applications. Staff feels the following findings can be determined:

1. The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.
2. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
3. The use as proposed will not overburden the fire fighting capabilities and the municipal water supply capacity of the Town."

Notice of the Public Hearing was published in the *Coastland Times* on Thursday, December 22, 2011 and on Thursday, December 29, 2011, as required by law.

Ms. Wyatt noted that Wendy Lewis and Ms. Cameron were present. Ms. Wyatt also noted that Sheila Davies was present earlier today but had to leave and passed on that she was in support of the request.

Wendy Lewis, pastor's wife at the Ark International Church; she indicated that the recreational area for the children was fenced in and the pick up and drop off areas are under a canopy.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 11:27 a.m. Attorney Leidy noted that specific findings of fact are required to be made for this application.

MOTION: Comr. Cahoon made a motion to approve the site plan/conditional use application for a child day care facility in the Ark International Church and to make the following required findings of fact:

- That the applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances,
- That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted,
- That the use as proposed will not overburden the fire fighting capabilities and the municipal water supply capacity of the Town.

The motion was seconded by Comr. Walters which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

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

Consideration of preliminary minor subdivision application submitted by John DeLucia of Albemarle & Associates on behalf of Michael Kelly for a two-lot subdivision within Nags Head Woods

Zoning Administrator Kelly Wyatt summarized her report which read in part as follows:

“Mr. John Delucia of Albemarle & Associates, Ltd. has submitted this Minor Subdivision Plat Approval on behalf of Michael Kelly. The lot is located at 436 W. Villa Dunes Drive within Nags Head Woods and is located within the SED-80 and SPD-20 Zoning Districts. The applicant has proposed to divide this existing 3.98 acre lot into two (2) lots, both meeting the minimum lot area of 80,000 square feet and 20,000 square feet for single family dwelling development respectively.

‘The Public Works Department has reviewed and approved the proposed subdivision.

‘The Fire Department has reviewed and approved the proposed subdivision; please see attached e-mail correspondence from Chief Steve Kovacs with clarifying information from the Department Of Insurance.

‘Staff Recommendation

Staff has conferred with the Town Attorney and has concluded that being there are no required site improvements (i.e.: roads, water connection, lights, etc.) and no improvements required for dedication to the Town for the creation of these two lots, that there is no need to require that the applicant re-appear before the Planning and Board of Commissioners to receive Final Subdivision Plat

Approval. Staff would therefore recommend approval of both the Preliminary and Final Subdivision Plat as presented."

Ms. Wyatt noted that Michael Kelly and John DeLucia were present.

In response to Comr. Sadler, Ms. Wyatt said that road was separate and not a requirement of the subdivision request; Mr. DeLucia stated that the driveway was being relocated, a recombination plat is being prepared.

Attorney Leidy stated that since there are no changes between the pre and the final plat, that the recombination plat should be conditioned upon approval by the Planning Director – instead of having to come back to the Board of Commissioners.

MOTION: Comr. Sadler made a motion to approve both the preliminary and final plats for the two-lot subdivision in Nags Head Woods requested by Michael Kelly with the condition that the recombination plat be approved by the Planning Director. The motion was seconded by Comr. Walters which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

Update on December 7, 2011 Public Hearing actions – Beach chair/umbrella rentals

The agenda summary sheet concerning the Public Hearing actions from the December 7, 2011 Board of Commissioners meeting read in part as follows:

"At the January 4, 2012 Board of Commissioners meeting, Planning Director Elizabeth Teague will provide a verbal update on staff actions following the December 7th Public Hearings.

'Ms. Teague has indicated that the Planning Board has assigned volunteers to work on two adhoc committees regarding digital signage and Beach and Umbrella Chair rentals. It is expected that the Planning Board and Planning and Development Department staff will be having round table discussions on these items at the January 2012 Planning Board meeting and staff expects to bring back recommendations to the Board of Commissioners in March 2012 at the latest."

