



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING (COVID-19)
WEDNESDAY, JANUARY 6, 2021**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, January 6, 2021 at 9:00 a.m.

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

Board members Absent: None

Others present: Interim Town Manager Greg L. Sparks; Attorney John Leidy; Andy Garman; Karen Snyder; Roberta Thuman; Tony Windham; Deronte White; Brittany Phillips; and Town Clerk Carolyn F. Morris

Via Zoom Platform: Amy Miller; Randy Wells; Michael Zehner; David Hallac; Bobby Outten; Lisa Murphy; Kelly Wyatt; Donald Booth

CALL TO ORDER

Mayor Cahoon made a brief statement re: the COVID-19 virus; he stated that despite much effort the virus is still spreading. There is one group of people, healthcare workers, who educated themselves using superhuman endurance and assisted in healing some and aided others who were dying. After 11 months the virus continues to rage even as the vaccine is now out and being distributed. Healthcare workers are still working, still caring for the sick, and still holding the hands of those dying; everyone has healthcare workers as family, neighbors, etc. and on their behalf Mayor Cahoon thanked them.

A moment of silence was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

Comr. Renée Cahoon requested to add a Closed Session to today's meeting to preserve attorney/client privilege and to discuss a personnel issue.

MOTION: Comr. Brinkley made a motion to adopt the January 6th agenda with the addition of a Closed Session to preserve attorney/client privilege and to discuss a personnel issue. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

RECOGNITION

Interim Public Works Director Terry Haugen, via Zoom, introduced Sanitation Equipment Operator Tony Windham who was recognized and thanked by the Board for 15 years of service.

Interim Public Works Director Terry Haugen, via Zoom, introduced Sanitation Equipment Operator Deronte White who was recognized and thanked by the Board for five years of service.

Fire Chief Randy Wells, via Zoom, introduced Firefighter/EMT Richard Gibbons who was recognized and thanked by the Board for 15 years of service.

Finance Director Amy Miller, via Zoom, introduced Water Billing/Customer Service representative Brittany Phillips who was recognized and thanked by the Board for five years of service.

PRESENTATIONS

Presentation by National Park Service Superintendent David Hallac – Sediment Management Plan

National Park Service Superintendent David Hallac via Zoom, discussed the Sediment Management Framework and Environmental Impact Statement with Board members; he reported that he has been preparing a very detailed erosion analysis on the miles between Ramp 1 (boundary of National Park Service and the Town) down to Oregon Inlet. The EIS is currently being refined and they hope to conclude the process soon.

Board members spoke positively of Superintendent Hallac's presentation and thanked him for including S Nags Head in their analysis and for being willing to work with the Town.

Presentation by Dare County Manager/Attorney Bobby Outten - Beach Nourishment

Dare County Manager/Attorney Bobby Outten, via Zoom Platform, discussed the County's Beach Nourishment Fund Program; he noted that he has been speaking to all the Towns. The Beach Nourishment Fund is financed by 2% of the occupancy tax; the model has worked pretty well and been fairly accurate; the goal of the County Commissioners is to use that fund to get as much sand on the beaches as possible.

Mr. Outten noted that there are two upcoming projects - one in Avon and one in Southern Shores – they are pushing for State funding. It may be 2028 before significant funds will be built up again in the Fund. Mr. Outten said that if there is a better way to conduct the program, he would welcome hearing about it. He invited Board members to review the plan which staff has.

Mayor Cahoon questioned the possibility of asking the legislature for another way to fund beach nourishment – for discussion at an upcoming Mayors lunch.

Presentation by Town Auditor Lisa Murphy - Annual Town Audit - Auditor Lisa Murphy of Grizzelle, Straub, Johnson, and Murphy, via Zoom, presented the Town's Annual Audit Report.

Ms. Murphy presented a summary of the audit document and indicated that the resulting opinion is good; she also briefly reviewed the financial statements. The Town ended the year with over \$8 million (minimum of \$1 million more than last year). She pointed out that the Town is in excellent financial

condition and that the Finance Dept is working at a high level of expertise and she thanked the Administrative Services staff for their assistance.

Presentation by Town Finance Director Amy Miller - Annual PAFR Report - Finance Director Amy Miller, via Zoom, presented her Popular Annual Financial Report (PAFR); she thanked everyone who assisted her with the Report and stated that she was available for questions.

Mayor Cahoon thanked staff for a consistently high level of performance.

PUBLIC COMMENT

Mayor Cahoon confirmed with the Town Clerk that there were no comments received for Public Comment.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #8 to FY 20/21 Budget
Consideration of Tax Adjustment Report
Approval of minutes
Consideration of Direct Electronic Payment Delivery Agreement
Consideration of Emergency Paid Sick Leave (EPSL) Policy
Ratification of Designation of Applicant's Agent

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 Adjustment #8 to the FY 20/21 Budget, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

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

The summary sheet for the Direct Electronic Payment Delivery Agreement read in part as follows:

"At the January 6th Board of Commissioners meeting, staff is requesting that the attached Direct Electronic Payment Delivery Agreement be considered for approval. The purpose of the agreement is to maximize the electronic delivery of payments, and to minimize or eliminate the use of paper checks."

The Direct Electronic Payment Delivery Agreement, as approved, is on file in the Town Clerk's Office.

The summary sheet for the Emergency Paid Sick Leave Policy read in part as follows:

"At the January 6th Board of Commissioners meeting, staff would like Board consideration of the attached Emergency Paid Sick Leave Policy, which provides eligible employees with temporary emergency paid sick leave under certain conditions.

'Outlined in the attached memo are the certain conditions the emergency sick leave is authorized as well as additional details concerning the policy.'

The Emergency Paid Sick Leave (EPSL) Policy, as approved, read in part as follows:

'The Town of Nags Head is taking proactive steps to protect our employees due to the failure of the United States Congress to extend the Families First Coronavirus Response Act (FFCRA) which expired on December 31, 2020. It is the Town's goal to continue to operate effectively and ensure that all essential services are continuously provided and that employees are safe within the workplace.

'The Town of Nags Head is committed to providing accurate information about the nature and spread of infectious diseases, including symptoms and signs to watch for, as well as required steps to be taken in the event of an illness or outbreak.

'The Town of Nags Head will provide eligible employees with temporary emergency paid sick leave under certain conditions. This policy will become null and void should Congress extend or adopt an Emergency Paid Sick Leave Act prior to the expiration date of this policy.

'The Town of Nags Head Emergency Paid Sick Leave (EPSL) is separate from and independent of Family and Medical Leave (FMLA) and is independent of any existing sick leave policies that the Town grants employees in the normal course of business.

'The EPSL allows an eligible employee to qualify for emergency paid sick leave as follows:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by their healthcare provider to self-quarantine because they are infected with or have been exposed to COVID-19 or because they are at high risk of complications from COVID-19.
3. The employee is showing symptoms of COVID-19 and is actively seeking but has not yet received a medical diagnosis;
4. The employee is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by their healthcare provider to self-quarantine for COVID-19 related reasons;
5. The employee is caring for his or her son or daughter because the child's school or childcare facility has been closed or the childcare provider is no longer available because of COVID-19 related reasons; or
6. The employee is experiencing substantially similar conditions as specified by the Federal Secretary of Health or Human Services, in consultation with the Federal Secretaries of Labor and Treasury.

'Eligibility

All employees who have been employed with the Town for at least 30 days (full-time, or part-time) are eligible for EPSL in the event the employee is unable to work or telecommute because the employee meets one or more of the conditions stated above.

