



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
WEDNESDAY, JANUARY 3, 2024**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, January 3, 2024 at 9:00 a.m. for a Regular Meeting.

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

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Amy Miller; David Ryan; Perry Hale; Randy Wells; Brittany Phillips; Roberta Thuman; Bob Muller; Anna Sadler; John Ratzenberger; Renée Cahoon; Charlene Heroux; Robert Heroux; Carolyn McCormick; Duke Geraghty; Dorothy Hester; Molly Harrison; Megan Vaughan; Valerie Netsch; Gayle Felton; Webb Fuller; Meade Gwinn; Crouse Gray; Emily Mills; Shanti Smith-Copeland; Michelle Gray; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 a.m. He recognized the following in attendance: former Mayor Bob Muller, former Comr. Anna Sadler, former Town Manager Webb Fuller, and former Dep Town Clerk Michelle Gray.

**ADOPTION OF AGENDA**

MOTION: Comr. Brinkley made a motion to approve the January 3<sup>rd</sup> meeting agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

**RECOGNITION**

NEW EMPLOYEE – Finance Officer Amy Miller introduced new Water Billing Specialist Shannon Beatty who was welcomed by the Board to Town employment.

RECOGNITION OF FORMER COMR. RENÉE CAHOON

Mayor Cahoon introduced former Comr. Renée Cahoon who was present with her family and friends for Board recognition. Mayor Cahoon spoke the following:

*"Today, as we begin a new year, we are pushing pause on the normal course of town business for a brief while, to honor a dedicated and long-time public servant, M. Renée Cahoon.*

*'In July 2023, Renée chose not to run for reelection to Nags Head's Board of Commissioners. Except for four years when she sat on the Dare County Board of Commissioners, Renée has served on Nags Head's Board since 1991, including several terms as its mayor. Renée continues to serve as Chair of the North Carolina Coastal Resources Commission.*

*'Renée's passionate, tireless public service has left a lasting imprint not only on Nags Head, but also on the other coastal areas of our state. Because of Renée, Nags Head is still, at its heart, the community that it was over 60 years ago when her family took over the store and cottages at Whalebone."*

Ms. Cahoon introduced those that were with her and she thanked them and others for coming to support her at today's meeting.

A video prepared by the Town was shown of Ms. Cahoon with various officials that worked with her over the years being interviewed highlighting their experiences serving with her. The video included former Town Attorney Tom White, former Mayor Bob Muller, former Commissioner Wayne Gray, former Commissioner Anna Sadler, and former Town Manager/Commissioner Webb Fuller.

Mayor Cahoon thanked Town Public Information Officer Roberta Thuman and other staff for preparation of the video.

Mayor Cahoon read the remarks from Braxton Davis, Director of the NC Division of Coastal Management and Director of NC Division of Marine Fisheries:

*"Renee, I am very sorry to miss today's event - I unfortunately had a conflict, but I still wish to offer a few brief comments to those assembled there today.*

*'As director of the NC coastal program, I've worked with Renee for a little over 12 years now. As you all know, she wears many hats, but most of our work together has involved the NC Coastal Resources Commission, where she has served as Chair since 2017 and as a commissioner since being appointed by Governor Easley in 2002.*

*'Working on the state coastal commission is all about balance. While developing rules and policies for development, and making decisions on complex coastal projects, the Commission is always seeking the appropriate balance between economic growth, environmental protection, property rights, and competing uses, all with a focus on protecting our coast for future generations to enjoy.*

*'I wanted to commend Renee today for being an exceptional coastal commissioner and strong representative of Nags Head's and Dare County' interests over the years. Having grown up on the Outer Banks and served the public in so many ways, Renee has developed vast knowledge, experiences and connections with coastal NC, and those experiences have resulted in valuable perspectives that she brings to the Commission's work every day.*

*'We appreciate Renee for her balanced, solution-oriented approach to complex coastal challenges. She has a passion for doing the right thing for the coast - and doing it well, I might add. And she has represented the Town and Dare County very well over the years.*

*'So, on behalf of the NC Division of Coastal Management, congratulations and we look forward to continuing to work with you in the years ahead!"*

Others spoke concerning their time with Ms. Cahoon:

Former Mayor Bob Muller said that he remembers being at the Skylark Restaurant in 1991 when hearing that Renée Cahoon and Wayne Gray had just been elected as commissioners; on behalf of everyone he thanked Ms. Cahoon for all that she has done for the Town over the years.

Former Town Manager and commissioner Webb Fuller thanked Renée for doing so much for the Town; people don't realize that a family atmosphere was a strong motivating factor for her and her supportive family was always indicative of her family values.

