



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING / BUDGET PLANNING WORKSHOP (COVID-19)
WEDNESDAY, FEBRUARY 3, 2021**

The Nags Head Board of Commissioners met remotely via the Zoom Platform on Wednesday, February 3, 2021 at 9:00 a.m. for a Regular Meeting followed by a Budget Planning Workshop.

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; Amy Miller; Michael Zehner; Holly White; Roberta Thuman; Terry Haugen; Ed Hawley; Mike Remige; George Bonner; Rachel Housego; Alex Moore; and Town Clerk Carolyn F. Morris

CALL TO ORDER

Mayor Cahoon called the February 3rd Board of Commissioners meeting to order at 9 am.

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the February 3rd agenda as presented. The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled the Board members and the motion passed unanimously.

RECOGNITION

On behalf of the Board, Mayor Cahoon recognized Town Customer Service representative Shannon Krzyzanowski for her assistance to a Town Hall neighbor.

Public Works Director Terry Haugen introduced Facilities Maintenance Supervisor Ed Hawley who was recognized by the Board for 15 years of service.

Dep Town Manager Andy Garman introduced Finance Director Amy Miller who was recognized by the Board for five years of service.

PRESENTATION - Annual Report from Jennette's Pier Executive Director Mike Remige

Jennette's Pier Executive Director Mike Remige summarized the annual report from Jennette's Pier; he then introduced George Bonner of the NC Renewable Ocean Energy Program of the Coastal Studies

Institute who reported that he is working with the Dept of Energy on a project to create another renewable energy center on the east coast. Mayor Cahoon confirmed that April 2022 is the anticipated "drink" competition phase of the project.

Mayor Cahoon confirmed with Director Remige that the Wifi in the parking lot at Jennette's Pier is a permanent feature, and that the new wind turbines are expected to be quieter than the previously installed turbines.

Comr. Fuller thanked the late Sen. Basnight, the Town of Nags Head, and Dare County for making the pier a reality years ago; he also expressed his appreciation of Mr. Remige for all the work he has done to make it work.

PRESENTATION - Findings from iFlood app - Rachel Housego

Rachel Housego, Joint Program Student, provided a presentation on the iFlood program which is used to analyze groundwater measurements provided by citizens on the Outer Banks. The app is a Citizen/Science app where citizens can report on flooding situations they observe which are then stored and evaluated. Ms. Housego's presentation was well received by the Board.

PUBLIC COMMENT

Mayor Cahoon summarized the email from Porter Graham of the Outer Banks Association of Realtors which read in part as follows:

"OBAR is concerned that the merits of nourishment project Alternative 2 (the 1,472,500 cy project) have not been adequately demonstrated in the board's public discussions in light of the potential that Alternative 2 poses for overlapping debt service obligations, forfeiting \$3.3 million in FEMA assistance available under Alternative 1, and permitting delays that may frustrate commissioners' objective of coordinating the project schedule with those of the northern towns and thereby eliminating costs for duplicative services. OBAR believes that a commitment to maximizing the impact of the federal public assistance grant should inform commissioners' choice of option. It is OBAR's understanding that a project formulation available within Alternative 1 wherein fill is concentrated in the most erosive regions would achieve a project lifetime similar to that of Alternative 2, and that Alternative 1 would within this formulation serve to align the schedule of future nourishment projects with those of the northern towns. OBAR requests that commissioners elaborate further on the preferences expressed for Alternative 2 in response to Mayor Cahoon's poll at the conclusion of the January 27 nourishment workshop. Thank you."

CONSENT AGENDA

The Consent Agenda consisted of the following items:

- Consideration of Budget Adjustment #10 to FY 20/21 Budget
- Consideration of Tax Adjustment Report
- Request to advertise delinquent taxes
- Approval of minutes
- Consideration of updated Vehicle Use Policy re: cell phone use while driving
- Consideration of request to apply for Assistance to Firefighter Grant
- Consideration of updates to the Town of Nags Head Vegetative Planting Guidelines

MOTION: Comr. Brinkley made a motion to approve the Consent Agenda as approved. The motion was seconded by Comr. Renée Cahoon. The Town Clerk polled each Board member and the motion passed unanimously.

Budget Adjustment #10, 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 request to advertise delinquent taxes, as approved, read in part as follows:

"In accordance with NCGS 105-369 advertisement of tax liens on real property for failure to pay taxes ... "The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period of March 1 thru June 30... The posted notice and newspaper advertisement shall set forth the following information: The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order; a brief description of each parcel of land to which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel; a statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items; ...a statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes."

"With your approval, staff intends to advertise the liens in the newspaper on March 10, 2021 in accordance with NCGS 105-369 for all amounts outstanding as of end of business on March 5, 2021."

The memo re: Request for Authorization to Begin Foreclosures on 2020 Taxes, as approved, read in part as follows:

"In accordance with NCGS 105-374, "foreclosure of the tax lien on real property by means of an action in the nature of a mortgage foreclosure is a civil action..." and/or NCGS 105-375, In Rem method of foreclosure "docketing certificate of taxes as judgment - in lieu of following the procedure set forth in NCGS 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised..."

"With your direction, staff will begin the foreclosure process where necessary on the 2020 delinquent taxes thirty days after advertising."

The summary sheet for the Updated Vehicle Use Policy, as approved, read in part as follows:

"Attached for Board review and approval is an updated Vehicle Use Policy.

"The updated policy includes an additional paragraph entitled "Cell Phone Usage While Driving" as follows:

Cell Phone Usage While Driving

It is against the law in North Carolina to text or email while driving. However, to ensure the safety of our employees and other drivers, Town of Nags Head employees may not use cell phones (including hands free devices) or any other mobile electronic devices while operating a Town vehicle. This includes, but is

not limited to, answering phone calls, engaging in phone conversations, reading or responding to emails and text messages. Emergency Services such as Police and Fire will follow best practices as outlined by their individual departments and state/federal guidelines.”

The memo re: Assistance to Firefighter Grant, as approved, read in part as follows:

“The 2020 Assistance to Firefighter Grant (AFG) program enrollment period opens January 04, 2021, and closes February 12, 2021. The AFG program is a 95/5 grant; 95% funding coming from the federal government and the 5% match from the applicant. The Town of Nags Head Fire Rescue has been successful in securing funding from this program for the previous two grant cycles. We have had support from the Board of Commissioners in seeking grant opportunities and would like to apply for this year’s AFG.

‘The AFG will offer us an opportunity to replace our hydraulic rescue equipment with an updated and more reliable version. These new tools will modernize our rescue equipment to a battery-powered version capable of functioning independently from a power source. These tools will use a renewable energy source. Helping us to support the Town of Nags Head’s goal of reducing our carbon footprint. We believe that upgrading to this newer technology will allow us to increase our performance and provide the citizens and visitors with better outcomes.

‘We estimate that the total cost to replace this equipment will be; \$155,515.00. If we are successful in securing another AFG it will significantly reduce this cost. The approximate breakdown for the project:

‘95% Federal Share - \$ 148,109.52
5% Town of Nags Head match- \$ 7,405.48

‘This project does not currently exist in the fire department’s requested CIP Capital Budget, I am asking that I be permitted to pursue this opportunity and add it to the department’s CIP for 2021.”

The memo re: Vegetative Planting Guidelines, as approved, read in part as follows:

“The attached Town of Nags Head Vegetative Planting Guidelines document was created in late 2015 and early 2016 in conjunction with an update to the commercial landscaping and buffering requirements that originated with the Local Business Committee’s discussion with business owners on potential obstacles to the success of businesses within the Town. At that time, Planning Staff met with the Planning Board, members of the Local Business Committee, and the then-Director of the Dare County Extension Office to create this guidance document, emphasizing the use of the native vegetation and outlining the appropriate planting zones. This document was last presented to the Board of Commissioners at their February 2016 meeting where it was noted that these guidelines, while referenced in the Town’s Zoning Ordinance (now referenced in the UDO), are not technically part of the Ordinance, and that the Guidelines would continue to evolve, as necessary.

‘Over the course of five years this document has proven to be very beneficial with few edits being necessary. As an administrative guidance document, although this does not require review and a hearing similar to a text amendment to the UDO, we believe it is appropriate for amendments to be recognized and approved by the Board. At this time, we would like to remove Pampas Grass from the Guidelines as an appropriate species, as we have learned that it is considered to be an invasive species. This does not preclude someone from planting Pampas Grass, however, it would not satisfy certain buffering or landscaping requirements of the Unified Development Ordinance.

