



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS (VIRTUAL)  
REGULAR MEETING (COVID-19)  
WEDNESDAY, APRIL 7, 2021**

The Nags Head Board of Commissioners met in the Board Room, located at 5401 S Croatan Highway, Nags Head, North Carolina and via the Zoom Platform, on Wednesday, April 7, 2021 at 9:00 a.m. for a Regular Meeting.

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; Attorney Lauren Arizoga-Womble; Karen Snyder; Amy Miller; Richard Hanson; and Town Clerk Carolyn F. Morris

Via Zoom: Michael Zehner; Kelly Wyatt; Kylie Shephard; John DeLucia; Brian Rubino

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 am.

Comr. Brinkley remembered former Kill Devil Hills Police Officer Lt Bill Walker who recently passed away. He was very active in community programs and Comr. Brinkley asked that Lt. Walker be remembered with a few moments of silence. The Pledge of Allegiance followed.

Mayor Cahoon recognized a key person in the development of Nags Head - Mr. Russell Twiford - who passed away earlier this year; he donated land for many good purposes on the Outer Banks to include nature preserves.

Comr. Fuller also spoke of Russell Twiford who was a lifelong friend of his, of the Outer Banks, and particularly of Nags Head.

Comr. Renée Cahoon remembered Russell Twiford as someone who did a lot for and loved the Town of Nags Head - he was a true southern gentleman.

**ADOPTION OF AGENDA**

MOTION: Mayor Pro Tem Siers made a motion to approve the April 7<sup>th</sup> agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

**RECOGNITION**

Fire Chief Randy Wells introduced Firefighter/EMT William Reynolds who was welcomed by the Board to Town employment.

Public Works Facilities Superintendent Mike Norris introduced Sanitation Equipment Operator I Heath Taylor who was welcomed by the Board to Town employment.

Police Chief Phil Webster introduced Police Officer/K-9 Matthew Huntingford who was congratulated by the Board for ten years of employment.

PROCLAMATION - Child Abuse Prevention Month - April 2021

Mayor Cahoon read the Child Abuse Prevention Month Proclamation as follows:

“Whereas, children are vital to our state’s future success, prosperity and quality of life as well as being our most vulnerable assets; AND

‘Whereas, all children deserve to have safe, stable, nurturing homes and communities they need to foster their healthy growth and development; AND

‘Whereas, child abuse and neglect is a community responsibility affecting both the current and future quality of life of a community; AND

‘Whereas, communities that provide parents with the social support, knowledge of parenting and child development, and resources they need to cope with stress and nurture their children, ensure all children grow to their full potential; AND

‘Whereas, effective child abuse prevention strategies succeed because of partnerships created among citizens, human service agencies, schools, faith communities, health care providers, civic organizations, law enforcement agencies, and the business community.

‘Therefore, we, the Town of Nags Head Board of Commissioners do hereby proclaim:

‘April 2021 as Child Abuse Prevention Month and call upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to increase their participation in our efforts to support families, thereby preventing child abuse and strengthening the communities in which we live.”

MOTION: Comr. Brinkley made a motion to adopt the Child Abuse Prevention Month Proclamation as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

RESOLUTION - Thanks Outer Banks - A Week Of Gratitude - May 9 - 15, 2021

Mayor Cahoon read the Thanks Outer Banks - A Week Of Gratitude Resolution as follows:

“Whereas, the Outer Banks has a 434-year history of resilience and strength coupled with a powerful sense of community; and

'Whereas, the world has suffered a horrible pandemic with over 500,000 people dying from COVID-19 in the United States alone; and

'Whereas, Dare County has not been spared the ravages of the pandemic to our personal health, to our personal lives, our lifestyles, and to our economy; and

'Whereas, vaccines are now being provided that give us hope for our future health and well-being; and

'Whereas, the Outer Banks has pulled through together – from families to first responders to front line workers to medical facilities – with Courage, Compassion and Strength to get past the worst of the pandemic.