Duke Geraghty, Outer Banks Homebuilders representative; on behalf of the Outer Banks Homebuilders Association, he congratulated Renée and wished her well and stated that the homebuilders have always been treated with respect by Ms. Cahoon even though they didn't always agree.

Dorothy Hester, Dare County Public Information Director, she worked with Ms. Cahoon years ago when she was on the Dare County Board of Commissioners and remembered how good she was about paying close attention to the details. Ms. Hester also stated that Craig Harris wanted to be here today and Ms. Hester read his comments thanking Ms. Cahoon for her service on the GOV-ED Channel Committee.

Meade Gwinn of the Village at Nags Head, thanked Ms. Cahoon for being "Nags Head" and for everything that she's done for the Town; he also expressed he and his wife's appreciation for Cahoon's Market.

Board members spoke of their time with Ms. Cahoon:

Comr. Lambert thanked Ms. Cahoon for her vision, her willingness to follow thru on her vision, and her support.

Mayor Pro Tem Siers thanked Ms. Cahoon for having a true commitment and for putting in a lot of time and effort in her job.

Comr. Brinkley pointed out that everything said in the video was true; Ms. Cahoon is a true public servant.

Comr. Sanders said that he can't add much more than what others have stated; her vision for the Town has been great and he has the most respect for her – community survey indicated that most are overwhelmingly in support of where the Town is going; she is also a good friend.

Mayor Ben Cahoon thanked Ms. Cahoon for all she has done for the Town over the years.

Town Manager Garman – on behalf of the staff – thanked Ms. Cahoon for all she has done and for always working to make those less visible to the community, more visible.

Ms. Cahoon thanked those for coming out and for their support over the years; her family has been very supportive and tolerant over the years; she has loved the Town and its people over the past decades; she looks forward to the future.

#### Presentation of Marcia Cline painting and Governor's Long Leaf Pine Award

On behalf of the Board, Mayor Cahoon presented an original painting of a view from Cahoon's Cottages/gazebo looking out over the ocean. The original painting was done especially for Ms. Cahoon by local artist Marcia Cline.

The Governor's Order of the Long Leaf Pine, the highest award for state service granted by the Office of the Governor, was presented to Ms. Cahoon. This was followed by a brief video presentation of Governor Roy Cooper thanking Ms. Cahoon for her service and wishing her well.

## **RECESS/RECONVENE**

The Board took a brief recess at 9:40 a.m. and reconvened at 9:50 a.m.

## **PUBLIC COMMENT**

### **DUKE GERAGHTY – MULTI-FAMILY ORDINANCE**

Duke Geraghty, representative of the Outer Banks Homebuilders Association; he spoke concerning the Public Hearing, scheduled for the February Board meeting, re: multi-family ordinance; he has sat through numerous Planning Board meetings during the detailing of the multi-family ordinance; he asked Board members to please look closely at the ordinance next month and to understand the comments that were made; he would like to simplify the ordinance in order to allow housing for workers/employees; he also thanked the Board for what has been done for former commissioner Renée Cahoon.

There being no one else present who wished to speak, Attorney Leidy concluded Public Comment at 9:54 a.m.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Budget Amendment #7 to FY 23/24 Budget

Tax Adjustment Report

Approval of minutes

Resolution to accept the American Rescue Plan Act grant offer for Stormwater Master Plan Update

Consideration of modification to Pay Plan

Consideration of annual audit contract

Request for Public Hearing to consider Special Use/Site Plan review submitted by Quible & Associates, P.C. and Beacon Architecture and Design PLLC, for the construction of a Trade Center. The property is zoned C-3, Commercial Services and is located on Lot 2a of the Charles L. Sineath Subdivision (PIN# 989317113533), vacant lot directly behind TW's Bait and Tackle

Request for Public Hearing to consider various text amendments to the Unified Development Ordinance (UDO) as it relates to multi-family development

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

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

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

The resolution to accept the American Rescue Plan Act grant offer for Stormwater Master Plan Update, as adopted, read in part as follows:

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

'WHEREAS, the North Carolina Department of Environmental Quality has offered LASII American Rescue Plan Act (ARPA) funding in the amount of \$400,000 to perform the work detailed in the submitted application; and

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

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

1. That the Town of Nags Head does hereby accept the American Rescue Plan Act (ARPA) offer of \$400,000;

2. That the Town of Nags Head does hereby give assurance to the North Carolina Department of Environmental Quality that any Conditions or Assurances contained in the Funding Offer and Acceptance (award offer) will be adhered to; has substantially complied, or will substantially comply, with all federal, State of North Carolina (State), and local laws, rules, regulations, and ordinances applicable to the project; and to federal and State grants and loans pertaining thereto; and

3. That Andy Garman, Town Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with this project; to make the assurances as contained above; and to execute such other documents as may be required by the North Carolina Department of Environmental Quality, Division of Water Infrastructure."