'Staff will be available for any further discussion or questions that may arise.'

PUBLIC HEARINGS

Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers

Attorney John Leidy introduced the Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers. The time was 9:53 a.m.

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

"As noted in my Director's Report to the Board of Commissioners and Planning Board, dated January 30, 2020, given previously expressed interest in the future of the Blue Heron Motel at 6811 S. Virginia Dare Trail and the limitations imposed by Town Code requirements on the evolution of the current nonconforming hotel use of the property, Staff began considering text amendments to the UDO to advance Comprehensive Plan policies valuing the preservation of legacy business, establishments, and structures.

'This item was initially discussed at the Planning Board's meeting on February 18, 2020, with the Planning Board wishing to consider and discuss options further. The Planning Board discussed this item further at their meeting on May 19, where the Board requested that Staff explore options that did not require the creation of an overlay zoning district, and to present those options to the Board for consideration. Staff presented additional information to the Planning Board on June 16; at that time, the Board was supportive of the option presented by Staff that would make amendments to Article 5, *Nonconformities*, of the UDO, by providing nonconforming restaurants, hotels, or retail uses that commenced on or before December 31, 1980 with the option of seeking a conditional use permit to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Sections 5.5. and/or 5.6. of the Article. At the meeting, the Planning Board requested that Staff review and determine the specific instances where such a provision would be applicable.

'Following the meeting, Staff conducted the review requested by the Planning Board and determined that the following hotels were all nonconforming uses, all located with the CR, Commercial Residential Zoning District, and which may benefit from the provision under consideration:

1. Comfort Inn South, 8031 S. Old Oregon Inlet Road, constructed in 1974
2. Dolphin Motel, 8017 S. Old Oregon Inlet Road, constructed in 1960
3. Owens Motel, 7115 S. Virginia Dare Trail, constructed in 1966
4. Seafoam Hotel, 7111 S. Virginia Dare Trail, constructed in 1961
5. Islander Motel, 7011 S. Virginia Dare Trail, constructed in 1973
6. Blue Heron Motel, 6811 S. Virginia Dare Trail, constructed in 1975
7. Surf Side Hotel, 6701 S. Virginia Dare Trail, constructed in 1984
8. Holiday Inn Express (former Nags Head Inn), 4701 S. Virginia Dare Trail, constructed in 1987
9. Colonial Inn, 3329 S. Virginia Dare Trail, constructed in 1947

'Additionally, Staff determined that there were no restaurants or retail establishments that were considered to be a nonconforming use. However, related, Staff did determine that the presence of

residential units in conjunction with the Nags Head Fishing Pier constituted a nonconforming use of the site, which may be something that the Board wished to address.

'Staff presented the above information to the Planning Board at their meeting on July 21. The Planning Board agreed, given that the necessary scope of any treatment would only apply to nonconforming hotels, that it may be more appropriate to focus any amendments within Section 7.12, *Hotels*, of Article 7, *Supplemental Regulations*, similar to the treatment of nonconforming cottage courts. Additionally, the Planning Board requested that Staff also address the residential dwelling units accessory to the Nags Head Fishing Pier.

'Staff returned to the Planning Board at their August 18, 2020 meeting with proposed amendments to add a Section 7.12.3. pertaining to existing nonconforming hotels, allowing a conditional use permit to be sought to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by existing UDO provisions pertaining to nonconforming uses. Additionally, amendment of Section 7.50.1. pertaining to fishing piers was proposed to reference that dwelling units existing as of July 1, 2020 are an allowable use in conjunction with fishing piers; it was noted by the Planning Board and confirmed by Staff that this would be applicable to both the Nags Head Fishing Pier and the Outer Banks Fishing Pier.

'Following further discussion, the Planning Board recommended approval of the proposed amendments 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.

'The Planning Board briefly revisited their recommendation at their meeting on September 16, 2020, considering whether the amendments would allow, with a conditional use permit, a nonconforming hotel to be demolished entirely and constructed anew, which would be precluded under the current provisions. 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.

'As the Board may recall, a request to consider the scheduling of a public hearing on the text amendments was on the Board of Commissioners' 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. At the Board's meeting on December 2, 2020, the Board requested that Staff return to the meeting on January 3, 2021 and present additional information along with the request to consider scheduling the public hearing.

'At the January 3, 2021 meeting, the Board voted to schedule the public hearing for the meeting on February 3, 2021. Two points of discussion concerned uncertainty as to what could be constructed under this provision, and a sense that it would be beneficial to have additional evaluation criteria by which to consider conditional use permits sought under this provision; at least with regard to the former, the draft amendments allow these nonconforming hotels to be subject to the dimensional requirements for hotels located in the C-2 district, which do have some distinctive differences from the requirements that applied to hotels in the CR district (where this would apply) prior to the UDO; with regard to the latter, findings in addition to those commonly applied to conditional use permits could be adopted as part of these amendments.

'As noted above, Staff was initially broadly focused on legacy establishments and structures which may have been rendered nonconforming over time, either with respect to the use no longer being allowed in

the zoning district in which the property is located or because of standards or requirements changing, or due to both circumstances. Upon further consideration, it became clear that nonconforming hotels were potentially impacted most, if not solely.

It is helpful to consider that the general principle with respect to nonconformities is that, over time, the nonconforming uses or conditions cease, evolving to conforming uses or conditions. This effect, at least with respect to the identified nonconforming hotels and piers, would therefore seem to be inconsistent with the intent of relevant goals, objectives, policies, and actions contained in the Comprehensive Plan (discussed further below). Specifically, Section 5.6, *Nonconforming Use of a Structure*, is limiting and jeopardizes the preservation of these nonconforming uses in that this Section precludes:

- Existing structures devoted to a nonconforming use from being "enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted by the regulations of the district in which it is located." (Section 5.6.1.1.);
- Extension of a nonconforming use "to occupy any land outside such building. A conforming structure cannot be expanded to allow expansion of a nonconforming use." (Section 5.6.1.2.);
- Recommencement of a nonconforming use if "the nonconforming use...ceases for any reason for a period of more than 12 consecutive months." (Section 5.6.1.4.);
- Work that may increase the "cubic content or intensity" of the existing nonconforming use. (Section 5.6.2.1. and 5.6.2.2.);
- If the structure is also nonconforming, work in any 12 consecutive month period that exceeds "50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value of the nonconforming structure as determined by a North Carolina Licensed Appraiser." (Section 5.6.3.1.); and
- If the structure is also nonconforming, restoration, repair, or rebuilding if the structure "becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, where such destruction or lack of repairs and maintenance exceeds 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value as determined by a North Carolina Licensed Appraiser" and where the building has been condemned. (Section 5.6.3.2.)

Generally, the impacts referenced above were the basis for the adoption of provisions in 2015 contained in Section 7.2.14 pertaining to nonconforming cottage courts. The proposed text amendments would operate in a similar fashion, allowing a conditional use permit to be sought to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Section 5.6, *Nonconforming Use of a Structure*.

Staff previously presented the proposed amendments to the Town Attorney for review. Generally, no legal issues or concerns were raised. Staff additionally requested the Town Attorney to review draft language addressing the Planning Board's revised recommendation, and such language has been included as part of the proposed text amendments. Additionally, as previously noted for the Board, references to Section 5.5 in the original version of the 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..." Therefore, references to Section 5.5 have been omitted from the proposed amendments.