'Duration/Compensation

Employees are eligible for, on a one-time basis, the following:

- **Full-Time employees:** 80 hours of pay at their regular hourly rate of pay. However, when caring for a family member, for reasons 4, 5 and 6 above, EPSL is paid at two-thirds the employee's regular hourly rate of pay.
- **Part-Time employees:** The number of hours the employee worked, on average, over the most immediate prior full pay period. However, when caring for a family member, for reasons 4, 5 and 6 above, EPSL is paid at two-thirds the employee's regular hourly rate or pay. Paid leave under this policy is limited to \$511 per day (or \$5,110 in total) where leave is taken for reasons 1,2, and 3 described above (generally, an employee's own illness or quarantine); and \$200 per day (\$2,000 in total) where leave is taken for reasons 4, 5, or 6 (generally care for others or school closures).

General EPSL Rules

- Employees may elect to use EPSL prior to utilizing any accrued paid sick leave under the Town's sick leave policy.
- No leave provided by the Town under any governmental act prior to January 1, 2021, may be credited against the EPSL eligibility.
- Employees are responsible for immediately notifying Human Resources of their intent to utilize this policy, so that the appropriate application paperwork may be given to the employee in a timely manner.
- Employees must successfully complete the necessary application paperwork and return it to Human Resources in a timely manner in order to receive compensation under this policy. Failure to return application paperwork and required supporting documentation in a timely manner may result in a delay in receiving compensation under this policy.
- Employees seeking compensation under this policy found solely to be taking this leave to defraud the Town will be subject to disciplinary action up to and including termination of employment.
- The Town will not retaliate against any employee who requests to take EPSL in accordance with this policy.
- This policy expires on March 31, 2021.

Ratification of Designation of Applicant's Agent

The resolution designating the Applicant's Agent, as adopted, is attached to and made a part of these minutes as shown in Addendum "C".

PUBLIC HEARINGS

Public Hearing to consider a text amendment to the Unified Development Ordinance pertaining to the reduction of the side yard setbacks for corner lots abutting unimproved rights-of-way

Attorney Leidy introduced the Public Hearing to consider a text amendment to the Unified Development Ordinance pertaining to the reduction of the side yard setbacks for corner lots abutting unimproved rights-of-way. The time was 10:45 a.m.

The agenda summary sheet was presented and read in part as follows:

"At their November 4, 2020 meeting, the Board of Commissioners were asked to consider the abandonment of an unimproved right-of-way in order to facilitate a reduction in the required 15 ft. minimum side yard for corner lots. While the Board was not inclined to consider the abandonment of the right-of-way as requested by the applicant, the Board did direct Planning Staff to review and draft potential options that may allow for a reduction of the applicable side yard under certain criteria. Ultimately, Staff prepared four (4) options for consideration (outlined in the attached memo), discussing these various treatments with the Planning.

'Staff Recommendation/Planning Board Recommendation

After receipt and consideration of additional information at their December 15, 2020 meeting the Planning Board voted unanimously to recommend denial of the proposed text amendment as presented with various options, citing that there does not seem to be an overwhelming need for the reduction beyond aesthetics.

'Staff recommends adoption of Option D as outlined in the attached memo; this Option addresses the reduction of the currently required setback along unimproved rights-of-way in the most efficient and concise way to address the request."

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

"At their November 4, 2020 meeting, the Board of Commissioners heard a request from Derek and Kristi Stallings to consider the abandonment of an existing paper street, Warren Street, or a portion thereof; the Stallings own the lot located at 6316 S. Virginia Dare Trail, abutting the south side of the unimproved 20 ft. right-of-way. Regardless of whether the street is improved or not, as a corner lot, the minimum corner lot side yard of 15 feet from the property line/right-of-way would be applied to any construction of a principal structure on this lot. The Stallings plan to construct a dwelling on this lot; by abandoning the unimproved right-of-way, their property would have been extended to the center line of the former right-of-way, thereby increasing the lot area of the property (as well as the adjoining lot to the north) and resulting in the lot no longer be considered a corner lot, and therefore not being subject to a greater side yard setback (15' versus 8').

'It was the consensus of the Board of Commissioners that they were not inclined to abandon the right-of-way as requested, and further that they were generally not in favor of abandoning any unimproved rights-of-way within the Town as there were numerous potential public use benefits, such as open space, drainage, and future pedestrian access. The Board of Commissioners directed staff to look into potential options for reducing the minimum 15-foot corner lot setback back requirement for cases such as that of the Stallings and similar.

'Section 8.6.3.4 of the Unified Development Ordinance, as follows, does currently offer a mechanism for reduction of the corner lot setback under certain circumstances:

8.6.3. Yard Requirements.

8.6.3.4. Corner Lots. In the case of a corner lot, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum setback shall be twelve (12) feet

'This provision would not offer relief to the Stallings as their property is greater than 10,000 square feet in area and has a lot width that exceeds 60 feet.

'As information, Staff is aware of the following existing unimproved rights-of-way within the Town, along with their zoning district designation:

- Morning Dove Street, R-2 Medium Density Residential (60 ft. ROW)
- Unnamed right-of-way located off W. Danube Street, running north to south, west of 4410 S. Croatan Highway (Christian Science Society), R-2 Medium Density Residential (25' ROW)
- Fourth Street, north of Post Office, R-2, Medium Density Residential (40 ft. ROW)
- Curlew Street, improved with pedestrian access/walkway, C-2, General Commercial (50 ft. ROW)
- Diamond Street, south of St. Andrews Church, C-2, General Commercial (50 ft. ROW)
- Dixie Street, C-2 General Commercial (50 ft. ROW)
- Dowitcher Street, portion east of Advanced Chiropractic, C-2, General Commercial (50 ft. ROW)
- Warren Street/Forrest Street, north of Forbes Candy, C-2, General Commercial, and west of 158, C-2 and R-3, High Density Residential (20 ft. ROW)
- Egret Street, east of KFC/Taco Bell, C-2 General Commercial (50 ft. ROW)
- S. Old Nags Head Woods Road, SED-80, various sections, various widths

'Staff originally proposed two options for the Planning Board's consideration as it pertains to a reduction of the corner lot setback; those options are outlined below:

- Option A: Revise Section 8.6.3.4, Corner Lots, in such a way that the reduction from 15 ft. to 12 ft. would apply to all corner lots, regardless of lot area and lot width. As part of this it may also be important to resolve any ambiguity and confirm that the additional setback applies to both improved and unimproved rights-of-way.
- Option B: Revise Section 8.6.3.4, Corner Lots, in such a way that lots adjacent to an improved right-of-way may take advantage of a reduction to 12 ft. as currently written and lots adjacent to an unimproved right-of-way may take advantage of reduced setback consistent with the setback for the zoning district in which it is located, when the following criteria are met:
 - All other lots abutting the unimproved right-of-way, and which are developed, do not derive access through the paper street/unimproved right-of-way;
 - The subject lot would be prohibited from deriving access through such right-of-way; and
 - The proposed principal use of the property upon which the reduction is being sought is residential.

'At the Planning Board's November 13, 2020 meeting, Planning Staff also noted that the Board may wish to consider, in either option, that the reduction applies only to rights-of-way of a minimum specified width. During the discussion staff noted that pursuant to Town Code Section 36-4, Streets, Sidewalks and other Public Places, Design Standards, that the least amount of pavement width allowed to meet Town standards is 40 feet wide for an Environmental Street. The Planning Board expressed concern that, if granted the necessary waivers by the Board of Commissioners, a right-of-way width less than 40 ft. could be developed for one-way traffic flow and/or parking. Staff did discuss this item with the Town Engineer, David Ryan and he noted that the narrowest paved width possible would be 16 feet; Mr. Ryan indicated that this is the minimum width eligible for state street aid for a public road. This minimum standard was utilized in 2013 for the Carolinian Circle street improvement project as part of an alternate environmental street standard to minimize tree removal in the right-of-way. With this in mind, Staff would not recommend that any reduction in corner lot side yard setback be tied to the width of the right-of-way as noted above, there are no unimproved rights-of-way within the Town less than 16 feet in width.