The modification to the Pay Plan was approved as presented in the agenda summary sheet, which read in part as follows:

#### "Overview

Currently, the Fleet Maintenance Division has a staff of four which includes the following positions: Superintendent, Sr. Fleet Mechanic and two Fleet Mechanics. Staff requests to re-align the structure of the Fleet Maintenance Division to add a Crew Lead position and allow for a maximum of two headcount between the existing classifications of Fleet Mechanic and Sr. Fleet Mechanic. This does not increase headcount; however, it provides promotional opportunities for current staff and recognizes the level of expertise and responsibility of our staff (~10% pay increase over a 6-month period). This structure is similar to Facilities Maintenance and would allow better organization and distribution of work for the Fleet Maintenance team, creating enhanced support for the Nags Head vehicle and equipment fleet. The cost of this proposal for FY 2024 is ~\$7,000. Additional costs would be included in the FY 2025 budget.

#### 'Requested Changes

1. Add a position classification for a Fleet Crew Lead at a Grade 9.

2. Maintain the current classifications of Fleet Mechanic (Grade 7) and Sr. Fleet Mechanic (Grade 8). Allow the total headcount between the two Grades not to exceed two. Currently, the headcount max at Fleet Mechanic is two, and the headcount max for Sr. Fleet Mechanic is one."

The agenda summary sheet presenting the annual audit contract read in part as follows:

"At the February 2, 2022 Board of Commissioners meeting, a contract with Potter & Company for audit services for the next five (5) years was approved with the understanding that the contract is to be submitted for Board approval each year. An approximate annual 4% inflation increase was also approved."

The contract, as approved, is on file in the Town Clerk's Office.

The Request for Public Hearing re: Trade Center, as approved for the February 2024 Board meeting, read in part as follows:

"A Special Use Permit/Site Plan Review was submitted by Quible & Associates, P.C. and Beacon Architecture and Design, PLLC for the construction of an 11,200 square foot building that includes eight (8) units operating as a "Trade Center". The property is zoned C-3, Commercial Services and is located on Lot 2a-1r of the Charles L. Sineath Subdivision (PIN# 989317113533), a vacant lot directly behind TW's Bait and Tackle located at 2230 S. Croatan Highway, Nags Head. Note that the Board of Commissioners originally reviewed and approved this Special Use/Site Plan Review on November 2, 2022. Absent the issuance of a building permit for this project, the Special Use Permit/Site Plan approval expires 12 months from the date of the Commissioners approval. This Special Use Permit/Site Plan Review is being requested for reconsideration as the original approval expired on November 2, 2023.

'By definition, "Trade Center" means a structure containing two or more individual units, primarily devoted to service and wholesale operations and the storage of materials for off-site work.

'Staff Recommendation/Planning Board Recommendation

The Planning, Fire, Police, and Public Services Department as well as the Town Engineer have reviewed the submittal and find it to be consistent, and still in compliance with the November 2, 2022, approved submittal. There have been no changes in the applicable codes for each respective department over the past year that would affect this submittal, therefore staff recommends approval of the Special Use/Site Plan Review application as submitted.

'At their December 19, 2023, meeting the Planning Board voted unanimously to recommend approval of the Special Use Permit/Site Plan Review as presented."

The Request for Public Hearing re: multi-family development, as approved for the February 2024 Board meeting, read in part as follows:

"In January of 2023 the Board of Commissioners adopted an ordinance removing multi-family as a permitted use within the C-2, General Commercial zoning district. This text amendment came about when staff, the Planning Board, and the Board of Commissioners were in the process of evaluating appropriate use standards for the C-5 Historic Character Commercial zoning district and determined that multi-family was not an appropriate use in that district, and in addition became aware of several other issues and inconsistencies within the existing ordinance. The Board then requested that staff and the Planning Board work to propose adequate corrections/clarifications as well as undertake a comprehensive review of multi-family standards. As such, planning staff began working with the Planning Board at their May 2023 meeting to complete a thorough review and identify issues and inconsistencies with the current multi-family language. Following eight (8) consecutive months/meetings of discussion, the Planning Board has prepared a comprehensive set of draft text amendments for the Board of Commissioners review and consideration. These amendments include but are not limited to:

- Allow multi-family development in the C-2, General Commercial zoning district on properties with frontage on US Hwy 158 only.