Update on December 7, 2011 Public Hearing actions – Beach chair/umbrella rentals

Planning Director Teague updated the Board that stakeholders Village at Nags Head, the Planning Board (Marvin Demers and the new Planning Board member to be appointed); and Thomas Musica and Courtney Fowler are to serve on this sub-committee; Ocean Atlantic has been contacted – for a meeting within the next two weeks. A meeting has been set for this week with Village staff to address their specific concerns related to this issue. Formal appointments and public notice of all meetings will be required; Thomas Musica, Courtney Fowler and Marvin Demers are to be formally appointed by the Board with any additional names to be added at the January mid-month meeting.

MOTION: Comr. Cahoon made a motion, seconded by Comr. Sadler, to appoint Marvin Demers, Courtney Fowler, and Thomas Musica to the Beach Chair/Umbrella rentals sub-committee.

Ms. Teague stated that it is hoped that the new member of the Planning Board (when appointed) and a representative from Ocean Atlantic Rentals will also be interested in participating. She asked if anyone was interested in serving in this capacity to please contact the Planning Department.

CONTINUATION OF MOTION: The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Update on December 7, 2011 Public Hearing actions – Digital signage

Planning Director Elizabeth Teague updated the Board that new technology has emerged in the digital signage arena; the Planning Board appointed Pogie Worsley and Tom Haddon and she would like to include a representative from the Outer Banks Mall (Betty Blanchard or Lois Williams) but she has not yet heard back from them. Ms. Teague asked if anyone was interested in serving in this capacity to please contact the Planning Department.

Mayor Oakes suggested waiting until after the next agenda item re: second reading of the proposed digital signage ordinance before appointing a Digital Signage sub-committee.

Second Reading - to consider adoption of Zoning Ordinance Text Amendments to Town Code Section 48-8, Definitions and Town Code Section 48-324, Prohibiting LED and Digital Signage – from December 7, 2011 Board meeting

Attorney Leidy explained that this second reading came forward because the original vote on the text amendment concerning digital signage did not include the four (4) positive votes required for first-time ordinance adoption – at this time, just a simple majority is needed to adopt the ordinance.

The agenda summary sheet read in part as follows:

“At the December 7, 2011 Board of Commissioners meeting, a Public Hearing was held to consider adoption of amendments to the Town Code concerning LCD, LED and other digital signage – After discussion, the Board requested that staff prepare an ordinance combining their ideas.

‘Later in the Board meeting, Planning Director Elizabeth Teague presented a revised ordinance for Board review. The Board passed a motion 3 – 0 (Mayor Pro Tem Remaley cast the NO vote and Comr. Sadler was not present) to adopt the ordinance which prohibits LED, LCD or plasma signs that project imagery or moving imagery.

‘A positive four (4) votes are required for first-time adoption of an ordinance, therefore, the attached ordinance is being brought back for a Second Reading at the January 4, 2012 Board meeting.’”

Ms. Teague explained that the Planning Board had brought forward an ordinance with a complete prohibition of all digital signage; after Board discussion the ordinance was modified at the end of the December 2011 Board meeting and adopted – clarification was added so that banks with their alternative date/temperature signage would be allowed.

MOTION: Comr. Cahoon made a motion to deny the second reading of the ordinance. The motion was seconded by Comr. Sadler.

Comr. Cahoon explained that she wants the second reading of the digital sign ordinance denied because no specific size limits were included in the ordinance.

CONTINUATION OF MOTION: The motion to deny the second reading of the digital signage ordinance passed 3 – 1 (with Mayor Oakes casting the NO vote; Mayor Pro Tem Remaley was not present.).

MOTION: Comr. Cahoon made a motion to adopt the Planning Board recommended ordinance as presented at the December 7, 2011 Board of Commissioners meeting and to adopt the Statement of Consistency. The motion was seconded by Comr. Sadler.

Ms. Teague summarized that the Planning Board's ordinance with a complete prohibition of digital signage was just adopted; the sub-committee is to research and bring back a revised proposal for Board review/consideration at a later date.