'Now, Therefore, be it Resolved, that the Nags Head Board of Commissioners does hereby declare May 9 – 15, 2021 as "Thanks, Outer Banks!" – A Week of Gratitude - And urges all citizens and businesses to participate to show their gratitude.

'Be It Further Resolved that Town officials and employees are encouraged to support the efforts of "Thanks, Outer Banks!" showing the Town's gratitude for all that has been done to move forward."

MOTION: Comr. Renée Cahoon made a motion to adopt the Thanks Outer Banks Resolution as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

With Board concurrence, Mayor Cahoon moved Public Comment to the current place on the agenda.

## **PUBLIC COMMENT**

### PUBLIC COMMENT - RICHARD HANSON

Richard Hanson, resident of Linda Lane in Old Nags Head Place Subdivision; spoke concerning flooding in the neighborhood; since February 2021 he has been working with staff and a plan has been developed; he is asking the Board to fund the work that is proposed; he has a pump system that allows him to get into his driveway; the problem is that there are 32 houses that do not have culverts under their driveways. Photographs were displayed that show some of the flooding issues in the Old Nags Head Place Subdivision and are attached to and made a part of these minutes as shown in Addendum "A". He asked that the Board consider funding the work this fiscal year.

### PUBLIC COMMENT – ADNAN JALIL

Mayor Cahoon noted that there was one written comment received from Adnan Jalil concerning the Soundside Road/Jockey's Ridge access issue; he read the email which encouraged the Board to approve and act on the recommendations made by the Soundside Road/Jockey's Ridge Working Group; Mr. Jalil's comments are attached to and made a part of these minutes as shown in Addendum "B".

Comr. Fuller pointed out that additional letters with the same sentiment were forwarded to the Board. Mayor Cahoon said that he was only aware of the one sent to the "Public Comment" mailbox; he stated that he would read others later in today's meeting if located.

PRESENTATION - Update of Dowdy Park Farmers' Market - Recap of 2020; Plans for 2021

Dep Planning Director Kelly Wyatt introduced the agenda item re: Update of the Dowdy Park Farmers' Market; Town Arts and Culture Committee Chair Peggy Saporito spoke of the accomplishments of the committee and of future Farmers Markets and other events to be held at the Park; she provided an update of last year's events and plans for 2021 events; she thanked Paige Griffin for her valuable assistance to the committee and to the Town. Ms. Saporito thanked the Board for its continued support of the Town's artistic vision in support of the Arts and Culture Committee.

Dowdy Park Coordinator Paige Griffin presented a brief powerpoint presentation updating the Board of the successes of the past year and the safety measures conducted during COVID.

Mayor Cahoon asked about the donation of the Don Bryan self portrait; Comr. Fuller said that the painting was offered by Mr. Bryan's estate to Village Realty who then donated it to the Town for display and inclusion in the Town's artwork collection.

**CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #13 to FY 20/21 Budget

Consideration of Tax Adjustment Report

Approval of minutes

Consideration of FY 2020/2021 equipment and vehicle financing resolutions

Consideration of modification to Consolidated Fee Schedule re: Dowdy Park Farmer's Market Vendor Fee

Request for public hearing to consider text amendments to the UDO pertaining to electric vehicle battery charging and battery exchange stations

Request for public hearing to consider text amendments to the Unified Development Ordinance to update references in the Stormwater, Fill and Runoff Management Ordinance for regulatory reference manuals

**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 #13, as approved, is attached to and made a part of these minutes as shown in Addendum "C".

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

FY 20/21 Equipment and vehicle financing resolutions

The memo concerning FY 20/21 equipment and vehicle financing, as approved, read in part as follows:

"Admin Services has obtained financing quotes from the following financial institutions:

	Interest Rate	Fees
Southern Bank & Trust	1.25%, 1.65%	\$150
Towne Bank	1.57%, 1.91%	\$0
First National Bank	1.73%, 1.76%	\$0
PNC	Unable to bid	
Truist	Unable to bid	

'Staff has included the proposal and amortization schedules from Southern Bank & Trust Company. The lowest total bid in aggregate has been selected. Staff is recommending accepting the proposal received from Southern Bank & Trust, which offered the most competitive financing bid within the requested financing guidelines.'