'POLICY CONSIDERATIONS

While not specific to the nonconforming hotels noted above, or the Nags Head Fishing Pier or Outer Banks Fishing Pier, Staff is of the opinion that the following policies and considerations included within the Town's Comprehensive Plan are applicable to the consideration of the proposed text amendments:

- One of the Town's principal goals, as established in the Comprehensive Plan, is to "Plan for orderly and sustainable growth and redevelopment," and an identified objective to attain this goal is the "Preservation and maintenance of legacy commercial businesses."
- As used in the Comprehensive Plan, at least within the context of *Character Areas*, legacy establishments, structures, or locations are those which "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."
- Legacy establishments are particularly noted as adding to the character of the Whalebone Junction Character Area, and specifically the Whalebone Junction Core, where it is noted that "flexibility should be given to legacy type establishments for renovations as a way to retain the character of area while allowing the establishment to remain viable in the market."
- Legacy businesses are also referenced with respect to the Corridors Character Area, and specifically for the NC 12 and SR 1243 corridors, where it is noted that one of the future desires is to "provide flexibility for existing legacy businesses to renovate to help keep the character of Beach Road."
- The Land Use Element of the Comprehensive Plan, and the discussion of Incentives/Design Flexibility with respect to Site Development Characteristics, provides an overview of the issue and general solution, as follows:

The town has taken recent steps to preserve older legacy businesses and encourage the retention of these structures. There has been a regulatory shift with regards to nonconforming properties (properties which met zoning regulations at the time they were developed but are not consistent with regularity changes that have occurred). Essentially, non-conformity regulations have been modified to allow continued improvements to these older properties. The regulations are primarily designed to restrict additional development of unwanted land uses. The town's position is to allow continued use and improvement to nonconforming properties.

- The section on Legacy Businesses under Local Business Development, as contained within the Economic Development and Tourism Element of the Comprehensive Plan, is attached. Specific policies and actions are as follows:

EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.

EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.

EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.

EC-7c: Develop incentives to encourage the preservation of commercial floor space.

EC-7d: Explore ways to aid in the development of cottage courts.

'As previously reviewed with the Board, when further consideration of these amendments was discussed at the Board's December 2 meeting, the Board indicated that they understood that they were awaiting a definition of "legacy" as it may pertain to the amendments. While Staff believes this expectation was clarified, Staff did provide a relevant email from Interim Town Manager Greg Sparks, responding to questions concerning the meaning of the word "legacy" within the context of the Strategic Plan.

'Staff has indicated that the overview provided by Mr. Sparks was comprehensive and relevant, and was generally the same policy information referred to above.

'Staff further noted, 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.

'Additionally, 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 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."

'PLANNING BOARD RECOMMENDATION

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; subsequently, at their meeting on September 16, 2020, the Planning Board indicated their unanimous support for additional provisions 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 RECOMMENDATION

While Staff is generally of the opinion that the proposed amendments are a furtherance of established and relevant policies contained in the Town's Comprehensive Plan, Staff recommends that further consideration should be given to establishing dimensional requirements more consistent with those formerly applicable in the CR district, as opposed to those applicable in the C-2 district, as well as specific additional findings applicable to these types of conditional use permits; Staff believes that modification along these lines is substantive enough to require additional review by the Planning Board, and recommends that the public hearing remain open, to be continued to the Board's March 3, 2021 meeting, and that the proposed amendments and modifications be referred to the Planning Board."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, January 24, 2021 and on Sunday, January 31, 2021 as required by law.

Comr. Fuller questioned why hotels were eliminated from the CR District; feels this should return to the Planning Board with no action for the Board of Commissioners at this time. He also asked for a definition of "legacy" if it is going to continue to be a term used.

Comr. Renée Cahoon said that its always been a goal of the Town to keep hotels and the date a hotel was built is not relevant; the buildings are valued whether they are nonconforming or not; she would like to move forward to allow hotels to do the things that they need to do.

Comr. Brinkley agreed with Comr. Renée Cahoon and would like to help the structures continue to be a valuable part of the Town.

Alex Moore, Surf Side Hotel owner; he said that his in-laws built the hotel in 1984 and he and his brother-in-law Ken Simpler, Jr. have run it and have enjoyed success; he applauds the Planning Dept for their help and for assisting him in understanding; he is asking the Board to approve the amendment as listed and to assist him and the other hotels to remain relevant and viable in the Town; different things are required now and they have to change in order to stay relevant; they need to be able to improve and this amendment is important for that as they are competing against mega-rentals; they need to be able to continue to make repairs/improvements to the hotel for their customers; he asked that the Board adopt the amendment as written to keep hotels appreciated by the Town and enjoyed by their guests.

Attorney Leidy confirmed there was no one else who had comments on this issue and he concluded the Public Hearing at 10:22 a.m.

MOTION: Comr. Renée Cahoon made a motion to continue the Public Hearing, and to consider Planning Board comments - concerning text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers - to the March 3rd Board meeting. The motion was seconded by Comr. Fuller. The Town Clerk polled each Board member and the motion passed unanimously.

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

Update from Planning Director

Planning Director Michael Zehner summarized his 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 February 3, 2021.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for December 2020*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Wednesday, December 2 - Board of Commissioners Meeting
- Thursday, December 10 - Board of Appeals Meeting
- Thursday, December 10 - Holiday Farmer's Market (evening)
- Friday, December 11 - Climate Septic Research Team Meeting
- Friday, December 11 - VW Settlement Webinar
- Tuesday, December 15 - Planning Board Meeting
- Wednesday, December 16 - Board of Commissioners Meeting
- Thursday, December 17 - Jockey's Ridge Soundside Access Working Group Mtg
- Saturday, December 19 - Holiday Farmer's Market
- Monday, December 21 - Multi-Jurisdictional GIS Services RFI Discussion

'SOG Report on Development Regulations

The UNC School of Government periodically surveys all North Carolina municipalities and counties regarding planning and development regulation practices. The most recent survey was conducted in the fall of 2017 through the spring of 2018 (prior surveys were conducted in 2002-03, 2004-05, 2006-07, 2008-09, and 2011-12). A blog post regarding the most recent survey and report can be accessed here: <https://canons.sog.unc.edu/2018-survey-results-are-in/> and the *complete 2018 Survey Report: Adoption and Administration of Local Development Regulations, Conditional Zoning, and Subdivision Administration* can be accessed here: <https://www.sog.unc.edu/publications/bulletins/2018-survey-report-adoption-and-administration-local-development-regulations-conditional-zoning-and>

'Planning Board - Pending Applications and Discussions

The January 19, 2021 meeting of the Planning Board (held remotely) included the Board's election of officers (reelection of Megan Vaughan as Chair, and Kristi Wright as Vice Chair), consideration of the Conditional Use Permit and Major Site Plan for alterations to Kitty Hawk Watersports, and continued discussion regarding updates to the UDO required by N.C.G.S. 160D.

'The Board's next meeting is scheduled for February 16, 2021. At this time, the agenda is expected to include consideration of text amendments to update the UDO for N.C.G.S. 160D, a text amendment to update references to the *Low Impact Development and Stormwater Reference Manual*, to replace the *Low Impact Development Solutions to Reduce Stormwater Runoff Manual*, and review of the Planning & Development Department's Work Plan (current FY status, and plans for FY21-22). Additionally, there are active pending conditional use permit applications for the property at 205 E. Baltic Street (a.k.a. the Dream Center) and The Soundside Event Site and associated properties; continuances were requested from the January meeting to the February meeting, however, further continuance requests are not unanticipated.

'Additional Updates

- Level 2 Charger - As directed at the Commissioners January 20 meeting, Staff is working to pursue a potential arrangement to allow for the location of a charger for electric vehicles on Town property. Staff is considering procurement requirements and will plan to return to the Board with updates when additional information is available.
- CAMA Land Use Plan Update - Staff participated in a virtual meeting with DCM staff on January 13, 2021 to review the comments returned as part of the State review. DCM staff requested that Town Staff provide a response indicating how we intended to address the comments prior to proceeding to local adoption of the Plan. Staff is working to complete this task in the next few weeks, and tentatively anticipates being able to bring the Plan forward for local adoption at the Board's April meeting.

- Review of Town Outdoor Lighting Regulations - As a separate agenda item for the February 3 Commissioners meeting, Staff will be presenting a report to the Board.
- Town Workforce Housing Study & Plan/RFI - Assigned Town Staff met on January 7, 2021 to discuss further actions related to this item. Staff anticipates presenting a draft RFI and additional options at the Commissioners March meeting.
- Nonconforming Hotels and Fishing Piers - Legacy Establishments/ Structures - This matter is on the Board's February 3, 2021 agenda for public hearing, with a continuance and referral back to the Planning Board recommended by Staff.
- Review of Residential Stormwater Regulations - As the Board is aware, recommendations from Staff and the Planning Board related to the Town's residential stormwater regulations were provided to the Board a few months ago. Staff is awaiting further direction from the Board of Commissioners as to whether the Board wishes to discuss at a workshop, potentially with the Planning Board, or take some alternative action.