'In researching old minutes, Staff identified a text amendment adopted in 1982 related to the regulation of side yard setbacks for corner lots. This language allowed side yard setbacks for corner lots to be the same

as for the district, with exception of that space that lies forty (40) feet from the point of intersection of the intersecting right-of-way, which would meet the intent of providing adequate sight clearance. Specifically, the language read, "For corner lots, to ensure adequate sight clearance, for a distance of not less than 40 feet from the point of intersection of the intersecting right-of-way the side yard shall be no less than fifteen (15) feet". Staff has unsuccessfully tried to locate the subsequent amendment which revised this language to that of the current language. Staff anticipates having greater clarification for the Board of Commissioners on the subsequent amendment and the reasoning for the revision, however, generally staff finds this to be an acceptable means to ensure adequate sight clearance for corner lots, but to not encumber lots that otherwise abut unimproved rights-of-way.

'POLICY CONSIDERATIONS

The Town's Comprehensive Plan contains no specific policies pertaining to paper streets/unimproved rights-of-way.

'PLANNING BOARD RECOMMENDATION

Below are four options that the Planning Board considered with regard to offering relaxation of side yard setbacks on corner lots adjacent to unimproved rights-of-way within the Town.

'Option A

8.6.3.4. Corner Lots. In the case of a corner lot being developed for a commercial use, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty

(60) feet or less in lot width, in which case the minimum side yard shall be twelve (12) feet. In the case of a corner being developed for a residential use, the maximum width of the side yard adjacent to the right-of-way shall be no less than twelve (12) feet regardless of the lot area and lot width.

'Option B

8.6.3.4. Corner Lots. In the case of a corner lot abutting an improved right-of-way, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum side yard shall be twelve (12) feet. In the case of a corner lot abutting an unimproved right-of-way, the UDO Administrator may approve a reduced corner lot side yard consistent with the minimum side yard requirement of the zoning district in which the property is located when the following criteria are met:

- a. All other lots abutting the unimproved right-of-way, and which are developed, do not derive access through the paper street/unimproved right-of-way;
- b. The lot subject to the reduced side yard setback is prohibited from deriving access through the unimproved right-of-way; and
- c. The proposed principal use of the property upon which the reduction is being sought is residential.

Option C:

Language for this option would be the same as that in Option B with the addition of a condition; **(d) The unimproved right-of-way, shall be less than 40 feet in width.**

Option D:

8.6.3.4. Corner Lots. In the case of a corner lot abutting an improved right-of-way, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum side yard shall be twelve

(12) feet. In the case of a corner lot abutting an unimproved right-of-way, to ensure adequate sight clearance, for a distance of not less than 40 feet from the point of intersection of the intersection right-of-way, the side yard shall be no less than fifteen (15) feet. Beyond the 40-foot distance from the intersection, the minimum side yard shall be consistent with the side yard requirement for the zoning district in which the property is located.

'At their December 15, 2020 meeting the Planning Board voted unanimously to recommend denial of the proposed text amendment as presented, citing that there does not seem to be an overwhelming need for the reduction beyond aesthetics.

'PLANNING STAFF RECOMMENDATION

Of the four options provided, Staff would submit that Option D is likely to be the most efficient and concise means to offer relief from the side yard setback while still preserving the sight clearance of all unimproved rights-of-way should they be improved in the future. While this option may not afford relief to every new development adjacent to an unimproved right of way, Staff does believe that this option could provide relief to the Stallings.

'Staff would note that options B and D have been attached in ordinance form, however, should the Board of Commissioners be interested in any variation of the four options provided, Staff will work to prepare the revised ordinance during the meeting so as to have a markup version ready for the Board's consideration.

'With regard to the Board of Commissioners' review and action, Staff recommends consideration of the following UDO provisions:

3.5.4. *Action by the Board of Commissioners.*

Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

3.5.4.1. *Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

3.5.4.2. *After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

3.5.4.3. *The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.*

3.5.4.4. *No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.*

3.5.4.5. *Prior to adopting or rejecting any UDO text and/or map amendment, the Board of*

Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification."

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, December 23, 2020 and on Wednesday, December 30, 2020 as required by law.

Mr. Stallings spoke indicating that the house and where they want to build on the lot has not changed.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 10:57 a.m.

MOTION: Comr. Brinkley made a motion to adopt Option B with "shall" to replace "may" in PART I. The motion was seconded by Mayor Pro Tem Siers.

Attorney Leidy questioned "unimproved" vs "unpaved"; Ms. Wyatt explained the difference between Options "B" and "D". Ms. Wyatt also explained that the options presented only affect residential.

WITHDRAWAL OF MOTION: Comr. Brinkley withdrew his motion; Mayor Pro Tem Siers withdrew his second.

MOTION: Comr. Brinkley made a motion to adopt the ordinance amending the Unified Development Ordinance pertaining to the reduction of the side yard setbacks for corner lots abutting unimproved rights-of-way - Option "D" - as presented. The motion was seconded by Mayor Pro Tem Siers.

To verify that the effect is only for residential properties, Planning Director Zehner added "being developed for a residential use and" to PART I of the ordinance.

Comr. Fuller questioned if the ordinance is in the general best interest of the community at large.

Mayor Cahoon pointed out that this would affect a limited number of situations.

CONTINUATION OF MOTION: The motion passed 4 – 1 with Comr. Fuller casting the NO vote.

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

Review of Public Works Facilities Master Plan scope of work - Time specific 11 a.m.

Dep Town Manager Andy Garman presented the summary sheet which read in part as follows:

"Staff and the town's consultant, DJG, have prepared the attached scope of work for the board's review detailing the Public Works Facilities Master Plan, to include to process, schedule, and deliverables for the project. This project was a high priority during the board's strategic visioning exercise and was subsequently budgeted in November after the town's post-season budget review. The primary goal is to develop a needs assessment for the department, considering current and future operations, followed by a review of conceptual alternatives to address physical space needs as well as facilities and equipment. The master plan will be in the form of a phased implementation plan for use in the town's capital improvement planning process.

"The Public Works department uses several contiguous sites located along Lark Avenue, including the bulk item/brush collection yard, the main Public Works office, which includes facilities and office space for Facilities Maintenance, Sanitation, Fleet Maintenance, Water Distribution, and Administration, and the water plant, which serves as the primary facility for Water Operations. There are also several other distributed sites throughout town, including the Gull Street water plant, the water tower in south Nags Head, and the maintenance building at Town Hall. Many of these buildings are aging and may be reaching the end of their useful life within the next 10 to 30 years. Additionally, some of the existing facilities may not be adequate to support current operations. An example would be the storage of vehicles and equipment.

"The attached document details the scope and process for the project, including the schedule and budget. Staff would like to review the scope and receive final input from the board before initiating the project."

Donald Booth of DJG & Associates summarized the proposed scope which is attached to and made a part of these minutes as shown in Addendum "E".

It was Board consensus to move forward with the Public Works Facilities Master Plan scope of work as presented. It was confirmed that the budget includes the cost of this work and was approved when the budget was amended in November 2020.