CONTINUATION OF MOTION: The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

NEW BUSINESS

Committee Reports

Comr. Sadler – Dare County Tourism Board: Comr. Sadler stated that she missed the December 2011 meeting of the DCTB but she understood that the news media reported adequately.

Comr. Walters – Seafood Festival Committee: Comr. Walters said that she has been on the Seafood Festival Committee for some time and they are preparing for a festival this fall to take place on the former Windmill Point restaurant site.

Mayor Oakes – Colony Ridge/Britthaven Committee: Mayor Oakes stated that an informal meeting of the Town's half of the Colony Ridge Committee has met; a formal meeting of all members has been scheduled for January 30th; the lease agreement and the first year's rent has been received by the Town.

Consideration of Board/Committee appointments

The agenda summary sheet read in part as follows:

"Appointments to Planning Board

The Board will consider an appointment to the Planning Board at the January 4, 2012 Board of Commissioners meeting to replace former member Susie Walters who was elected to serve as Nags Head Commissioner in the November 8, 2011 election. In addition, Tom Haddon's term expired in

November 2011 – he would like to be considered for reappointment if the Board is willing. Current alternate, Barbara Gernat would like to be considered for regular appointment. Attached please find a current Planning Board roster, and a listing / application from those interested in serving.

Local Firemen's Relief Fund Board of Trustees

Jo Fessler's term as a member of the Local Firemen's Relief Fund Board of Trustees expires January 2012; Ms. Fessler has indicated that she is willing to be reappointed - if no one else is found to be interested.

Annual appointment of Board of Adjustment Chair/Vice-Chair

Reappointment of Jack Cooper and Margaret Suppler as Chair/Vice-Chair, respectively, of the Board of Adjustment. Both are willing to continue in these capacities."

Appointments to Planning Board

Comr. Sadler – she would like to postpone the appointments to the Planning Board to a future Board meeting – when all Board members are present.

Comr. Walters said that she would like to see the action for appointment to the Planning Board move forward.

MOTION: Comr. Walters made a motion to appoint alternate Barbara Gernat to the regular position on the Planning Board. The motion was seconded by Mayor Oakes.

Comr. Sadler nominated Toni Parker to the regular position on the Planning Board. Comr. Cahoon seconded Comr. Sadler's nomination.

There being no further nominations, Mayor Oakes called for the vote which was:
Barbara Gernat – 2 votes; Toni Parker – 2 votes

Comr. Sadler requested an updated list of those interested in serving for the next Board of Commissioners meeting – she noted that resident Richard Murphy would like to submit an application. She stated that she would prefer to address the appointments when all Board members are present.

Comr. Walters pointed out that the current Planning Board alternate, Barbara Gernat, has served the Planning Board well over the years.

Local Firemen's Relief Fund Board of Trustees

MOTION: Comr. Cahoon made a motion to appoint Jo Fessler to another term on the Local Firemen's Relief Fund Board of Trustees. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

Annual appointment of Board of Adjustment Chair/Vice-Chair

MOTION: Comr. Cahoon made a motion, seconded by Comr. Walters, to appoint Jack Cooper and Margaret Suppler as Board of Adjustment Chair and Vice-Chair respectively. The motion passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Town Attorney – Cherry Inc. litigation

The Cherry Inc. litigation is a nuisance structure enforcement case. Town Attorney Leidy stated that next week, January 12, 2012, the case is to be considered by the Court of Appeals; an oral argument will be heard at that time in Raleigh.

Town Attorney – Fisher et al litigation

The case against the Town by the Fishers et al was originally dismissed by the court and subsequently appealed by the Fishers; Attorney Leidy stated that Town response is due next Friday, January 13, 2012.