Staff is proceeding with a text amendment to update the ordinance to reference the recently updated *Low Impact Development and Stormwater Reference Manual*, to replace the *Low Impact Development Solutions to Reduce Stormwater Runoff Manual*; this will be presented to the Planning Board initially at their February meeting.

- Provisions for the Registration of Events Held at Residential Properties - As noted in the previous Director's Report, both the Planning Board and the Board of Commissioners had indicated an interest some months ago in considering a policy or regulations requiring the registration of events held at residential properties. The Planning Board had discussed this matter earlier in the year, with delays related to the pandemic, ultimately tabling consideration until the fall. The Planning Board revisited the matter at their October and November meetings (materials provided to the Planning Board of their November meeting may be accessed here: [LINK](#)), and ultimately supported the general provisions that Staff had developed; it is important to note, the draft provisions require that events be registered as a way of notification, that no approval of the registration or event is contemplated.

When it is appropriate, Staff would request feedback from the Board of Commissioners as to whether they would like to consider the provisions for adoption. As noted in the memorandum to the Planning board, a more comprehensive review and amendment of Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial-Outdoor Recreational Uses*, may be necessary given issues that have arisen; provisions addressing events at residential properties could be addressed separately now, or be incorporated into this more comprehensive review and amendment.

- Skate Park Renovation - Phase 1 - As previously reported, Staff finalized submission of an application for the National Endowment for the Arts Our Town Grant on August 18, 2020, seeking funds to design and develop plans for a future renovation of the Skate Park; awards under this grant are not expected to be announced until April 2021, with funds available July 1. Additionally, the Town was awarded \$30,000 in grant funds from the Tourism Board.
- Art Masts - As previously noted, the Art Mast project, coordinated with the Arts & Culture Committee, has resulted in four completed art panels. The Arts & Culture Committee continues to discuss the locations for the new Art Masts, and is considering installations beginning at Bonnet Street and ending in the Gallery Row District. Staff is moving forward, with support from the Arts & Culture Committee, with the reproduction of the original artwork on material that is more

weather resistance to avoid the damage or destruction to the original pieces. Based on this, it should be possible to install completed panels this spring.

- Decentralized Wastewater Management Plan - Staff has delivered a prepared contract to the preferred consultant and hopes to finalize this step and initiate the project shortly. Staff will present this information to the Board once the contract has been executed.
- Dowdy Park Farmer's Market - Staff has begun preparing for the 2021 Season, and will plan to present a recap of the 2020 Season and plans for 2021 at an upcoming Board meeting, likely the March meeting.
- Estuarine Shoreline Management Plan - As noted below, Staff has received paperwork to finalize the grant award from the NFWF. Staff understands that CSI, who is open to providing complementary services to support this project, may also be pursuing a grant to offset those costs. Staff will begin developing a scope for the project, to present to the Board at a future meeting, with an RFQ seeking consultant services to follow.
- Grants and Assistance
 - Staff had submitted a request under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan. Staff learned that funding under that event was no longer being considered, but that the request may be considered under funding decisions related to Hurricane Dorian.
 - Staff submitted a Letter of Interest ("LOI") under the Hazard Mitigation Grant Program related to Hurricane Dorian for the acquisition of property, and assisted Fire Chief Wells in the submission of an LOI for replacement of a generator; we have been notified that the generator request has been selected for further consideration. Additionally, Staff has had recent discussions with relevant State staff who are reviewing the request for funds for property acquisition and expects to receive updates on this request in the near future.
 - As previously noted, the Town was successfully awarded \$75,000 in funds from the National Fish and Wildlife Foundation - National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan. Staff has received paperwork necessary to finalize this award.
 - As noted, Staff submitted a final application for the National Endowment for the Arts Our Town Grant on August 18, 2020 seeking funds to prepare designs for the renovation of the Town's Skate Park; awards under this grant are not expected to be announced until April 2021, with funds available July 1. Additionally, the Town was awarded \$30,000 in grant funds from the Tourism Board.
 - As previously reported, the Town had submitted a letter of support to participate in a joint grant to fund additional tide gauges to be located in Town, as well as other locations in Dare County. The Town was notified on January 3, 2021 that the collaborative request was selected for funding. Town Staff is working with partners to identified suitable and preferred locations; one gauge is expected to be located on Jennette's Pier, with another located along the Sound (likely in the Village at Nags Head or on Little Bridge).
 - As previously noted, the Town was notified that it was successfully awarded \$2,500 in cost share assistance from the Dare Soil and Water Conservation District through the Community Conservation

Assistance Program for the development of a rain garden at Town Hall to improve local water quality and serve as a Low Impact Development demonstration and education project. Once this award is finalized, Staff will begin working to refine the plan for this improvement.

'Upcoming Meetings and Other Dates

- Friday, January 29 - APA-NC Legislative Committee Annual Meeting (M. Zehner)
- Tuesday, February 2 - Permitting and Inspections; Code Enforcement Staff Mtg
- Wednesday, February 3 - Board of Commissioners Meeting
- Wednesday, February 3 - Planning & Zoning; Environmental Planning; Hazard Planning Staff Mtg
- Thursday, February 4 - OBX CRS Users Group - Presentation on The Nature Conservancy's Satellite Mapping of Flooding Extent
- Wednesday, February 10 - Arts & Culture Committee Meeting
- Thursday, February 11 - Board of Adjustment Meeting
- Tuesday, January 16 - Planning Board Meeting
- Wednesday, January 17 - Board of Commissioners Meeting (tentative)"

Receive Report on Review of Town Outdoor Lighting Regulations; Consider Initiating Further Actions

The agenda summary sheet read in part as follows:

"At their October 7, 2020 meeting, the Board of Commissioners requested that Staff conduct a study of the Town's outdoor lighting regulations, including as they pertain to signage, with consideration of best practices related to both technical aspects and aesthetics. Following review with the Planning Board, Staff is returning to the Board with a Report outlining findings and best practices, conclusions, and recommendations.

'Staff Recommendation/Planning Board Recommendation

Staff welcomes feedback and direction from the Board with respect to this report and the conclusions, and specifically with respect to lighting issues that they perceive in the community, regulations that require improvement, and presented best practices and recommendations. Staff recommends a short list of best practices and recommendations be prioritized as the Board considers options for moving forward. These are highlighted in the Staff Recommendation of the report.

'Staff presented information contained in this memorandum to the Planning Board at meetings on November 17, 2020 and December 15, 2020. The Planning Board was supportive of the conclusions and recommendations included in Staff's report, noting specific findings and best practices that they believed had merit."

Planner Holly White summarized her memo which read in part as follows:

"BACKGROUND

At their October 7, 2020 meeting, the Board of Commissioners requested that Staff conduct a study of the Town's outdoor lighting regulations, including as they pertain to signage, with consideration of best practices related to both technical aspects and aesthetics. Specifically, the Board of Commissioners are concerned that evolving and new lighting technologies have rendered our current regulations (now over 30 years old) obsolete, and result in increased potential for glare, light trespass onto adjacent properties, and more intense lighting visible at greater distances. The Board reiterated the Town's long-standing values for

a dark night sky. Staff confirmed that the Board wished Staff to conduct this review with the input of the Planning Board and return conclusions and recommendations to the Board at a future meeting.

Staff presented information contained in this memorandum to the Planning Board at meetings on November 17, 2020 and December 15, 2020. Generally, the Board was supportive of the observations, conclusions, and recommendations identified by Staff. Specific items referenced by the Board included:

- Support for the idea of businesses turning off or dimming lights during off hours.
- An indication that security lighting is important but should be done in a way that does not create glare or negative impacts to the environment or property owners.
- A suggestion that there needed to be a clearer definition as to what constitutes security lighting.
- The potential for incentives for existing development to modify lighting and requirements for the types of fixtures used for public street lighting.
- Support for the concept of "light zones" for different areas of the Town with different lighting needs.
- The need of gaining public input on potential changes regarding lighting.

In response to the last point noted above, in early January, Staff created and shared an online survey to learn more about community perspectives. The survey went live on January 8, 2021 and is open through January 31, 2021. As of January 26, 274 responses have been received. Staff has provided a summary of the survey responses as an attachment. Generally, survey responses confirmed conclusions and recommendations made in this memo, and responses can inform potential regulatory changes.