Public Hearing to consider text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the "Furniture Store" and "Furniture Showroom" uses, the "Warehousing & Storage Facilities" use and storage as an accessory to these uses

Attorney Leidy introduced the Public Hearing to consider text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the "Furniture Store" and "Furniture Showroom" uses, the "Warehousing & Storage Facilities" use and storage as an accessory to these uses. The time was 11:44 a.m.

Planning Director Michael Zehner summarized his report which read in part as follows:

"At the October 7, 2020 Board of Commissioners meeting, Commissioner Fuller raised an interest in having a clearer definition for the Furniture Store use as contained in the Unified Development Ordinance (UDO). Currently, the definition of Furniture Store is as follows:

'Furniture store means an establishment that sells goods and/or movable objects, intended to support various human activities such as seating, eating, and sleeping, for furnishing or improving housing units that make a room or other area ready for occupancy.

'Commissioner Fuller suggested that the definition be something to the effect of, "a furniture store is a retail store that sells furniture to the general public; the structure may have incidental storage to the principal business." Commissioner Fuller indicated that he believed the current definition to be too liberal, and that he would like it better defined; he requested that the Board agree to allow Staff to develop such an amendment and bring it to the Board as quickly as possible. There were no objections to this request, and the Mayor indicated that Staff was "so directed."

'In addition to the definition of Furniture Store, there is also a definition for Furniture Showroom, as follows, which may be relevant for the Planning Board to consider:

'Furniture showroom means a retail establishment that utilizes large, open floor areas to display furniture or mattresses.

'While Furniture Store is listed as a permitted use (only within the C-2 zoning district), Furniture Showroom is not specifically listed or otherwise referenced as being prohibited. From a parking standpoint, these uses or areas of a use are treated differently, with Furniture Stores being included along with all other General Retail uses (requiring one parking space for each 250 square feet of gross floor area, plus 1 parking space for each employee, but no less than 2 employee parking spaces for each retail unit or establishment), and Furniture Showrooms having a specific parking requirement of 1 (one) parking space for each 500 square feet of gross floor area.

'Prior to the UDO, Furniture Store and Furniture Showroom were not specifically identified as uses, except that there were specific lighting standards for a "furniture or appliance store," and the aforementioned parking required for a "Furniture Showroom" was instead specified for a "Furniture or appliance store." Staff understands that the sale of furniture (i.e. a furniture store) was viewed as general retail; case in point, the only two businesses meeting the current definition of Furniture Store, Mattress Xpress and Outer Banks Furniture (both with areas meeting the current definition of Furniture Showroom) are located at the Outer Banks Mall, within the Village SPD-C district, which did not formerly and does not now specify Furniture Store or Furniture Showroom as a specifically allowed use.

'A distinction between a Furniture Store and Furniture Showroom was discussed during the development of the UDO. It is understood that there was a consideration to establishing a distinction between a retail store that may sell furniture, and a Furniture Store that commonly includes a Furniture Showroom. Staff is of the opinion that this distinction, or lack thereof, may be important to clarify at this time.

'The Planning Board discussed the Commissioners' direction and the considerations above at their meeting on October 20, 2020. In their discussion, the Planning Board had questions regarding the intent and purpose of the requested change, wanting to better understand what the Commissioners were intending to protect against, whether their concern was related to the use or the opportunity for too much associated storage, and whether the Commissioners believed there to be an actual or necessary distinction between a furniture store and a furniture storeroom. The Board suggested that it would be helpful to clarify what uses or aspects of uses should be allowed or prohibited, and assuming there was an intent to guard against too much associated storage, suggested that one approach may be to establish a standard for furniture stores, if not other retail, related to a percentage of sales versus storage. Ultimately, the Board requested that Staff relay their questions to the Board of Commissioners for additional guidance, to ensure that the proposed text amendment was responsive to the Commissioners' intent, and continued consideration of the text amendment to their next meeting on November 17, 2020.

'Staff presented the Board's request to the Commissioners at their meeting on November 4, 2020. During their meeting, members of the Board of Commissioners provided the following feedback regarding their intent:

1. To avoid, through lack of clarity or specificity with regard to the definition of uses, having uses only appropriate within the C-3 zoning district from being located within the C-2 zoning district; this goal intends to recognize the intent of the respective districts, with the C-2 district intended for the location of businesses and uses that offer goods and services to residents and visitors, and the C-3 district intended for the location of high-intensity commercial uses, not appropriate elsewhere in Town.
2. To clarify that while furniture stores are allowed within the C-2 zoning district, and furniture showrooms are allowed within the C-2 zoning district, that only furniture stores, and not furniture showrooms, are allowed as part of a mixed-use development.
3. To clarify that furniture stores and furniture showrooms, if not all general retail sales businesses, are to be open to the general public.

'Staff returned to the Planning Board at their meeting on November 17, 2020 presenting several recommended amendments (outlined below in Staff's recommendation) intended to respond to the feedback provided by the Board of Commissioners. As noted below, at the meeting the Planning Board unanimously voted (7-0) to recommend approval of the amendments as recommended by Staff, with a request that Staff continue to review and investigate appropriate percentages related to storage, either as a principal or accessory use.

'POLICY CONSIDERATIONS

The Town's Comprehensive Plan contains no specific policies pertaining to Furniture Stores or Furniture Showrooms. However, with respect to uses that may be appropriate within the C-2 and C-3 districts, Section 3.2.3., Permitted and Prohibited Land Uses, is helpful in that it clarifies that appropriate and permitted general commercial uses, those which may be found in the C-2 district, include:

- Retail
- Office
- Banking institutions

- Professional and personal services
- Restaurants and eating establishments
- Indoor and outdoor entertainment
- Automobile service and care facilities
- Equipment rental, sales and service
- Mixed use

'And further, that appropriate and permitted commercial services, those which may be found in the C-3 district, include:

- Concrete processing
- Storage and warehousing
- Screen printing
- Fabricating
- Contractor and materials sales, service, and storage

'PLANNING BOARD RECOMMENDATION

The Planning Board unanimously (7-0) recommended approval of the amendments as recommended by Staff, with a request that Staff continue to review and investigate appropriate percentages related to storage, either as a principal or accessory use.

'STAFF RECOMMENDATION

Originally, in presenting this matter to the Planning Board, Staff had recommended that should the Board wish to consider a text amendment specifically responding to the original direction of the Board of Commissioners, Staff would recommend the following changes to the definition of Furniture Store:

'Furniture store means an a retail establishment that primarily sells, to the general public, furniture goods and/or movable objects, intended to support various human activities such as seating sitting, eating, and sleeping,; the establishment may also sell home furnishings or related goods incidental to the sale of furniture for furnishing or improving housing units that make a room or other area ready for occupancy. Storage area and the storage of furniture "on-hand" or "in-stock" for same-day transactions is commonly limited.

'Staff had further noted that should the Board wish to consider addressing the separate terms and definitions for Furniture Store and Furniture Showroom, Staff would recommend deleting both terms and definitions, and adopting a new term and definition, as follows:

'Furniture store/showroom means a retail establishment that primarily sells, to the general public, furniture intended to support various human activities such as sitting, eating, and sleeping; the establishment may also sell home furnishings or related goods incidental to the sale of furniture. Furniture available for purchase is commonly displayed in large, open areas, and is not available "on-hand" or "in-stock" for same-day transactions, with limited storage of inventory.

'And finally, originally, under this alternative approach, Staff recommended that:

- the Furniture Store use as included in Sections 6.6 (Table of Uses), 7.32.2., and 10.37.1.3. be changed to Furniture Store/Showroom; and
- that Table 10-2, Required Parking by Use, be amended by deleting Furniture Showroom as a separate use and Furniture Store from the list of General Retail uses, and that Furniture Store/Showroom

be added as a use with the following required parking:

o One (1) parking space for each 500 square feet of gross floor dedicated to open display area of furniture, and one (1) parking space for each 250 square feet of gross floor for all other areas of the establishment; additionally, one (1) parking space shall be provided for each employee, with no less than two (2) employee parking spaces for each establishment.