The resolution approving the 3-year financing, as adopted, read in part as follows:

"*WHEREAS:* The Town of Nags Head (the "Town") has previously determined to undertake a project for the financing of vehicles and equipment, (the "Project"), and the Town Manager has now presented a proposal for the financing of such Project.

'BE IT THEREFORE RESOLVED, as follows:

1) The Town hereby determines to finance the Project through Southern Bank & Trust Company, in accordance with the proposal dated March 26, 2021. The amount financed shall not exceed \$312,008.00 the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.25%, and the financing term shall not exceed two (2) years from closing.

2) All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.

3) The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Director is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Director shall approve, with the Finance Director's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4) The Town intends that the adoption of this resolution will be a declaration of the Town's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the Southern Bank & Trust Company financing described above. The Town intends that funds that have been advanced, or that may be advanced, from the Town's general fund, or any other Town fund related to the project, for project costs may be reimbursed from the financing proceeds.

5) All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately."

The resolution approving the 5-year financing, as adopted, read in part as follows:

"*WHEREAS:* The Town of Nags Head (the "Town") has previously determined to undertake a project for the financing of vehicles and equipment, (the "Project"), and the Town Manager has now presented a proposal for the financing of such Project.

'BE IT THEREFORE RESOLVED, as follows:

- 1) The Town hereby determines to finance the Project through Southern Bank & Trust Company, in accordance with the proposal dated March 26, 2021. The amount financed shall not exceed \$1,126,780.00 the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.65%, and the financing term shall not exceed four (4) years from closing.
- 2) All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.
- 3) The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Director is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Director shall approve, with the Finance Director's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.
- 4) The Town intends that the adoption of this resolution will be a declaration of the Town's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the Southern Bank & Trust Company financing described above. The Town intends that funds that have been advanced, or that may be advanced, from the Town's general fund, or any other Town fund related to the project, for project costs may be reimbursed from the financing proceeds.
- 5) All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately."

The Consolidated Fee Schedule modification summary sheet, as approved, read in part as follows:

"At the April 7<sup>th</sup> Board of Commissioners meeting, staff is requesting approval to modify the Dowdy Park Farmer's Market Vendor fee.

'With the increase in the number of markets being proposed in the 2021 Season, the Arts & Culture Committee and Staff are recommending an increase in the vendor fee from \$125 to \$240 (16 markets @ \$15/market day). Please see the attached."

The Request for Public Hearing, as approved, read in part as follows:

"Given the Town's interest in the installation of an electric vehicle charging station, as well as recent private interest, Staff determined that amendment to the Town's regulations concerning these facilities was necessary. Generally, there are some inconsistencies within current regulations with respect to terminology, where such charging facilities may be located based upon zoning district, and the standards that such facilities are subject to. The Board of Commissioners, at their March 3, 2021 meeting, authorized Staff to pursue amendments to the Unified Development Ordinance to address necessary changes.

'Staff Recommendation/Planning Board Recommendation  
Planning staff recommends that the public hearing be scheduled.

'At their March 16, 2021 meeting the Planning Board voted 7-0 to recommend approval of the proposed text amendments as presented."

The Request for Public Hearing, as approved, read in part as follows:

"The proposed text amendments would update various sections of the code to reflect the recently updated Town of Nags Head Low Impact Development and Stormwater Reference Manual as well as reference the current version of the NCDEQ Stormwater Design Manual. The updated Town of Nags Head Low Impact Development and Stormwater Reference Manual will be presented for a separate action/adoption.

'Staff Recommendation/Planning Board Recommendation  
Planning staff recommends that the public hearing be scheduled.

'At their March 16, 2021 meeting the Planning Board voted 6-0 to recommend approval of the proposed text amendments as presented."

Soundside Road/Jockey's Ridge Working Group comments received

Mayor Cahoon reported that the public should be aware of additional public comments that writers wish to have entered into the record that will be read under the Mayor's agenda.