EXISTING OUTDOOR LIGHTING REGULATIONS

The Town currently regulates outdoor lighting specifically in Article 10, Performance Standards, Part IV. Outdoor Lighting, of the UDO ([LINK](#)), with the general purpose of preserving the visual integrity of the nighttime environment. These standards apply to commercial development that requires a site plan approval, or the alteration of existing lighting on a commercial site. There are no specific standards that apply to single-family and duplex development, and the regulations specifically indicate that they are not intended to regulate single-family and duplex security lighting.

Beyond the Outdoor Lighting ordinance contained in Article 10, certain aspects of lighting and lighting conditions are regulated in other articles and sections of the UDO; most notably this includes lighting limitations for specific uses contained in Article 7, Supplemental Regulations, lighting limits specific to certain zoning districts contained in Article 8, District Development Standards, and Article 9, the Village at Nags Head SPD- C Zoning Ordinance, standards for street lighting contained in the Town's Subdivision Regulations, and within the Town's Commercial Design Standards. Within the Town's General Code, there are miscellaneous references to lighting, so with references to specific regulations contained in the UDO.

Current regulations address [prohibited lighting](#), [general provisions for all commercial lighting](#), [lighting plan requirements](#), performance standards, and [specific lighting application standards](#) (i.e. parking lots, recreational facilities, signage, etc.). The regulations require lighting plans for commercial development in order to review fixture types, photometry, and overall lighting layout. The focus of the lighting plans is to limit lighting levels by regulating foot-candles at their source and at property boundaries. As noted above, there are lighting regulations for specific uses, as contained in [Article 7. Supplemental Regulations](#); there are certain situations where the regulations in Article 7 are more restrictive than those lighting standards contained in the Outdoor Lighting ordinance. The regulations generally contained in the Outdoor Lighting section utilize and rely on fixture types, location, and photometric readings (i.e. footcandles) to determine compliance with the standards.

'Additionally, current regulations address the potential for light pollution along the Town's ocean and sound shorelines, but not necessarily in an objective manner. These regulations are for aesthetic reasons, but also to limit disturbance to wildlife, including sea turtle and shorebirds that nest and feed on the town's beaches. More information on the effect of light pollution on sea turtle nesting and solutions for addressing this issues is detailed in the Florida Fish and Wildlife Research Institute Technical Report, *Understanding, Assessing, and Resolving Light-Pollution Problems on Sea Turtle Nesting Beaches* ([LINK](#)).

'The Town's signage regulations are contained in Article 10. Performance Standards, Part III Sign Regulations ([LINK](#)); however, requirements for the illumination of signs are contained in [10.37.6. Illuminated Signs](#), of the Outdoor Lighting ordinance; these provisions specify standards for signs lit using fluorescent tubes, as well as standards for the external illumination of signs. The Town's Sign Regulations ordinance does prohibit certain types of lighted signs, such as signs with moving lights, signs with exposed tube lighting (i.e. neon), and digital signs.

'With the exception of the review of permits or inspections of development projects, enforcement of the Town's various lighting regulations is largely reliant on complaints. The majority of complaints received over the last four (4) years have been related to commercial lighting; however, there have been increases in residential lighting complaints, and increases in both residential and commercial complaints associated with LED lighting (see attached spreadsheet).

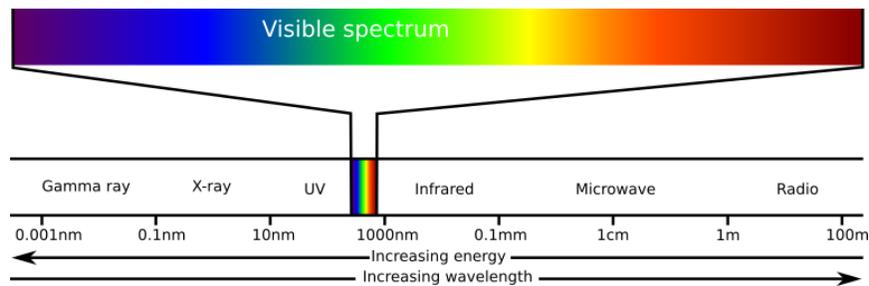
'As previously noted for the Board, Staff reached out to Bob Parks with the Smart Outdoor Lighting Alliance, who was willing to perform a cursory assessment of the Town's Outdoor Lighting ordinance (Mr. Parks' bio may be found at the bottom of the page at the following [LINK](#)). A mark-up of the Town's ordinance with comments from Mr. Parks has been attached.

'BEST PRACTICES

Most relevant resources advocate for regulations in favor of a dark night sky, or, specific to coastal locations, protective of sea turtle nesting, and recommend the following guidelines and best management practices:

- Keep It Low:
 - Be no brighter than necessary.
 - Reduce the wattage of problem lighting. For a given lamp type, reducing the wattage of the luminaire will reduce the amount of light emitted. When changing lamp types or fixture styles, the manufacturer's data on luminance (typically given in lumens) should be consulted.
 - Use lower pole-mounted luminaires or low-mounted luminaires (such as louvered, bollard-type fixtures or path-light fixtures) as a substitute for pole-mounted lighting. Low-mounted luminaries better focus light where it is most needed; the lower a light source is mounted, the smaller the area it will illuminate. In addition, lighting mounted lower will tend to have a greater degree of shielding from the beach by objects on the dune (vegetation, buildings, etc.).
 - Only keep lights on when needed.
 - Only light areas that need lighting.
- Keep it Shielded.

- Replace unshielded fixtures with full-cutoff, fully-shielded luminaires to focus light where it is most needed.
- Replace higher-wattage multidirectional luminaires with lower-wattage directional luminaires.
- Recess luminaires into the underside of architectural features of the roof such as a beam, arch, ceiling, or vault, where available. Recessed sources will be more directional and, if directed downward, will be less visible.
- Minimize lighting from indoor sources onto the beach and estuarine shorelines by turning off lights in rooms not being used at night, tinting or applying window treatments to windows visible from the beach, and closing opaque curtains or blinds after dark.
- Keep it Long:
 - Monochromatic long-wavelength light sources such as amber or red LEDs that produce light at 560 nm or longer are less likely to impact sea turtles.
 - Minimize blue light emissions. Shorter-wavelength light, such as blue and purple, can penetrate more deeply into the water column.



Additionally, in his review, Mr. Parks references use of the BUG rating, which stands for backlight, uplight, and glare. The BUG rating system was developed in partnership between the [Illuminating Engineering Society \(IES\)](#) and [The International Dark Sky Association](#) to better explain how light from specific luminaires can be measured. The purpose of the BUG rating is to create a luminaire classification system that replaces existing cutoff and full cutoff terminology to more comprehensively address light pollution from all directions, not just up into the night sky.

In addition to those general best practices and guidelines, Staff found the following information and resources helpful:

- Guidelines for Good Exterior Lighting Plans - Prepared by [The Dark Sky Society](#) (see attached)
- [Model Lighting Ordinance](#) - International Dark Sky Association
- [Chapter 11 Lighting](#) - Town of Knightdale, NC
- [Section 16G. Outdoor Lighting](#) - Town of Wellesley, MA
- [Understanding, Assessing, and Resolving Light-Pollution Problems on Sea Turtle Nesting Beaches](#) - Florida Fish and Wildlife Research Institute Technical Report

Staff believes that the Town of Knightdale Lighting ordinance is a good representation of these best practices, guidelines, and technical guidance being applied in a community in North Carolina. In some respects, Staff believes this ordinance could serve as a model for any update to the Town's ordinance.

POLICY CONSIDERATIONS

The [2017 Comprehensive Plan](#) addresses lighting within the Land Use Section (3.2) under Site Development Characteristics (Section 3.2.4.; page 3-26); some observations of note included in this Section are as follows:

- The Town has held a longstanding commitment of being a dark sky community.
- The town should evaluate and modernize the lighting ordinance in the future with revisions to reflect best practices in being a dark sky community. The town may even consider applying to the IDA for the Dark Sky designation.
- It should be noted that there are no lighting regulations that currently apply to residential properties. The town may wish to consider minimum regulations that limit nuisance lighting and glare to adjacent properties or to townrights-of-way.
- The town has always regulated light pollution along the shorelines including the ocean and sound waters. This is for aesthetic reasons and to limit disturbance to habitats including marine turtle species that nest on the town's beaches. The town should continue this practice and evaluate future ordinance revisions to strengthen and clarify these regulations.