Town Attorney Leidy - Request for Closed Session

Town Attorney Leidy requested a Closed Session to preserve the attorney/client privilege with a discussion of the Sansotta litigation and condemnation actions to include the Fisher et al and Margaret Burch litigation cases.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager – Request for Closed Session

Town Manager Ogburn requested a Closed Session to discuss the possible acquisition of real property (Dowdy Go-Cart track) located at 3006 S Virginia Dare Trail – Lots 8, 9, 16, and 17 – next to Tortuga's Lie Restaurant.

Town Manager - Consideration of replacement trash cart policy

Town Manager Ogburn reviewed with Board members the proposed ordinance re: replacement/repair of automated trash carts. The agenda summary sheet read in part as follows:

"Pursuant to several questions and concerns raised regarding rollout carts, Town staff has prepared updates to the Town Ordinance and the Sanitation Policy. Staff recommends that the Town replace carts within 10 years of purchase if the cart should fail through wear and tear and not as a result of damage. Carts older than 10 years however, must be replaced at the owner's expense.

'Changes to the Town Code will require Board action. Updates to the Sanitation Policy are administrative changes to ensure that policies and procedures are up to date.'

Comr. Sadler confirmed with staff that the price of a rollout cart is currently \$66; Town Manager Ogburn said that the cost may go up for a higher quality cart. Comr. Sadler confirmed with Dep Public Works Director Ralph Barile that the automated carts under warranty are under ten (10) years old.

Dennis Mabe, Northridge Subdivision resident; he said that when hydraulic lift of the refuse truck picks up the cart, there is too much pressure put on the carts which is why they crack.

Doug Langford, Northridge Subdivision resident; his cart has been damaged and he feels that the carts in the Town are of sub-standard quality.

Jim Boyd, Northridge Subdivision resident; he questioned the Town's policy because he purchased a cart for \$65 recently and he has been at his address for less than 10 years.

Mayor Oakes pointed out that everyone had the same goals.

Richard Murphy, South Nags Head resident; he agrees with Mr. Barile that the amount of weight in the carts is related to the refuse truck crushing the carts; he waits until his carts are full before placing them out for pick-up.

Jim Boyd, Northridge Subdivision resident; he wanted to point out that the Public Works sanitation staff does a great job.

MOTION: Comr. Walters made a motion to adopt the ordinance concerning the replacement automated cart policy as presented. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

The ordinance concerning the replacement of automated refuse carts, as adopted, is attached to and made a part of these minutes as shown in Addendum "D".

Town Manager Ogburn - Approval of contract

Public Works Director Dave Clark summarized the process for the bids received to repair the Hurricane Irene-damaged Sound access sites; the contract presented detailed the request.

MOTION: Comr. Cahoon made a motion to award the contract to Earth Savers in an amount not to exceed \$56,500 as requested/presented in the contract. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.).

CLOSED SESSION

MOTION: Mayor Oakes made a motion to enter Closed Session to confer with the Board's attorney to preserve the attorney/client privilege, and to discuss the acquisition of real property – the Dowdy Go-Cart track property - located at 3006 S Virginia Dare Trail (lots 8, 9, 16, and 17) in accordance with GS 143-318.11(a)(3) and (5) respectively. The motion was seconded by Comr. Sadler which passed 4 – 0 (Mayor Pro Tem Remaley was not present.). The time was 12:36 p.m.

OPEN SESSION

The Board re-entered Open Session at 2:32 p.m. Town Attorney Leidy reported that during Closed Session the Board discussed with the Town Attorney the Cherry, Inc., Sansotta, Margaret Burch, and Fisher et al litigation and did give some direction to the Town Attorney; the Board also discussed with the Town Attorney potential but not pending litigation as well as the potential acquisition of the Dowdy Go-Cart track property located at 3006 S Virginia Dare Trail (lots 8, 9, 16, and 17) but no further action was taken.

ADJOURNMENT

Mayor Oakes stated that the Board of Commissioners was in recess until the Board Retreat on Thursday, January 12, 2012 at 9:00 a.m. in the rental house located at 4801 Engagement Hill Loop on S Virginia Dare Trail. The time was 2:35 p.m.