**PUBLIC HEARINGS**

Public Hearing to consider text amendments to the UDO pertaining to the various Commercial Mixed-Use use types and the various uses allowed therewith

Attorney John Leidy introduced the Public Hearing to consider text amendments to the UDO re: various Commercial Mixed-Use use types and the various uses allowed therewith.

Mayor Pro Tem Siers asked to be recused as he may benefit based on the decision made.

**MOTION:** Comr. Fuller made a motion to recuse Mayor Pro Tem Siers from discussion or action on this item. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

The time was 9:50 a.m.

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

"At their February 17, 2021 meeting, the Board of Commissioners directed the initiation of a text amendment to include religious complex as an allowed use within shopping centers. The Board scheduled a public hearing to consider this amendment at their meeting on April 7, 2021.

'The Planning Board considered these amendments at their meeting on March 16, 2021. As part of their discussion, the Planning Board considered whether a Religious Complex use should be required to receive a Conditional Use Permit to be located within a shopping center, for instance, since the same use would be required to receive a Conditional Use Permit if developed as a standalone use, except for in the C-3 zoning district. Ultimately, the members of the Planning Board agreed that there may be unknown or unanticipated impacts associated with a Religious Complex locating within a shopping center, such as inconsistencies with existing tenants or uses, or issues with parking, that warranted requiring the same Conditional Use Permit requirements as are required for standalone Religious Complexes.

'Following discussion, the Planning Board recommended approval of the amendments as proposed, including the requirement that a Conditional Use Permit be required for the Religious Complex use as part of a Commercial Mixed-Use designation use.

#### 'CODE CONSIDERATIONS

Section 7.32, General Provisions of the UDO, specifies those allowable uses that may be included as part of all types of Commercial Mixed-Use use designations. The Commercial Mixed-Use uses include: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Center. Presently, Religious Complexes, defined as "a church (a building primarily used for public divine worship) or a church and any related structures including a parsonage, fellowship halls, educational buildings, youth centers, recreational facilities (which include playgrounds), day care centers, parochial schools or similar structures or areas located on a single site," are not included as one of the allowable uses within a Commercial Mixed-Use use.

'Additionally, Section 7.45 includes supplemental regulations applicable to Religious Complexes. The required dimensional requirements are more applicable to a standalone Religious Complex, as opposed to one that may be located within a tenantspace of a shopping center.

'Finally, as referenced in the review of the Planning Board's discussion, Section 6.6, Tables of Uses and Activities, currently lists Religious Complexes as being a permitted use with a Conditional Use Permit in the Town's R-2, R-3, C-1, C-2, and SPD-20 zoning district, and a permitted by-right use in the C-3 zoning district. Should the amendment be adopted, prior to locating in a shopping center, for example, a Religious Complex would need to receive approval of a Conditional Use Permit.

#### 'POLICY CONSIDERATIONS

The Comprehensive Plan does not address this specifically. The Plan does refer to mixed-use in terms of mixing commercial and residential uses, but Staff does not believe this was intended to or contemplated the exclusion of institutional uses, such as Religious Complexes, from mixed-use development.

#### 'PLANNING BOARD RECOMMENDATION

The Planning Board considered these amendments at their meeting on March 16, 2021. Following discussion, the Planning Board recommended approval of the amendments as proposed, including the requirement that a Conditional Use Permit be required for the Religious Complex Use as part of a Commercial Mixed-Use designation use.



**STAFF RECOMMENDATION**

To address the direction by the Board of Commissioners, it is Staff's recommendation that the following amendments to the UDO be adopted (these amendments are included in the attached draft adoption ordinance)."

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

There being no one who wanted to speak, Attorney Leidy concluded the Public Hearing at 9:59 a.m.

**MOTION:** Comr. Fuller made a motion to adopt the ordinance concerning various commercial mixed-use types and various uses allowed therewith as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

Comr. Renée Cahoon noted that this was an unintended consequence of the UDO.