The Land Use Section describes the desired characteristics of preferable development in Nags Head for the future; this section of the Plan not only addresses the physical characteristics of buildings, but the broader context of community character. Included in this description (page 3-5), are the following references to lighting and signage:

"A visible and dark night sky maintained by lighting that is minimal and carefully designed. Signage that provides adequate communication but does not dominate the landscape."

In addition, the following policies and actions support the review and update of the lighting ordinance as well as preservation of the dark night sky.

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

LU-16a: Evaluate and modernize the lighting ordinance to reflect best practices for being a dark sky community.

LU-16b: Research and consider applying to the IDA for the Dark Sky designation.

LU-16c: Explore the feasibility of minimum regulations for residential properties that limit nuisance lighting to adjacent properties or town rights- of-way associated with glare or light trespass.

LU-16d: Explore efficient low-level lighting along multi-use pathways and at crosswalks to promote safety while preserving the night sky. The town should resist proposals to provide overhead lighting along roadway corridors.

LU-17 Maintain current regulations which prohibit lighting of the ocean beach or estuarine waters to protect marine species and limit unnecessary intrusions into natural areas.

CONCLUSIONS

Based upon the above, steps that the Town can take to address glare and light trespass can include one or more of the following options:

- Lighting Assessment:
 - Conduct a lighting assessment to determine areas within the Town where glare and light trespass may be a problem.
 - Assess and document problematic lighting that is inconsistent with the overall goal of maintaining a dark night sky.
 - Work with property owners to correct violations.
 - Utilize this information to inform development of future regulations or amendments.
- Update the Ordinance to:
 - Regulate lighting through lighting zones that are appropriate to specific areas of the town. Areas along the corridor and commercial areas would be regulated with more leniency than areas closer to ocean and estuarine shorelines that are more environmentally sensitive. See the [Model Lighting Ordinance](#) from the International Dark Sky Association (page 5).
 - Specify appropriate regulations and measurements to address lighting intensity, illuminance, color, glare, and fixture classification. This may include but is not limited to:
 - a. Luminance - the intensity of light emitted from a surface per unit area in a given direction;
 - b. Lux - a unit that measures light illumination on a surface or area that is one meter from a uniform point source;
 - c. Light Trespass - the shining or spillage of direct light produced by a luminaire behind the boundaries of the parcel on which the luminaire is located; and
 - d. Glare - light emitted from a luminaire with an intensity great enough to produce annoyance, discomfort, or reduction in a viewer's ability to see.
 - Consider minimum regulations for outdoor residential lighting; this may include regulations to address lighting levels of floodlights, angle of floodlighting, color temperature, and/or prohibited lighting types.
 - Develop separate standards for new development; this will allow flexibility for existing development. See [ordinance language](#) from Atlantic Beach, FL.
 - Utilize *best practices* when updating the ordinance; see best management practices outlined above, reference Bob Park's mark-up of the existing ordinance (attached), and the [Town of Knightdale Lighting Ordinance](#). This may include the update of definitions and terminology as well as the inclusion of graphics to better visualize regulations.
 - Review and assess the number and size of allowed signage and the manner in which signs are allowed to be lit. For example, while exposed neon tubing and the like are prohibited (except in limited instances), and the use of fluorescents is regulated, internally illuminated signage is generally allowed; depending on the number and size of signs, internally illuminated signs can appear to be excessively lit. Staff would recommend consideration of requirements, with limits, for external illumination of signage in some instances, the requirement for reverse back-lit signage (aka halo lit signage), and/or a prohibition on the internal illumination of signs of a certain size or beyond a certain number.

- Education and Outreach:
 - Develop outreach and education that promotes desirable lighting, the Town's values for a dark night sky, and the negative side effects of lighting the ocean and estuarine shorelines.
 - Partner with [NEST](#), Jennette's Pier, Sea Grant, Coastal Studies Institute, and the Outer Banks Visitors Bureau to develop/distribute educational materials.
 - Include lighting related education with other Town distributed property owner and visitor information. Publicize the impact of light trespass on the beach to sea turtle and shorebird breeding and feeding; encourage the installation of timers and that residents and visitors to turn off lights in upper floors of rental homes with direct view of the beach.
 - Work with Dominion Power to ensure that they are aware of the Town's policies, expectations, and regulations pertaining to lighting; develop specifications for street and parking lot lights.

'STAFF RECOMMENDATION

Staff welcomes feedback and direction from the Board with respect this report and the conclusions, and specifically with respect to lighting issues that they perceive in the community, regulations that require improvement, and presented best practices and recommendations.

'Staff would recommend that the following best practices and recommendations be prioritized as the Board considers options for moving forward:

- Conduct a lighting assessment to document problematic lighting in violation of the lighting ordinance and work with property owners to correct violations.
- Develop educational materials about lighting regulations and best practices; work with partners to distribute and educate homeowners and visitors.
- At a minimum, update the UDO to address changes in lighting technology (i.e. LED technologies) that address lighting intensity, illuminance, color, and glare as described above.
- Consider development of specific standards for lighting along the ocean and estuarine shorelines, due to their environmental sensitivity and/or specific standards that apply to residential structures or apply geographically to certain areas of the Town (i.e. lighting zones as described above).
- Consider limiting lighting during non-business hours for commercial sites and signage.
- Consider limits on lighting of signs of certain sizes and/or limiting the number of lit signs; consider requiring or prohibiting certain lighting styles.
- Develop common technical specifications for streetlight fixtures and work with Dominion Power to install and retrofit fixtures that are consistent with Town ordinances.

'Staff anticipates that the feedback from the Board of Commissioners will be utilized to prepare draft amendments to the UDO.'

Planner Holly White described best practices with slides which highlighted the following standards for lighting: Keep It Low; Keep It Shielded; and Keep It Long.

Comr. Renée Cahoon stated that what was presented by staff does not address the issue that brought this discussion forward which was commercial lighting in the Town that could be seen across the water from Manteo.

Mayor Cahoon suggested that staff review commercial property and cut to the chase in some of the regulations that contributed to the original problem. There is no need for a lighting plan for residential uses; he questioned if there was a middle ground between a lighting plan and waiting for a complaint?

Comr. Brinkley stated that the UDO needs to be updated to address new lighting technology with commercial businesses - residential standards do not need to be addressed.

Comr. Renée Cahoon - only address the commercial aspect; she feels it is more the new technology where there are issues.

Comr. Fuller said that there is no need to address anything residential - he would like to pursue the specific issue that brought this forward with a specific action. Also, everything presented today was very interesting but he does not want it pursued at the expense of taking action on the original issue. He would also like the lighting, installed on US 158 at the former Kelly's Restaurant, removed as the reason for that installation is no longer needed.

Mayor Pro Tem Siers agreed with Board members - he feels that staff provided good information but it does not bring us any closer to the issue that started the discussion.

It was Board consensus that staff review the commercial lighting issue that brought this matter forward, research new lighting technology and prepare proposed ordinance amendments for Board consideration.

NEW BUSINESS

Committee Reports

Gov-Ed meeting - Comr. Renée Cahoon reported that the Gov-Ed Committee recently met, welcomed a new member from the Town of Duck, hired a new assistant, determined the Committee's budget was in good shape, and approved several grant applications - in a very productive meeting.

Dare County Tourism Board - Comr. Fuller reported that there is movement re: Dare County Tourism Board taking some action concerning paying the Town for its share of the Event Site. In addition, he noted that the Event Site Development Committee will be meeting again soon.

Soundside Road/Jockey's Ridge Committee - Mayor Pro Tem Siers reported that the Soundside Road/Jockey's Ridge Committee met recently and continues to work on a resolution; he anticipates that a report will be forthcoming to the Board. Mayor Cahoon pointed out that a letter had been received from a property owner on Soundside Road concerning this issue and he confirmed all Board members had received it.

Consideration of appointments/reappointments to Planning Board / Board of Adjustment

The summary sheet read in part as follows:

"Appointment to Planning Board

- Megan Vaughan's term expires February 7, 2021. She is interested in being re-appointed.

'Appointment to Board of Adjustment

- Tina Adderholdt's (Alternate) term expires February 21, 2021. She is interested in being re-appointed.