Carolyn F. Morris, Town Clerk

Approved: February 1, 2012

Mayor: _____
Robert O. Oakes, Jr.



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that Chapter 48, Zoning, of the Code of Ordinances shall be amended as follows:

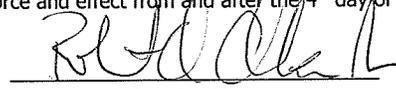
PART I. That **Section 48-282(6) Signs and Outdoor Advertising Structures, Prohibited Signs** be amended as follows:

- (6) Prohibited signs.
- a. No sign shall be located within a public right-of-way except for street identification signs and official traffic control signs.
 - b. No sign shall be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER."
 - c. No sign, business sign or outdoor advertising structure shall be erected which contains, employs or utilizes lights or lighting which rotates, flashes, moves or alternates; except that time and temperature displays without electronic advertising matter are permitted but must be included in computing allowable signage. Continuous printout, running or ticker-tape type message panels or signs are prohibited.
 - d. No sign shall be erected which contains rotating sign panels.
 - e. No sign shall obstruct visibility at an intersection or driveway as regulated in section 48-79.
 - f. No sign shall be posted on any telegraph, telephone or electrical light pole or on any tree along any street.
 - g. No sign shall be permitted that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building.
 - h. No sign shall be permitted that violates any provision of any law of the state relative to outdoor advertising.
 - i. All outdoor advertising signs or structures are prohibited.
 - j. Signs supported in whole or in part by water, air or gas are prohibited.
 - k. No real estate sign on property abutting a public trust area shall be directed toward any public trust area as defined by CAMA.
 - l. All pennants are prohibited, effective December 6, 1995.
 - m. Use of exposed neon, argon, krypton, or similar gas tube lighting shall be prohibited in all manner except as provided in section 48-284(2) e.
 - n. Tourist-oriented directional sign (TODS).
 - o. Three dimensional sculptured objects and pictorial devices attached to and extending more than 12 inches beyond any wall or roof of a building in business use. Attached sculptured objects and pictorial devices extending 12 inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this chapter pertaining to such signs.
 - p. Roof signs within the SPD-C, Village at Nags Head C-1, C-2, hotel and institutional districts.
 - q. **LED and Digital signs.**

PART II. That **Section 48-7 Definitions** be amended as follows:

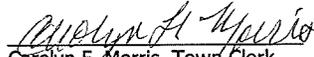
Digital sign means any sign featuring electronic display or moving images created by incandescent, LCD, Plasma, LED or projected images for any purposes other than traffic control devices. This definition is intended to include any sign containing incandescent lights or exposed light bulbs used as a message or reader board, or to project images. This definition does not include LED technology used only for the purpose of illuminating a structural sign face.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 4th day of January 2012.



Robert O. Oakes, Jr., Mayor
Town of Nags Head

ATTEST:


Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney



Date adopted: January 4, 2012

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

**TOWN OF NAGS HEAD
STATEMENT OF CONSISTENCY
WITH THE LAND USE PLAN FOR A ZONING TEXT AMENDMENT**

BE IT HEREBY RESOLVED by the Board of Commissioners for the Town of Nags Head, that in accordance with provisions of North Carolina General Statute 160A-383, the Board of Commissioners hereby finds and determines that the adoption of the requested zoning text amendment to prohibit digital signs.

Is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest because it addresses an emerging concern related to community appearance (p. 104)

READ, APPROVED AND ADOPTED by a vote of 4 – 0 (Mayor Pro Tem Remaley was not present.), this the 4th day of January 2012.



Robert O. Oakes Jr., Mayor

ATTEST:



Carolyn Morris, Town Clerk



Cliff Ogburn, Town Manager

DIGITAL BILLBOARD OR SIGN: A computerized display that may be changed or updated remotely and utilize video or other changing images. Also known as "electronic variable message signs" or video advertising.