- All new multi-family development shall be deed restricted to long-term tenancy/occupancy and a portion will additionally be deed restricted for workforce housing.
- Create standards and regulations for "small" multi-family developments and "large" multi-family developments. These include minimum lot sizes, setbacks, density, maximum number of units, lot coverage, height, buffering, architectural design, etc.
- Design considerations such that large multi-family developments shall consist of townhouse style development only and small multi-family developments may consist of both townhouse and apartment style design.
- Create definitions for the following terms, " Dwelling, Multiple Family (Multi-family)", "Townhouse", "Large Multi-family", "Small Multi-family", "Long-term occupancy/tenancy", "Principal Place of Residence", "Qualified Person", and "Workforce Housing".

#### 'Planning Board Recommendation

At their December 19, 2023, meeting the Planning Board voted unanimously to move forward the proposed text amendments for the Board of Commissioners review and consideration."

### **MOVE PLANNING DIRECTOR'S REPORT UP ON THE AGENDA**

Board members agreed to move the Planning Director's Report to this portion of the agenda to allow more time for those interested in attending the upcoming Public Hearing to arrive.

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

#### Update from Planning Director

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

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on January 3<sup>rd</sup>, 2024.

#### 'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for November 2023*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, December 5<sup>th</sup> – Technical Review Committee Meeting
- Wednesday, December 6<sup>th</sup> - Board of Commissioners Meeting
- Thursday, December 7<sup>th</sup> - CRS Users Group Meeting
- Wednesday, December 13<sup>th</sup> – Committee for Arts and Culture Meeting
- Wednesday, December 13<sup>th</sup> – Strategic Plan Implementation Session
- Thursday, December 14<sup>th</sup> – Board of Adjustment Meeting (no hearings scheduled)
- Thursday, December 14<sup>th</sup> – Flashlight Candy Cane Hunt
- Wednesday, December 19<sup>th</sup> – Planning Board Meeting
- Wednesday, December 20<sup>th</sup> – Board of Commissioners mid-month meeting (if needed)
- Saturday, December 2<sup>nd</sup> & 9<sup>th</sup> from 9am – noon – Dowdy Park Holiday Markets

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

The Planning Board's most recent meeting was held on Tuesday, December 19th, 2023, and included the following:

'Consideration of Special Use/Site Plan Review for construction of a Trade Center on Lot 2a of Charles Sineath Subdivision, vacant lot behind TW's Bait and Tackle. The November 2, 2022 approval had expired. The Planning Board voted unanimously to recommend approval of the SUP/Site Plan as presented.

'Consideration of text amendments that if adopted would allow the long-term rental of units within existing hotels and motels. The Planning Board and applicant had productive discussion and staff will be returning to the January 2024 Planning Board meeting with an updated draft amendment based upon discussion.

'Consideration of various text amendments to the UDO as it pertains to multi-family development. The Planning Board completed a thorough review of the draft amendments, and requested some minor revisions that will now be provided to the Town Attorney for review. The Planning Board voted unanimously to go ahead and move the amendments forward in order to schedule the Public Hearing before the Board of Commissioners at their February 7<sup>th</sup>, 2024 meeting.

'Consideration of text amendments related to the use of Drive-Through Restaurants within Commercial Mixed-Use Developments and to discuss a conflict in the Unified Development Ordinance and Comprehensive Land Use Plan. The Planning Board discussed this item again and upheld their original recommendation for denial of the text amendment as it related to the allowance of drive-through restaurants within commercial mixed use developments including shopping centers. Additionally, the Planning Board recommended that the conflict noted between the UDO and Comprehensive Land Use Plan be rectified by eliminating the use of drive-through restaurants within the C-2, General Commercial zoning district.

'The Planning Board's next meeting is scheduled for January 16<sup>th</sup>, 2024. At this time, the agenda is expected to include consideration of a text amendment to allow the long-term rental of units within existing hotels and motels, and consideration of a proposed text amendment requiring that septic systems and all other components are contained within a barrier to prevent vehicle parking. Staff will also update the Planning Board on any revisions requested by the Town Attorney on the proposed multi-family development amendments.

#### 'Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in December 2023. At their January 11, 2024 meeting the Board of Adjustment is expected to hear an Appeal of an Administrative Decision submitted by Joseph Surles with regard to the issuance of a building permit for the property located at 4313 W. Soundside Road, Nags Head (Martin Residence).