'Based upon the further input and feedback of the Board of Commissioners, Staff presented the following recommendations to the Planning Board, and similarly presents these recommendations to the Board of Commissioners (provided in the attached adoption ordinance):

- Staff would recommend deleting both terms and definitions for Furniture Store and Furniture Showroom, and adopting a new term and definition, as follows:

'Furniture store/showroom means a retail establishment that sells, to the general public, furniture intended to support various human activities such as sitting, eating, and sleeping; the establishment may also sell home furnishings or related goods incidental to the sale of furniture. Furniture available for purchase may be and is commonly displayed in large, open areas, and is not available "on-hand" or "in-stock" for same-day transactions, with limited storage of inventory.

- That the Furniture Store use as included in Sections 6.6 (Table of Uses and Activities), 7.32.2., and 10.37.1.3. be changed to Furniture Store/Showroom.

- That Table 10-2, Required Parking by Use, be amended by deleting Furniture Showroom as a separate use and Furniture Store from the list of General Retail uses, and that Furniture Store/Showroom be added as a use with the following required parking:

'One (1) parking space for each 500 square feet of gross floor dedicated to open display area of furniture, and one (1) parking space for each 250 square feet of gross floor for all other areas of the establishment; additionally, one (1) parking space shall be provided for each employee, with no less than two (2) employee parking spaces for each establishment.

- That a term and definition for Warehousing & Storage Facilities be added, as follows:

'Warehousing & storage facilities means a use primarily oriented to the receiving, holding, and shipping of packaged or bulk materials or products. With the exception of loading and parking facilities, such uses are contained entirely within an enclosed building. Uses and/or establishments where fifty percent (50%) or more of the floor area is dedicated to the aforementioned activities shall constitute a warehousing & storage facility.

- That the term "General Contractor's Office" be changed to "Building Contractor's Office" within Appendix A, Definitions.

- That supplemental regulations for Building Contractor's Office be added, as follows:

'Building contractor's offices are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

Building contractor's offices where thirty percent (30%) or more of the floor area is dedicated to tools, equipment, machinery, building materials, fixtures, appliances, or the like, actively used at the location or otherwise stored, shall only be allowed within the C-3 zoning district.

- That the Warehouse or Wholesale Retail use be identified and specifically noted as a prohibited use, and a term and definition be added, as follows:

'Warehouse or wholesale retail means a use that provides goods directly to consumers, often as a club or on a membership basis, in bulk quantities and/or with shipping packaging intact.

- That the definition of Retail, General be amended, as follows:

'Retail, general means establishments open to the general public that provide goods directly to the consumer where such goods are available for immediate purchase and removal from the premises by the purchaser.

- That an accessory use Accessory Commercial Storage be identified and permitted with supplemental regulations in the Commercial zoning districts, as follows:

'Accessory commercial storage is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

'### All non-residential uses shall be allowed accessory storage of goods, inventory, materials, supplies, or the like, with such area dedicated to such storage to be less than thirty percent (30%) of the floor area of the use.

'With respect to the Commissioners' suggestion that it be clarified that only furniture stores, as opposed to furniture showrooms, be allowed as part of a mixed-use development, Staff has not been able to locate any best practice examples of communities recognizing these as two separate and distinct uses. Further, Staff believes that the only furniture store businesses located within Town, both have showrooms. Staff believes that one or more of the recommendations above, in concert with existing regulations that limit the floor area of buildings, will address the intent of the Commissioners to allow for commercial businesses in the C-2 district, while limiting businesses with significant levels of storage to the C-3 district.

'With regard to the Board of Commissioners' review and action, Staff recommends consideration of the following UDO provisions:

3.5.4. Action by the Board of Commissioners.

Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the

Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, December 23, 2020 and on Wednesday, December 30, 2020 as required by law.

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 11:57 a.m.

Comr. Fuller said that he feels the Furniture store definition changes the definition of mixed use. He is not comfortable combining furniture store and showroom at this time.

Comr. Renée Cahoon expressed concern about possible unintended consequences.

Board members spoke concerning language in the ordinance that is geared toward maintaining the Town's values and standards yet somehow separates furniture store from showroom in all its various forms and also addresses other parts of the ordinance such as dual/mixed uses/shopping centers. Planning Director Zehner is to revise the ordinance based on the Board's comments and return for further discussion - but not before the March 2021 Board meeting.

MOTION: Comr. Renée Cahoon made a motion to table consideration of text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the "Furniture Store" and "Furniture Showroom" uses, the "Warehousing & Storage Facilities" use and storage as an accessory to these uses. The motion was seconded by Comr. Brinkley which passed unanimously.

RECESS FOR/RECONVENE FROM LUNCH

The Board recessed for lunch at 12:35 am and reconvened at 1:45 p.m.

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

Update from Planning Director

The Planning Director's update is attached to and made a part of these minutes as shown in Addendum "F".

Consider VW Settlement Phase 1-Level 2 Charge Program

Planning Director Zehner summarized this section of his report which read in part as follows:

"Staff has been made aware that approximately \$1.15 million in funds associated with the Volkswagen Settlement are being made available as part of a "Phase 1 for the Light Duty Zero Emission Vehicle Level 2 Charging Infrastructure Rebate Program. This program is designed to expand the state's light duty ZEV charging infrastructure network." (<https://deg.nc.gov/volkswagen-settlement/level-2>) Staff participated in a webinar to learn more about the program and the application process, which opens on January 25, 2021. Under the program, for Level 2 chargers installed on government- owned property and accessible to the public, the Town could be reimbursed up to \$5,000 for the installation.

'Based upon preliminary estimates received, upfront vendor costs would total between \$7,000 to \$11,000, depending on the vendor and equipment, with complete installation (including Town labor and materials to extend electrical service and install a concrete base for the charger) totaling \$11,000 to \$15,000. With the potential reimbursement, actual cost to the Town would be \$6,000 to \$10,000. Please visit <https://www.chargepoint.com/products/commercial/ct4000/> for one example of equipment that could be available. It is also important to note that many of the systems require annual maintenance and software service fees; however, it is also possible to assess fees to users for charging, which may offset these annual costs.

'Attached for the Board's consideration is a budget amendment to allocate \$15,000 for this project, should the Board wish for Staff to pursue this opportunity further.

"Tentatively, Staff is considering siting this charger at Town Hall or adjacent to the Board Room, on the beach access parking lot side."

Staff is to verify questions brought forward today re: fees to be charged and collected, location, and grant information for the Board's mid-month meeting.

Mayor Cahoon told Board members that if there were any additional questions, to please call or email Director Zehner so he can research for further discussion at the January 20th mid-month meeting.

Review and Discuss Options to Allow Flexible/Temporary Outdoor Dining

Director Zehner summarized this section of his report which read in part as follows:

"At the Board of Commissioners November 2020 meeting, the Board discussed the possibility of amending the UDO to allow outdoor dining on a temporary basis in a more flexible and simplified manner, and asked Staff to return with some thoughts on addressing this before proceeding with a text amendment. Generally, the Board was open to allowing this where parking was not reduced below that which is required and/or seating not increased in excess of available and required parking, or in excess of wastewater capacity.