'Attached please find associated candidate and tracking charts."

MOTION: Mayor Pro Tem Siers made a motion to reappoint Megan Vaughan to the Planning Board for another three-year term, pending her acceptance. The motion was seconded by Comr. Brinkley. The Town Clerk polled each Board member and the motion passed unanimously.

MOTION: Comr. Brinkley made a motion to reappoint Tina Adderholdt as an Alternate on the Board of Adjustment for another three-year term. The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled each Board member and the motion passed unanimously.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Town Attorney John Leidy stated that he had nothing new to report at this time.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Beach Nourishment Project

- Consideration of initiation of Municipal Service District process
- Request for formal action to proceed with Beach Nourishment Project

The agenda summary sheet read in part as follows:

"Consideration of initiation of Municipal Service District process

'The Town has recently completed its second beach nourishment project and is preparing for future shoreline management efforts. The Board of Commissioners held a workshop on January 27, 2021 to discuss beach nourishment, including a review of project alternatives to conduct a Hurricane Dorian FEMA restoration project. The board also discussed the merits of placing additional sand to supplement the FEMA project to provide greater project longevity. With both projects the goal is to align the town's projects with the other Dare County towns who are planning combined FEMA/local projects in 2022 and scheduled maintenance in 2027/28.

'Two alternatives were considered: Alternative 1 involves a FEMA project supplemented with Coastal Storm Damage Mitigation (CSDM) fund grant revenue. The total sand placement would be 567,000 cu/yds located in reaches 2, 3, and 4. Alternative 2 involves a FEMA+CSDM+Town project placing 1.47 million cu/yds in reaches 1-4 (10 miles). At the upcoming meeting, staff would request that the board finalize its decision regarding the two proposed alternatives (see attached sheet - Attachment #2 - with required actions).

'It was acknowledged by the board that additional revenue may be needed to complete this project. Furthermore, the board discussed future funding strategies for nourishment and noted that additional

sources of revenue will be needed for future projects, given rising project costs and the uncertainty of available external revenue sources. The board discussed the merits of creating new municipal service districts to provide additional revenue sources to the town. This would also allow the board to more evenly distribute project costs to portions of the town that realize the greatest benefits. A municipal service district (MSD) is a defined area within a town where additional property tax is levied in order to provide projects or extra services that benefit the properties in that district. The town has demonstrated a number of benefits from beach nourishment and shoreline management activities, including protection of properties on the oceanfront and directly adjacent to the ocean, protection of infrastructure such as roads, waterlines, sewage systems, electrical services, and beach accesses, and maintaining a recreational beach that is attractive and usable by the public, free of structures and debris. These benefits can be assigned to different parts of the community at different levels, with oceanfront properties having the greatest benefit. Properties adjacent to but not directly on the ocean also benefit from reduced flooding and impacts to infrastructure, as well as increased property values due to their proximity to a well-maintained recreational beach. The entire town also receives a series of benefits, but to a lesser extent than these other areas. At its January 27th workshop, the board proposed creating four additional MSDs. These would include the following:

- From Whalebone Junction to Bonnett Street, to include all properties east of US 158
- From Whalebone Junction to the southern town limits, to include all properties in South Nags Head
- From Bonnett Street to Eighth Street, to include all properties east of US 158
- From Bonnett Street to Eighth Street, to include all properties east of NC 12

'It is important to note that in order to include a property within an MSD, the project or services delivered must be provided within the MSD boundaries. Therefore, in the future, properties along the oceanfront would be included in two MSDs. It is conceived that the new MSDs could be taxed at a nominal rate to pay for current planning activities as well as to supplement the town's beach nourishment fund balance, which will be utilized to fund a portion of the 2022/23 project.

'Attachment #1 is a map showing the current and proposed MSD boundaries. Also included are several slides describing the process for creating MSDs. At the upcoming meeting, staff would request that the board initiate the MSD process by directing the preparation of a report (per State Statute) depicting the boundaries of the proposed MSD, a statement identifying the services to be provided, and plan for providing those services.

'Attachment #2, explaining the required actions depending on which Alternative project is chosen, read in part as follows:

'Request for formal action to proceed with Beach Nourishment Project

'Staff is requesting formal action be taken at the February 3rd Board meeting on the items listed below.

'If proceeding with Alternative 1 (567,000 cu/yds of sand placement), please address #2, #4, #6.

'If proceeding with Alternative 2 (1.47 million cu/yds of sand placement), please address #1, #3, #5, #7.

'**1** Action to authorize staff to proceed forward with the planning, design, permitting, bidding and construction administration for an approximate 1,472,500 cy Post-Dorian beach nourishment project along the existing 10-mile project length.

- '2 Action to authorize staff to proceed forward with the planning, design, permitting, bidding and construction administration for an approximate 567,000 cy Post-Dorian beach nourishment project along Reaches 2, 3, and 4.
- '3 Action to authorize staff to modify the existing Costal Storm Damage Mitigation (CSDM) Grant application to include the FEMA Public Assistance request sand volume of 508,070 cy, CSDM grant award amount of \$1,408,247.19, and approximate Town of Nags Head sand volume addition of 881,648 cy.
- '4 Action to authorize staff to modify the existing Costal Storm Damage Mitigation (CSDM) Grant application to include the FEMA Public Assistance request sand volume of 508,070 cy, CSDM grant award amount of \$1,408,247.19.
- '5 Action to authorize staff to modify the existing FEMA Category G, Public Assistance application to include the FEMA Public Assistance request amount of 508,070 cy, CSDM grant award amount of \$1,408,247.19, and approximate Town of Nags Head sand volume addition of 881,648 cy.
- '6 Action to authorize staff to modify the existing FEMA Category G, Public Assistance application to include the FEMA Public Assistance request amount of 508,070 cy, CSDM grant award amount of \$1,408,247.19.
- '7 Action to authorize the Interim Town Manager to execute a contract change order in the amount of \$195,855 with Moffat & Nichol for the performance of additional offshore borrow area; Investigation for vibracore sampling collection and geotechnical reporting, as required, for environmental permitting of a beach replacement/maintenance project with an approximate volume of 1,472,500 cy. At this current time, it is uncertain whether the Division of Coastal Management (DCM) will require supplemental geotechnical investigation for permitting of the offshore borrow source. If it is determined the hydrographic survey and analysis is sufficient for permitting needs, no action will be taken on this proposed contract amendment. If DCM determines vibracore sampling and analysis is required, the Board authorization will permit the Interim Town Manager to execute a contract change order, without delay to the project schedule. The geotechnical work will be conducted through a joint effort of Moffat & Nichol and Athena Technologies. A copy of the Athena Technologies/Moffat & Nichol proposal is attached. The associated Budget Amendment in support of the geotechnical work is also attached.

'It should be noted the additional geotechnical work is not anticipated to be required by the Division of Coastal Management (DCM) for permitting of the offshore borrow source for the smaller scale nourishment project. However, if DCM does require additional geotechnical work, a subsequent change order request will be submitted for Board action at the March meeting. The project schedule for the smaller scale project provides a greater level of flexibility in the project schedule as compared to the 1.472 m cy project."

Interim Town Manager Sparks stated that the Board had two items to consider based on last week's discussion: 1) Action to take re: the additional four (4) MSD creation and 2) The choice of either Alternative #1 (FEMA project supplemented with coastal storm mitigation grant funds with 567K cy of sand in Reaches 2, 3, and 4) or Alternative #2 (FEMA project with coastal storm mitigation grant and Dare County funds with 1.47M cy of sand in all Reaches).

Municipal Service Districts

MOTION: Comr. Renée Cahoon made a motion to direct staff to prepare the maps/study/report to implement the municipal service districts as listed - with the use of "Gulfstream Street" in place of

"Whalebone Junction". The motion was seconded by Comr. Brinkley. The Town Clerk polled Board members and the motion passed unanimously.

Board members spoke of their choice of Beach Nourishment Project Alternative:

Mayor Cahoon said that after last week's workshop he favored Alternative #2 but after thinking about it further what persuaded him was looking at the breakdown staff prepared and reviewing the mobilization and demobilization costs - there was no efficiency with the larger project. He was in favor of the Alternative #1 project so as not to pass up the additional FEMA financing.

Mayor Pro Tem Siers felt that the return from Alternative #1 project was greater; in addition, he was not sure that all the work could be done with the larger project in a timely manner.