#### 'Additional Updates

'DWMP/Septic Health Advisory Committee – Over the course of two days in early December, Environmental Planner Conner Twiddy and a representative from OTT HydroMet installed 14 groundwater level loggers and 2 water quality loggers throughout the Town as recommended in the recent Decentralized Wastewater Master Plan. The loggers will soon be calibrated and sending real-time ground water and water quality data to the town.



'Electric Vehicle Action Plan – Staff are currently working with Daniel Parsons of LoWire Technologies to finalize a quote for the acquisition, installation, and future maintenance of the EvoCharge equipment. Staff is also working to identify contractors to construct ADA accessible parking spaces and to fabricate and install signage in accordance with the DEQ grant requirements. Staff will continue to update on this item.

'Sand Relocation and Dune Management Cost Share Program – Staff will provide updated information on this item at the January 3<sup>rd</sup>, 2024, meeting.

'Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – The 2<sup>nd</sup> Annual Flashlight Candy Cane Hunt was well attended this year and many parents expressed their appreciation for the festive holiday cheer it and the Dowdy Park lighting brought. Kenneth and Kathleen Morgan were the winners of the Holiday Decorating Contest. Event Coordinator Paige Griffin has begun preparing for the upcoming Winter Markets. These markets will be held on the 2<sup>nd</sup> Saturday of January - April, from 9am – noon at Dowdy Park. These markets are open to producer/consumable vendors only.

#### 'Upcoming Meetings and Other Dates

- Tuesday, January 2<sup>nd</sup> - Technical Review Committee Meeting (no items)
- Wednesday, January 3<sup>rd</sup> - Board of Commissioners Meeting
- Thursday, January 4<sup>th</sup> - CRS Users Group Meeting
- Wednesday, January 10<sup>th</sup> – Committee for Arts and Culture Meeting
- Thursday, January 11<sup>th</sup> – Board of Adjustment Meeting (Surles Appeal)
- Saturday, January 13<sup>th</sup> – Winter Market from 9am – noon
- Tuesday, January 16<sup>th</sup> – Planning Board Meeting
- Wednesday, January 17<sup>th</sup> – Board of Commissioners mid-month meeting (if needed)''

## PUBLIC HEARINGS

Public Hearing to consider text amendments to the Unified Development Ordinance as it pertains to including the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use (Public Hearing held Dec 6, 2023)

Town Attorney Leidy introduced the Public Hearing to consider text amendments to the Unified Development Ordinance as it pertains to and includes the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use. A Public Hearing was held at the December 6, 2023 Board of Commissioners meeting. The time was 10:00 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, December 20, 2023 and on Wednesday, December 27, 2023, as required by law.

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

"At the Board of Commissioners meeting on December 3, 2023, the Board noted that there was conflict in the appropriateness and permitting of the Restaurant, Drive-Through use between the Comprehensive Land Use Plan and the Unified Development Ordinance. The Unified Development Ordinance allows the Restaurant, Drive-Through use as a special use within the C-2, General Commercial zoning district with supplemental regulations. However, the Comprehensive Land Use Plan excludes Restaurant, Drive-Through as an appropriate use in all of the identified character areas within the town, and notably the Corridors Character Area and Whalebone Character Area. The Board of Commissioners voted 4-1 to pass a motion to table this item and send it back to the Planning Board to resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.

'At their December 19, 2023, meeting planning staff presented to the Planning Board the updated information as included below.

'It should be noted that the Comprehensive Land Use Plan is an official policy document adopted to strategically plan for and enhance the quality of life and physical character of the community. While this plan is not regulatory in nature it builds upon adopted plans and policies to provide a foundation for decision making, future regulations, and project development. The plan was created utilizing community input to illustrate the vision for the future of Nags Head and define steps to secure that future. The Comprehensive Land Use Plan was developed over the course of two years, was overseen by a Board of Commissioners appointed Advisory Committee consisting of nine members of the community. These committee members met in excess of 15 times to discuss and provide guidance on the plan development. In addition, the process of developing the plan included four community and public engagement opportunities and approximately 70 stakeholder interviews/meetings.

'Staff has reviewed the agendas, notes, and minutes of the advisory committee meetings and found two instances where drive-through restaurants were discussed. The first is from a set of notes that reads:

*'Whalebone - Concern*

*Traffic patterns might impact walkability and safety, also just hard to maneuver a vehicle in this area.*

*Would be great to have a walking path on opposite side of the road - Town wide concern.*

*Don't want more fast food or drive thru type restaurants.*

*Want to distinguish between bypass and beach road between types of business*

*Not appropriate for drive thru on beach road*

*Encourage future development like legacy.*

The second is a formal minute's document from the advisory committee's December 8, 2016, meeting and is attached for the Board of Commissioners review.