"Based upon a cursory review of the UDO, Staff believes that the best opportunity to address this allowance would be through the modification of the Temporary Use Permit provisions that were recently adopted. At present, the issuance of a Temporary Use Permit for a temporary use or the temporary modification of a use is only eligible during a declared State of Emergency (or due to the impacts associated with a declared State of Emergency). Staff is of the opinion that the provisions could be easily modified to allow for Temporary Use Permits to be issued at all times, for limited durations, for limited use types (at least initially, outdoor dining), and subject to certain limitations (i.e. no reduction of parking, no occupancy in excess of wastewater capacity, etc.). If this is generally acceptable to the Board, Staff will begin working with the Planning Board on draft text amendments."

Mayor Cahoon asked if there would be a wind-down period; Director Zehner stated that after the Statement of Emergency (SOE) is lifted, there is some flexibility; a Special Use Permit would allow them to continue at least through the rest of the season.

It was Board consensus to wait until nearing the end of the Statement of Emergency before looking further into the issue of flexible/temporary outdoor dining options - in the short term, no action is needed.

Director Zehner, in response to Comr. Brinkley, stated that nine (9) restaurants have taken advantage of this option.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From Dec 2nd Board meeting - Discuss and consider Request for Public Hearing to consider text amendments to the Unified Development Ordinance pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers

Planning Director Michael Zehner summarized his memo which read in part as follows:

"As requested by the Board at their meeting on December 2, 2020, Staff is presenting a request to schedule a public hearing on the subject text amendments. As part of their request and consideration of these text amendments, the Board indicated that they understood that they were awaiting a definition of "legacy" as it may pertain to the amendments. As the Board may recall, a request to consider the scheduling of a public hearing on the text amendments was on the Board's consent agenda for September 2, 2020; however, at that time, the Board voted to remove that item from the consent agenda, and to not consider further until a future meeting.

'Subsequently, at their meeting on November 2, 2020, in consideration of the draft Strategic Plan, the Board had discussed and questioned the meaning of the word "legacy" within the context of the Strategic Plan; following that meeting, Interim Town Manager Greg Sparks had provided the Board with an email that read, in part:

'In addressing this more completely, I have re-read sections of the 2017 Comprehensive Plan, to make sure that I more fully understood what had previously been approved as town policy. As you may recall, our [Strategic Plan] facilitator Richard Fursman started off the first day of the retreat addressing Mission, Shared Values and Legacy to determine if these statements were still relevant and accepted by the Commission. I believe Richard captured that the consensus was that these statements were still consistent with the town's values.

'In reviewing the Comprehensive Plan, the legacy statement is first addressed under 1.2 Vision on page 1-15. It discusses legacy as our small- town character, family vacation tourism, high quality beach experience, and small, locally owned businesses, as well as preserving historic architecture. Under this section of Vision, there is not a definition of what legacy and historic architecture mean but that is clarified later in the Plan. Under 2.1.2 Character Area Terms on page 2-4, "Legacy establishments, structures, or locations contribute to the overall sense of place or tell the story of Nags Head's past. These establishments, structures, or locations often remind you of the past and are nostalgic." This provides some level of definition but does not indicate that this means a structure that is 30, 40, or 50 years old as part of that definition

'2.6 Whalebone Junction Character Area on page 2-32 notes that there are "many examples of legacy type establishments that embody the heritage of the town." It doesn't specifically identify which structures are being noted.

'On page 2-33 it notes that the Advisory Committee indicated that these legacy type establishments are paramount to the desirability of the area. Also, under Whalebone on page 2-38 notes that flexibility should be given to legacy type establishments for renovations as a way to retain the character of the area while allowing the establishment to remain viable in the market.

3.2.4 Site Development Characteristics on page 3-24 states: "It should be noted that many of the older legacy businesses in town are small and have a varied architectural style. Not all reflect the shingle style of historic cottages but are still important to the heritage of Nags Head."

'The section of the Comprehensive Plan that addresses legacy in the greatest detail is under Section 3.4.3 Local Business Development (B) Legacy Businesses, starting on page 3-121-where the Advisory Committee further identified that legacy businesses typically have the following characteristics:

- *The architecture is varied but the overall size and scale of the building is small and blends within the surrounding neighborhood.*
- *The building is low scale often with only one or 1 ½ stories.*

- *Multiple small buildings may be located on the same property with a mix of residential and business uses. However, the structures appear residential.*
- *The buildings are set in close proximity to the road.*
- *Parking is directly adjacent to the building or wraps around the building.*
- *Restaurants often have walk up windows with outdoor seating.*
- *The area is highly walkable and businesses often have amenities such as outdoor seating and bike racks that cater to pedestrians and cyclists.*
- *Structures with legacy characteristics were typically constructed prior to 1980. (This is the first place in the Comprehensive Plan that a date is used in the definition-however it is not a hard date, but rather a softer definition.) The question is can it be a legacy structure if built after 1980? Possibly, if it is consistent with the other relevant definitions.*
- *Dining and retail establishments with legacy characteristics in Nags Head range on average between 3,000-5,000 square feet in size.*

'This is further covered in 3-122/123 on the Policies and Actions - particularly EC-7a [as follows:] "Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings"

'Prior to the request at the December 2 meeting, Staff was unaware that further consideration of the subject text amendment was awaiting a definition of "legacy." Regardless, Staff is of the opinion that the overview provided by Mr. Sparks is comprehensive and relevant. Generally, this is the same information that was provided to the Planning Board as part of their consideration of the proposed amendments; an earlier memo dated March 13, 2020 (with attachments), as well as the most recent memo dated August 14, 2020, are attached for the Board's review.

'With respect to the term "legacy," while the identified Comprehensive Plan policies valuing the preservation of legacy business, establishments, and structures served as support and general direction for pursuing the proposed text amendments, the term "legacy" is not proposed to be defined as a regulatory term, and the proposed regulations do not attempt to directly regulate physical conditions (i.e. structures or sites) that may or may not be considered to be "legacy." Rather, the proposed amendments focus on uses that are now nonconforming, which may be considered legacy businesses or establishments (specifically, or in more general terms), and perhaps then warrant some mechanism to allow the uses to continue to be maintained and evolve.

'At least with respect to older hotels and motels, there are references in the Comprehensive Plan to the loss of these structures and uses, replaced with large single-family homes, and, at least as it pertains to the South Nags Head Character Area, references to providing "existing hotels/motels and cottage courts" with "flexibility to repair and renovate, in order to remain relevant in the market;" to be sure, the Comprehensive Plan also discusses the that the Town "has experienced the loss of hotels, particularly along the oceanfront. Many of the small hotels and commercial establishments are being converted to single-family dwellings. Cottage courts, which involve multiple detached single-family dwellings on one lot, may be an alternative to hotel development and are more compatible for the oceanfront. The town desires to offer a diversity of accommodations and should consider incentives to encourage cottage court development along the oceanfront as an alternative to single-family vacation rentals."

'As noted in the attached memos to the Planning Board, the proposed text amendments were the result of discussions over several meetings with the Planning Board. At least initially, Staff's focus was on a potential overlay district that could apply and relate more specifically to sites and/or structures that could perhaps qualify, based upon identified standards, as legacy establishments or structures. However, ultimately, the direction pursued by Staff and the Board focused more broadly on existing hotels and other uses that were rendered nonconforming; this approach is not dissimilar to options available for existing

nonconforming cottage courts. A copy of the draft adoption ordinance for the proposed amendments, dated August 24, 2020, is attached for the Board's review and consideration as to whether to schedule a public hearing.