Comr. Fuller was also in favor of the smaller project.

Comr. Renée Cahoon said that she left last week's meeting thinking of Alternative #2; she said that she appreciates staff's clarity in the presentation; she supports the Alternative #1 project.

Comr. Brinkley stated that he prefers the Alternative #1 project for the reasons noted by the other commissioners.

Beach Nourishment Project - Alternative #1

MOTION: Comr. Brinkley made a motion to proceed with paragraph 2 as follows:

- 2 Action to authorize staff to proceed forward with the planning, design, permitting, bidding and construction administration for an approximate 567,000 cy Post-Dorian beach nourishment project along Reaches 2, 3, and 4.

The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled the Board members and the motion passed unanimously.

MOTION: Comr. Renée Cahoon made a motion to proceed with paragraph 4 as follows:

- 4 Action to authorize staff to modify the existing Coastal Storm Damage Mitigation (CSDM) Grant application to include the FEMA Public Assistance request sand volume of 508,070 cy, CSDM grant award amount of \$1,408,247.19.

The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled the Board members and the motion passed unanimously.

MOTION: Mayor Pro Tem Siers made a motion to proceed with paragraph 6 as follows:

- 6 Action to authorize staff to modify the existing FEMA Category G, Public Assistance application to include the FEMA Public Assistance request amount of 508,070 cy, CSDM grant award amount of \$1,408,247.19.

The motion was seconded by Comr. Fuller. The Town Clerk polled the Board members and the motion passed unanimously.

Town Engineer David Ryan explained the maximum amount needed to cover either Alternative - "up to" just in case additional geo-tech work is needed.

MOTION: Comr. Brinkley made a motion to proceed with paragraph 7 as follows (modified to read "approximate volume of up to"):

- 7 Action to authorize the Interim Town Manager to execute a contract change order in the amount of \$195,855 with Moffat & Nichol for the performance of additional offshore borrow area; investigation for vibrocore sampling collection and geotechnical reporting as for environmental permitting of a beach replacement/maintenance project with an approximate volume of up to 1,472,500 cy. At this current time, it is uncertain whether the Division of Coastal Management (DCM) will require supplemental geotechnical investigation for permitting of the offshore borrow source. If it is determined the hydrographic survey and analysis is sufficient for permitting needs, no action will be taken on the proposed contract amendment.

The motion was seconded by Comr. Renée Cahoon. The Town Clerk polled the Board members and the motion passed unanimously.

MOTION: Comr. Brinkley made a motion to proceed with paragraph 8 as follows:

- 8 Additional funding of \$220,000 is requested from the beach nourishment capital reserve fund balance due to the uncertainty of the need for additional geotechnical investigation within the beach nourishment project borrow area. Since timing is the critical path for this project, staff is notifying the Board of this future request to authorize the Interim Town Manager to execute a change order to the existing Moffat & Nichol contract for an amount not to exceed \$220,000. As necessary, this authorization will permit the change order process to be expedited and reduce potential delays to the project schedule. If the funds are not required, staff can submit a request at a future meeting for an amendment to return the funds to the Beach Nourishment Maintenance Capital Project Fund.

The motion was seconded by Comr. Renée Cahoon. The Town Clerk polled the Board members and the motion passed unanimously.

Amendment #1 to the Beach Nourishment Maintenance Capital Project Ordinance

The Finance Director's clarification for Amendment #1 to the Beach Nourishment Maintenance Capital Project Ordinance request read in part as follows:

"Additional funding of \$220,000 is requested from the beach nourishment capital reserve fund balance due to the uncertainty of the need for additional geotechnical investigation within the beach nourishment project borrow area. The field data for the hydrographic survey was recently completed to aid in the evaluation of the sand infill within the existing borrow area. This will be the basis for determination of the need for additional geotechnical work. Since timing is the critical path for this project, staff notified the Board of this future request to authorize the Interim Town Manager to execute a change order to the existing Moffat & Nichol contract for an amount not to exceed \$220,000. This request is formally considered at the regularly scheduled February 3, 2021 Board of Commissioners meeting. As necessary, this authorization will permit the change order process to be expedited and reduce potential delays to the project schedule."

MOTION: Comr. Renée Cahoon made a motion to adopt Amendment #1 to the Beach Nourishment Maintenance Capital Project Ordinance as presented. The motion was seconded by Comr. Brinkley. The Town Clerk polled the Board members and the motion passed unanimously.

The Capital Project Ordinance, Amendment #1, as adopted, is attached to and made a part of these minutes as shown in Addendum "C".

Budget Amendment 10.3

MOTION: Comr. Brinkley made a motion to adopt Budget Amendment 10.3 to move funds as needed for the Beach Nourishment Project geo-technical investigation as presented. The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled the Board members and the motion passed unanimously.

BOARD OF COMMISSIONERS AGENDA

Comr. Fuller - Email from John CeCe re: sand fencing

Comr. Fuller brought up the email the Board had received from John CeCe, former field representative from Division of Coastal Management, who provided some suggestions concerning the installation of sand fencing.

It was Board consensus that staff review and discuss Mr. CeCe's sand fencing suggestions at an upcoming Board of Commissioners meeting.

Comr. Fuller - Letter from Village at Nags Head Property Owners Association President Milton Jernigan

Comr. Fuller asked if staff had responded to the letter received from Village POA President Milton Jernigan concerning extension of the Town's multi-use path in the Village.

Interim Manager Sparks stated that he would address Mr. Jernigan's request for an extension of the multi-use path in a section of the Village during the Board's Budget Planning Workshop later today.

MAYOR'S AGENDA

Mayor Cahoon - Discussion of Town Manager Recruit Ad/Brochure

Board members discussed the Town Manager Recruit ad/brochure, prepared by Developmental Associates, and the possibility of requiring Town residence for the manager. Board members agreed to require residence in Nags Head for the Town Manager position - with a reasonable amount of time provided to find a suitable location.

It was Board consensus that the Town Manager recruitment ad/brochure be modified to require the Town Manager position to live within the confines of the Town and to allow a reasonable amount of time to make that transition. Interim Manager Sparks is to follow-up with Developmental Associates to have them make the modification.

RECESS FOR LUNCH

MOTION: Mayor Pro Tem Siers made a motion to recess for lunch and to reconvene at 1:30 p.m. to participate in the Budget Planning Workshop. The motion was seconded by Comr. Brinkley. The Town Clerk polled Board members and the motion passed unanimously. The time was 12:17 p.m.

RECONVENE FROM LUNCH

The Board reconvened from lunch at 1:34 p.m.

BUDGET PLANNING WORKSHOP

CALL TO ORDER

Mayor Cahoon called the Budget Planning Workshop to order at 1:34 p.m.

Mayor Cahoon noted that Comr. Renée Cahoon was not in attendance for the Budget Planning Workshop.

Interim Town Manager Greg Sparks explained that this is a pre-budget planning workshop so that Board members can let staff know of any specific/additional priorities.

He spoke of the following scheduled projects: Employee Compensation Study; Public Works Master Plan; Building Security Plan; CIP scheduled for Board review on March 24th where the multi-use path extension detailed in the letter from the Village Property Owners Association will be addressed; the changeover of water meters.

Board members spoke of individual projects they would like to see:

Mayor Cahoon - Public Works improvements; work with staff re: the use of reserved funds; debt on the fuel tank clarified.

Comr. Brinkley - Public Works Master Plan; questioned the debt on the fuel tank; anxious for the results of the upcoming Pay and Class Study; would like to see departmental requests considered after cuts made last year for COVID.

Comr. Fuller - Would like to see a decision made re: removing/keeping the AEC - feels no work can be done until that decision is made; Dep Mgr Garman suggested a discussion at the February mid-month meeting; did a delay in the CIP process cause any compression or is one year just being dropped; questioned how far COVID has put the Town behind budget or is there another year of being COVID-cautious.

Mayor Pro Tem Siers - he agrees with Comr. Fuller's comments; he feels the Town is behind with vehicle purchase and maintenance; since he, Mayor Cahoon, and Comr. Fuller came onto the Board they have spoken of stormwater and other changes but he has not seen much finalized. Infrastructure projects need to be budgeted; he feels there needs to be more of a balance between items needed every day and projects such as beach nourishment.