To resolve the conflict between the Unified Development Ordinance and the Comprehensive Land Use Plan, the Board of Commissioners may wish to consider one of the following two options:

- Consider amending the UDO as necessary to remove the use of "Restaurant, Drive Through" from the C-2, General Commercial Zoning District. This action would represent implementation of the recommendation of appropriate uses within the Corridors and Whalebone Character Areas.
- Consider amending the Comprehensive Land Use Plan to include the "Restaurant, Drive-Through" use as an appropriate use in one or more character areas.

#### Timeline of Events

- April 13, 2023: Text Amendment Application submittal.
- May 16, 2023: The Planning Board considered a text amendment application and Starbucks sketch plan. The Planning Board voted unanimously to recommend denial of the text amendment.
- June 7, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment.
- July 18, 2023: The Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.
- September 11, 2023: Text Amendment Application third submittal received.
- August 2, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment unanimously.
- October 17, 2023: Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.
- December 3, 2023: Board of Commissioners requested the Planning Board resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.
- December 19, 2023: Planning Board considered the text amendment application and how to resolve the conflict between the UDO and the Comprehensive Land Use Plan. The Planning Board voted unanimously to recommend denial of the text amendment.

Updated Staff Analysis for Planning Board and Board of Commissioners Meeting - There are currently three (3) establishments that meet the definition of "Restaurant, Drive Through" within the town.

- Sonic, located at 5205 S. Croatan Highway was approved within the Village at Nags Head SPD-C ordinance allowances.
- KFC/Taco Bell, located at 7320 S. Virginia Dare Trail is currently non-conforming as Section 7.29, Supplemental Regulations for Drive-Through Restaurants states that the restaurant must front on US 158 right-of-way.
- Dunkin Donuts, located at 2424 S. Croatan Highway is currently nonconforming in that the Unified Development Ordinance does not currently allow Restaurant, Drive- Through within commercial mixed-use developments such as South Beach Plaza.

Should the Planning Board be inclined to recommend removal of the Restaurant, Drive Through use from the C-2, General Commercial zoning district it would have a limited effect on existing drive-through development as KFC/Taco Bell and Dunkin Donuts drive-through restaurants are already non-conforming and Sonic would not be affected as it is located within the Village at Nags Head Commercial-2 Zoning District.



Mayor Pro Tem Siers confirmed with Mr. Costello that he is referring to getting rid of "drive-through restaurants" and not "drive-throughs".

Attorney Crouse Gray, spoke representing the applicant; he wants to narrow things down – they do not want to request a change that would allow drive-throughs throughout the town – they want it only with specific requirements so that it wouldn't be opened up to everywhere else in the Town; a benefit to the Town would include cutting down on the number of septic systems in the Town by putting it into a known existing facility.

Gayle Felton of Soundside Road; her parents purchased their house in 1944; she is not in favor of Nags Head becoming another "french fry alley"; she feels that bringing in a Starbucks would create a dangerous situation and also doesn't seem to go with the vision of Nags Head.

Megan Vaughan of Soundside Road and also Chair of the Planning Board; on behalf of the Planning Board she stated that they voted unanimously four separate times against the amendments; they found no real compelling reason to change the UDO; there is no underserved area not being served in the Town; the Town-wide community survey confirmed that they want to keep Nags Head as is; she felt that both the Comprehensive Plan and the Unified Development Ordinance, as well as the recent Community Survey all speak against drive through restaurants.

Meade Gwinn, Village at Nags Head resident; he voiced his opposition to the proposed text amendment re: drive-thru restaurants as a permissible use in Nags Head; the 2019 Nags Head Report he read from pointed out that the vision indicates that the land should be compatible to the community; drive-thru restaurants do not add to the Nags Head vision; approving this amendment would not be in the public's interest.

Bob Muller, Nags Head Cove Road resident; he stated that he feels there is a conflict and that the ordinance should be brought into compliance with the vision; the Board is only being asked to add drive-thru restaurants into shopping centers; what does a mall look like – a large parking lot with people parking and then going to a fixed set of stores; but the business model of drive-thru restaurants is a different goal and would be a conflict between the pedestrians and the vehicles in the drive-thru. He also pointed out that the applicant has recognized this as they have narrowed the request to only be allowed at the one location. He asked the Board to consider this conflict when making their decision.