'Beyond the attached memos and adoption ordinance, there are a few additional items important to note:

- The Planning Board recommended approval 6-1, with Gary Ferguson dissenting. Mr. Ferguson's objections were generally that 1) it may not be fair to other property owners in the same district that cannot build a new hotel if one did not previously exist, and 2) the amendment essentially provides the right for this nonconforming use to be perpetually extended.
- At least on Mr. Ferguson's second point, as long as the use is maintained and not ceased for a period, that is the case regardless of the amendments; under current provisions, if a nonconforming use is destroyed it can hypothetically be built back at the same cubic volume (assuming Flood or CAMA don't preclude), and this is also true under the proposed amendments, except that a Conditional Use Permit may be applied for to seek to alter, move, or even enlarge the use and associated buildings when reconstructed (which may allow flexibility to address Flood or CAMA regulations).
- One related question is whether the amendments would allow someone, with a Conditional Use Permit, to seek to demolish entirely and construct anew, which would be precluded under the current provisions. This possibility was reviewed further with the Planning Board at their meeting on September 16, 2020, following their initial recommendation to the Board; the Planning Board was unanimously in favor of prohibiting a conditional use permit from being sought or issued to allow the demolition of a significant percentage of existing floor area, if such floor area was to be reconstructed.
- Staff presented the proposed amendments to the Town Attorney for review. Generally, no legal issues were raised. Staff additionally requested the Town Attorney to review draft language that would address the conceptual regulation raised in the previous bullet point; the following two options were reviewed, to be considered further and eventually incorporated within the proposed amendments if a public hearing is scheduled:
 - *A conditional use permit may not be sought or issued to allow the demolition of more than 75% of the gross floor area of any building wherein a nonconforming hotel use is located, when such floor area is proposed to be reconstructed; this prohibition shall not apply to buildings determined to have been destroyed.*
 - *A conditional use permit may not be sought or issued under this section following the intentional demolition of more than 75% of the gross floor area of any building wherein a nonconforming hotel use is located; this prohibition shall not apply to buildings determined to have been destroyed due to reasons outside of the control of the owner.*
- References to Section 5.5 in the memos to the Planning Board and proposed text amendments are not likely relevant given the scope of the amendments; Section 5.5 is only applicable "Where use of land exists..., and where such use involves no individual structure or combinations of structures with a cumulative assessed tax value not exceeding \$5,000.00...", whereas, Section 5.6 applies to "a use involving individual structures or combinations of structures with a cumulative replacement cost of \$5,000.00 or more..." Should a public hearing be scheduled, references to Section 5.5 would be struck from the proposed amendments.

'As previously noted, the Planning Board voted 6-1 at their meeting on August 18, 2020 to recommend approval of the proposed text amendments as presented, and the Planning Board subsequently indicated

their support for a provision to prohibit the voluntary demolition of significant portions of existing nonconforming hotels, if such portions were to be reconstructed.

'At this time, Staff would recommend that the public hearing be scheduled.'

Mayor Cahoon said that he wants to make sure property owners are aware of any possible conflicts such as with CAMA before taking action to improve their properties.

MOTION: Comr. Renée Cahoon made a motion to schedule the Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers, as requested. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

From Dec 16th Board meeting – Update on street maintenance plan/repair work

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

'At its December 18th board meeting, staff was requested to provide the board with an update on the status of street maintenance and repair activities, specifically related to the streets and drainage plan that was presented to the board at its retreat in January of 2020.

'Attached is a copy of the plan the board reviewed last year. It was board consensus at the retreat to move forward with this plan which is in the first year of implementation. As the board will recall, the plan included several drainage projects in FY 2020-21 (Danube Street, intersection of Wrightsville and Barnes Street) that were to be completed in advance of larger paving efforts in FY 2021-22. These drainage projects are currently out to bid. Staff anticipates requesting funding to complete the year 2 work as part of this year's budget cycle. This would involve large scale paving efforts in Nags Head Acres and Nags Head Cove. The attached documents include a map and schedule of paving recommendations, a list of drainage projects, and a proposed CIP schedule which combines paving and drainage work into one budget.

'Based on the pavement condition survey that was completed in advance of the paving plan, streets were placed into two main categories, "fair or better" and "poor or worse." The fair or better streets would receive a 1" sand asphalt overlay as a recommended maintenance treatment. The poor or worse streets would receive a full 1.75" thick asphalt overlay. Initially the plan considered the use of a pavement rejuvenation product, however it was determined that a sand asphalt overlay would serve as a better aesthetic treatment, particularly when used to match up against fully overlaid streets. It was also recommended since it is more widely used in this region by existing paving contractors. Pavement rejuvenation and other specialized treatments are not generally available in the northeast NC market.

'Staff will review the paving and drainage plan and CIP with the board. Staff will also address current routine maintenance activities that are performed outside of the larger pavement plan and suggestions to enhance pavement performance in conjunction with the plan.'

Comr. Renée Cahoon said that the Board should consider a policy during the budget process that money rolls over to the fund balance, equivalent to 1% of the tax rate increase, to be used for other street repair projects.

Comr. Fuller emphasized that both stormwater and streets need to be done at the same time so one is not messed up when replacing the other.

It was Board consensus that a 1% increase be added to a separate fund for stormwater/street repairs; both stormwater/street projects are to be taken care of at the same time so a stormwater project doesn't have to be redone when a street project is constructed.

NEW BUSINESS

Committee Reports

Mayor Pro Tem Siers - Street/Stormwater

Mayor Pro Tem Siers reported that he recently rode around Town with staff to view some street and stormwater areas of concern.

Mayor Pro Tem Siers - Jockey's Ridge/Soundside Road Committee

The Jockey's Ridge Soundside Road Committee recently met and is working toward a resolution.

Mayor Cahoon - COVID update

Mayor Cahoon forwarded to Board members this week an email summarizing the recent meeting of local officials discussing the latest updates on the COVID pandemic where the numbers continue to increase.

Consideration of appointment(s) to Board of Adjustment

- a) Consideration of appointment to fill existing term of Jack Cooper
- b) Consideration of annual Chair/Vice-Chair appointments

The summary sheet read in part as follows:

"Appointment to BOA

At the January 6th Board of Commissioners meeting, request appointment to fill the existing term of Jack Cooper who resigned December 2020.

'Annual appointment of Chair/Vice-Chair to BOA

In addition, in accordance with Town Code Sec. 48-592 request appointment of Chair and Vice-Chair to the BOA. Current Vice-Chair, Margaret Suppler, is interested in being appointed as Chair.

'Attached please find an updated Tracking chart with the current roster for the Board of Adjustment as well as a Candidate chart listing those interested in serving."

MOTION: Comr. Renée Cahoon made a motion to appoint Margaret Suppler to serve as Board of Adjustment Chair. The motion was seconded by Comr. Fuller which passed unanimously.

MOTION: Comr. Brinkley made a motion to appoint Angelina Lowe to the vacant regular position on the Board of Adjustment. The motion was seconded by Mayor Pro Tem Siers which passed unanimously

Appointment of Vice-Chair on the Board of Adjustment is to be included on the January 20th mid-month Board meeting. Staff is to also find out if BOA member Bobby Gentry is interested in reappointment, his term expires February 2021, and if so, if he is interested in serving as Vice-Chair.

Discussion of Salary Study Scope

Human Resources Coordinator Stacey Reichler summarized her memo which read in part as follows:

"Attached please find documents submitted for the Request For Proposals (RFP) for Compensation Study Services for the Town. Replies are due at 4 pm on Friday, January 8, 2021 in response to the following:

1. Perform a review of the existing classification plan,
2. Perform a salary study,
3. Examine and compare benefits in relation to other Local Governments and relevant private sector organizations,
4. Review specific identified job descriptions and place them in the pay plan at the appropriate level,
5. Create career progression goals,
6. Provide recommendations for a Pay Policy and
7. Prepare one or more pay plan option schedules"

Ms. Reichler's salary study scope was well-received by the Board with the following comments:

Comr. Fuller stated that he would like to see the progression goals not be glossed over and not become boiler plate and that opportunities be provided for Administrative Services and other departments so they are eligible for pay increases once they meet their agreed-upon goals.