John Ratzenberger, Nags Head resident; he spoke in opposition to the proposed text amendments; he has reviewed the minutes where the applicant tried to make the drive-thru restaurant fit in the shopping mall. In the first diagram he saw there were 17 drive-thru lanes listed which is a conflict between the pedestrians and vehicles; it just doesn't fit and it just doesn't make sense.

Webb Fuller, Villa Dunes Drive resident; he is opposed to the proposed text amendments; a similar issue was brought up recently and the Board went with the Land Use Plan which trumps the Unified Development Ordinance; he feels that the Planning Board has it right; as a citizen he is against the proposal.

Molly Harrison; Nags Head resident; as a member of the Focus Group that worked on the Land Use Plan years ago she said that it was agreed upon how the Town was to look; she does not want the Board to go with a company coming in asking to modify our ordinances; she would like to see the ordinances modified to not allow drive through restaurants.

Renée Cahoon, Nags Head resident; there is no need for drive-through restaurants and she feels this would only be the first of many in the Town - the planning documents should take precedence; delete drive-thru restaurants and put on the list that the Town does not allow them town-wide.

Valerie Netsch, of Soundside Road; does not support the amendment because she fully supports and is in favor of the 2017 Land Use Plan; she appreciates the Town staff and Planning Board efforts on this; she asked the

Board to listen to the recommendations from the Planning Board, the Land Use Plan and the residents of Nags Head who rely on the decision making of the Board.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 10:38 a.m.

**MOTION:** Mayor Pro Tem Siers made a motion to deny the proposed text amendments and to modify the UDO to prohibit all drive-through restaurants. The motion was seconded by Comr. Lambert.

Attorney Leidy explained that modifying the Unified Development Ordinance to prohibit all drive-through restaurants would require going through the Planning Board and the Public Hearing processes.

**MOTION:** Mayor Pro Tem Siers modified his motion to deny the proposed text amendment as presented today. The motion was seconded by Comr. Brinkley which passed 4 – 1 with Mayor Cahoon casting the NO vote.

Comr. Lambert thanked those for coming out today to speak at the public hearing concerning drive-through restaurants.

## **NEW BUSINESS**

### Presentation from Town Auditors – Via Zoom platform – Time Specific 10:30 a.m.

Emily Mills, a partner with Potter & Co presented the annual audit for the Town for the year ending June 30, 2023. She issued an unmodified opinion – the highest level of compliance that can be issued.

She pointed out that the two issues that the Town needs to respond to from the Local Government Commission (LGC) are based on changes made this past year and are as follows:

Two FPIC (Financial Performance Indicators of Concern) responses are required to submit to the LGC (Local Government Commission) within 60 days of the audit presentation. One is related to the newly implemented GASB 96 relating to SBITAs (Subscription-Based Information Technology Arrangements), which was resolved in fiscal year 2024 with Budget Amendment #7. One was related to a performance indicators benchmark on the LGC data input sheet.

Ms. Mills expressed her appreciation on being able to work with the Town's staff who were professional and very helpful; Finance Officer Amy Miller also expressed her appreciation on working with Ms. Mills during the audit process.

### Presentation of Emergency Operations Plan – Time Specific 11:00 a.m.

Fire Chief Randy Wells summarized the agenda summary sheet and introduced Shanti Smith-Copeland of IParametrics. The agenda summary sheet read in part as follows:

"At the January 3<sup>rd</sup> Board of Commissioners meeting, representatives from IParametrics, LLC will be in attendance to present the updated Emergency Operations Plan. This item is time specific for 11:00 a.m.

'The Town of Nags Head utilized a \$75,000 FEMA Hazard Mitigation Grant (HMGP) to update its Emergency Operations Plan (EOP), and selected the consulting firm of Iparametrics to prepare the plan. Beginning on 08/22/2022, a core planning team, comprising of members from the Town Manager's office, Fire, Police, Public Services, Planning, and Finance Departments, was formed to guide the initiative.

'The EOP is a comprehensive document outlining coordinated actions before, during, and after emergencies. It encompasses a framework for town-wide operations, event-specific playbooks offering tactical guidelines, and an Emergency Operations Center Operation Guide, detailing when, how, and why to utilize the EOC based on incident severity and how it should be staffed depending on the circumstances. We believe this updated plan enhances the Town's readiness and response capabilities.

'A copy of the Emergency Operations Base Plan is attached, which provides a broad overview of the Town's emergency management structure, functions, and operational picture. Although several other documents were produced as part of this effort, including the incident/hazard specific playbooks and an EOC guide, they are primarily for internal use and are not part of this presentation. Staff would ask for the Board's approval of the attached Emergency Operations Plan."