Comr. Brinkley would like to see responses within a 3 - 4 month timeframe; Comr. Fuller would like to see the classification/pay plan come in at average or a little above average pay scale.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy had nothing new to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Interim Town Manager Sparks - Consideration of setting dates

Board members discussed upcoming dates for Budget/CIP workshops. Agreed upon dates are as follows:

Recessed Meeting

- Includes Beach Nourishment Funding

Wed. Jan 20, 2021; 9 am

Interview with Board members

Steve Straus of Developmental Associates

Wed. Jan 20, 2021; 11:30 am

- Town Manager Recruit Firm

<u>Budget Planning Workshop</u>	Wed. Feb 3, 2021; following 9 am Board of Commissioners meeting
<u>Capital Improvement Program Workshop</u> - If continuation is needed	Wed. Mar 24, 2021; 9 am Wed. Mar 31, 2021; 9 am
<u>Presentation of Managers Recommended Budget</u>	Wed. May 5, 2021; 9 am
<u>Budget Workshop</u> - If continuation is needed	Wed. May 12, 2021; 9 am Wed. May 19, 2021; 9 am
<u>Public Hearing</u>	Wed. Jun 2, 2021; 9 am
<u>Budget Workshop</u>	Wed. Jun 16, 2021; 9 am; Followed by mid-month meeting and Adoption of Budget

It was Board consensus to inform them of the dates for the Public Works public meetings; to add the final Budget/CIP workshop dates to the BOC calendar and to forward these dates in an email to Board members.

Interim Town Manager Sparks - Position request for Sanitation Division

Interim Manager Sparks summarized the agenda summary sheet which read in part as follows:

"In November the Board approved a budget amendment to unfreeze a sanitation supervisor position starting on January 1, 2021. The Board also approved adding back an operator position starting April 1, 2021 assuming the supervisor position would be filled internally.

"This budget amendment requests funds to fill the operator position starting in February rather than April. This request is being made in light of current staffing availability and would allow the division to train an operator for the upcoming season. The total request is \$10,250 (see attached budget amendment)."

MOTION: Comr. Brinkley made a motion to approve the Sanitation Division position request as presented. The motion was seconded by Comr. Fuller which passed unanimously.

Mayor Pro Tem Siers - Dominion Energy

Mayor Pro Tem Siers questioned the Dominion Energy storage on the lot next to Dunes Restaurant - Interim Manager Sparks is to continue to look into this issue and verify completion of project/lot cleared by end of February.

Interim Town Manager Sparks - Update on signage

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

"At the December 2nd Board meeting, it was Board consensus to prioritize speaking with NCDOT concerning a more noticeable sign, such as a flashing sign, to identify the 45 MPH speed limit for vehicles coming off the Washington Baum Bridge into Nags Head; and to prioritize looking into automated signage that would inform the public of flooding conditions. At the January 6th Board meeting, Dep Town Manager Andy Garman will present options for board consideration with respect to these two types of signs.

To summarize, the flood warning signage would include two solar powered signs (placed in advance at each end of the flooded portion of the roadway) connected to a pressure transducer designed to trigger flashing lights when water is detected on the roadway. This sign can also be operated remotely from a computer workstation. The cost is estimated at \$8,500.

For the traffic speed alert signs, two options were reviewed:

- 1) A solar powered blinking speed alert sign placed in advance of the posted speed highlighting the upcoming change in speed limit - \$1,900.
- 2) A solar powered radar message sign that alerts drivers to their actual speed and indicates the posted speed limit. This sign also collects speed data - \$6,000.

A budget amendment has been prepared to use Powell Bill funds for purchase of this signage. The budget amendment is based upon the more expensive sign option. If the final cost/option is less than the budgeted amount, budgeted funds would return to the Powell Bill fund balance."

Mayor Cahoon noted that there was not a lot of support among Board members for a flashing MPH sign coming off of the Washington Baum Bridge into Nags Head from the west. Board members asked staff to continue to put pressure on NCDOT for maintenance of their roadway - SR 1243 in S Nags Head. In addition, staff is to provide NCDOT contact information and forward any emails received concerning this issue to NCDOT.

MOTION: Comr. Brinkley made a motion to authorize the purchase of flood warning signage, in the amount of \$8,500, for use in S Nags Head or anywhere there is road flooding. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Board members took no action concerning causeway signage but did request increased police patrol in that area.

BOARD OF COMMISSIONERS AGENDA

Comr. Brinkley - Town's weather measurement

Comr. Brinkley stated that after the New Year's Eve heavy rainfall, he pulled up the Town's weather rainfall calculations on the Town's web site and it reported no rainfall. He would like to see the Town's weather recorder fixed so those interested can view local weather information.

Comr. Fuller - Hole in ceiling in Board Room

Comr. Fuller thanked staff for fixing the hole in the ceiling [from removal of the projector unit].

Comr. Fuller - Drainage

Comr. Fuller spoke of the letter received from Mr. David Benner of the Old Nags Head Place Subdivision Homeowner's Association. He confirmed with Interim Town Manager Sparks that staff has made no arrangement re: Old Nags Head Place.

Comr. Renée Cahoon - Thank you

Comr. Renée Cahoon thanked Police, Fire, and Sanitation employees for their work during the holidays.

MAYOR'S AGENDA

Mayor Cahoon - Town Retreats

Mayor Cahoon pointed that usually the Board has two retreats per year - one in January and one in September. Since the Board just held a fall 2020 retreat and laid out a comprehensive plan that staff is engaged in, and since the Town is in the process of hiring a permanent Town Manager and a Public Works Director, and is about to go in Beach Nourishment funding discussions, that it would be presumptuous to have a January 2021 retreat. Board members agreed.

The Board is to receive quarterly strategic planning progress updates; Mayor Cahoon stated that two of these updates could be in a retreat (in abbreviated form) and two in the form of workshops. Board members agreed. Mayor Cahoon indicated that after discussion with Interim Town Manager Sparks, he would return with a schedule.

Comr. Renée Cahoon - Funds for traffic signage

Comr. Renée Cahoon mentioned that funds for traffic signs should not come out of Powell Bill funds.

MOTION: Comr. Renée Cahoon made a motion to utilize funds in the amount of \$8,500 for traffic signage from Undesignated Fund Balance and not from Powell Bill funds. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Mayor Cahoon - Consideration of letters of support for NC DEQ Secretary Regan as EPA Director

MOTION: Comr. Renée Cahoon made a motion authorizing the Mayor to sign the letters in support of NC DEQ Secretary Regan as EPA Director to Senators Burr and Tillis as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

CLOSED SESSION

MOTION: Mayor Pro Tem Siers made a motion to enter Closed Session to discuss a confidential personnel issue and to confer with the Town Attorney re: attorney/client privilege. The motion was seconded by Comr. Renée Cahoon which passed unanimously. The time was 3:49 a.m.

OPEN SESSION

The Board re-entered Open Session at 4:10 p.m. Attorney Leidy reported that during Closed Session the Board did confer with the attorney re: attorney/client privilege and a personnel matter but no actions were taken.

ADJOURNMENT

MOTION: Comr. Renée Cahoon made a motion to recess to a mid-month meeting on Wednesday, January 20, 2021 at 9 am. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 4:15 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: February 3, 2021

Mayor: _____
Benjamin Cahoon