Ms. Smith-Copeland of IParametrics presented the updated Town Emergency Operations Plan. She stated that she appreciated the amount of time staff put into preparation of input for the Plan.

Any questions or concerns can be submitted to Ms. Smith-Copeland until the end of January 2024 before Board consideration of the new Emergency Operations Plan in February.

### Committee Reports

Comr. Sanders – Estuarine Shoreline Master Plan – the grant was not received for the Master Plan and Comr. Sanders indicated that he has spoken to Manager Garman about options.

Comr. Brinkley – Jennette's Pier Advisory Committee – He was unable to attend the December 11<sup>th</sup> meeting due to COVID but will forward minutes once received.

### Consideration of appointment/reappointment to Boards/Committees

- Government Education Access Channel Committee
- Septic Health Advisory Committee
- Firemen's Relief Fund Board
- Board of Adjustment Alternate
- Annual appointment of BOA Chair and Vice-Chair

### GOV-ED Committee

Comr. Lambert indicated that she was willing to serve on the Gov-Ed Committee on behalf of the Town.

**MOTION:** Mayor Pro Tem Siers made a motion to appoint Comr. Lambert to represent the Town on the Government Education Access Channel Committee. The motion was seconded by Comr. Brinkley which passed unanimously.

### Septic Health Advisory Committee

**MOTION:** Comr. Brinkley made a motion to appoint Planning Board member Gary Ferguson to the Septic Health Advisory Committee. The motion was seconded by Comr. Lambert which passed unanimously.

### Firemen's Relief

**MOTION:** Mayor Pro Tem Siers made a motion to reappoint Anne Farmer to another term on the Firemen's Relief Fund Board. The motion was seconded by Comr. Brinkley which passed unanimously.

## Board of Adjustment

**MOTION:** Mayor Pro Tem Siers made a motion to reappoint Bobby Gentry to another three-year term on the Board of Adjustment. The motion was seconded by Comr. Brinkley which passed unanimously.

**MOTION:** Comr. Brinkley made a motion to appoint Dru Ferrence as an alternate BOA member. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

**MOTION:** Mayor Pro Tem Siers made a motion to reappoint Margaret Suppler and Bobby Gentry as Chair and Vice-Chair respectively of the Board of Adjustment. The motion was seconded by Comr. Brinkley which passed unanimously.

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

Attorney Leidy reported on the litigation filed by all municipalities against the State re: the Dare County Local Act (House Bill 592) – the State has received additional time to respond. Attorney Leidy also confirmed that the Board was aware of the resolution adopted by the Dare County Board of Commissioners yesterday where they stated they would not use House Bill 259 to exempt any workforce housing solutions from the local government zoning authority. He said further that the resolution does not modify the litigation but any effects would remain to be seen.

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

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

Town Engineer David Ryan provided an update on the new Public Services Facility construction via a photo presentation; he is also planning a tour of the new site for the Board to take place after the February Board meeting, as requested.

Engineer Ryan's photos shown during his presentation are attached to and made a part of these minutes as shown in Addendum "C".

## **BOARD OF COMMISSIONERS AGENDA**

### Mayor Pro Tem Siers – Thank you to staff for Renée Cahoon's presentation

Mayor Pro Tem Siers thanked staff for putting together today's presentations on Renée Cahoon which was very much appreciated.

### Mayor Pro Tem Siers – Thank you to Dare County for the resolution

Mayor Pro Tem Siers thanked Dare County for adopting the resolution yesterday which stated that they would not use House Bill 259 to exempt any workforce housing solutions from the local government zoning authority as part of any proposed solution.

Mayor Pro Tem Siers – Amend the UDO to reflect the LUP for drive-through restaurants

Mayor Pro Tem Siers said that he would like to see an amendment to the Unified Development Ordinance to reflect the Land Use Plan – not just to prohibit drive-through restaurants as discussed earlier today but for other issues of concern also.

Comr. Sanders – Thank you to staff for Dowdy Park lighting

Comr. Sanders thanked staff for the display of lights at Dowdy Park during the Christmas season.

Mayor Pro Tem Siers – Amend the UDO to reflect the LUP for drive-through restaurants (Continued)

It was Board consensus to ask the Planning Board to begin the process to amend the Unified Development Ordinance to reflect the Land Use Plan to prohibit drive-through restaurants and to also review other items of concern. Town Manager Garman stated that Planning Director Kelly Wyatt and her staff have been working on a list to bring forward.

**ADJOURNMENT**

**MOTION:** Comr. Brinkley made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:10 a.m.

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Carolyn F. Morris, Town Clerk

Date Approved:            **February 7, 2024**    

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