**CONTINUATION OF MOTION:** The motion passed unanimously.

The ordinance, as adopted, is attached to and made a part of this meeting as shown in Addendum "E".

Mayor Pro Tem Siers returned to the meeting.

Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers; and text amendments pertaining to the permitted zoning district location and supplemental regulations for hotels

Attorney John Leidy introduced the Public Hearing to consider UDO text amendments pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers; and text amendments pertaining to the permitted zoning district location and supplemental regulations for hotels.

The time was 10:02 a.m.

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

"Two related text amendments are before the Board for consideration. The first proposal would establish a provision allowing for preexisting nonconforming hotels in the CR zoning district to seek a Conditional Use Permit 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 pertaining to nonconforming uses; the proposal would also establish that dwelling units existing as of July 1, 2020 were an allowed accessory use to fishing piers. The second proposal would amend the UDO to allow hotels in the CR zoning district, subject to a Conditional Use Permit.

"With respect to the first proposal to address preexisting nonconforming hotels and accessory uses as part of fishing piers, the Planning Board has taken several votes recommending approval, with the most recent being at their meeting on February 16, 2021. With respect to the amendment to allow hotels in the CR zoning district, the Planning Board voted 7-0 to recommend approval of the amendment, subject to a limitation that only hotels and sites used as hotels prior to January 1, 2021 would be considered to be a permitted use.

'Please find attached a letter from Alex Moore, President, Seaboard Hotels, dated March 2, 2021, concerning the proposed text amendments.

#### 'CODE CONSIDERATIONS

At present, with the adoption of the UDO, hotels are no longer allowed as a permitted use, subject to a Conditional Use Permit, within the CR zoning district (Section 6.6). Based upon this, the following hotels are considered nonconforming uses:

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; and
9. Colonial Inn, 3329 S. Virginia Dare Trail, constructed in 1947

'Additionally, Section 7.50.1. pertaining to fishing piers, indicates that such piers may include accessory restaurant or retail uses, but does not include dwelling units. Both the Outer Banks and Nags Head fishing piers have on-site dwelling units, therefore resulting in nonconforming uses conditions,

'Given the circumstances associated with these uses, both are subject to the following UDO provisions:

#### **SECTION 5.6 NONCONFORMING USE OF A STRUCTURE.**

**5.6.1.** If a use involving individual structures or combinations of structures with a cumulative replacement cost of \$5,000.00 or more exists that was legal at the time of its creation but would not be allowed in the district under the terms of this UDO, the lawful use may continue, subject to the following provisions:

**5.6.1.1.** No existing structure devoted to a use not permitted by this UDO in the district in which it is located shall be 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.

**5.6.1.2.** Any nonconforming use may be extended throughout any part of a structure which was manifestly arranged or designed for such use at the time of adoption or amendment of this UDO, but no such use shall be extended to occupy any land outside such building. A conforming structure cannot be expanded to allow expansion of a nonconforming use.

**5.6.1.3.** Where a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.

**5.6.1.4.** If the nonconforming use of any structure ceases for any reason for a period of more than 12 consecutive months, any subsequent use of the structure shall conform to the regulations specified by this UDO for the district in which such structure is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

**5.6.2.** A conforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

**5.6.2.1.** On any structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, provided that the cubic content or intensity existing when it became nonconforming shall not be increased.

**5.6.2.2.** If a structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired or rebuilt provided that the cubic content or intensity of the existing nonconforming use is not increased, or that the use is changed to a use permitted by the regulations the district in which it is located.

**5.6.2.3.** Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.

**5.6.3.** A nonconforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

**5.6.3.1.** On any nonconforming structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 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, provided that the degree of nonconformity existing when it became nonconforming shall not be increased.

**5.6.3.2.** If a nonconforming structure containing a nonconforming use 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, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

With respect to both text amendment proposals, it was Staff's understanding that the Commissioners' intent was to impose restrictions on hotels allowed within the CR district that were essentially the same as those that existed prior to the adoption of the UDO. The following were the specific standards, including dimensional requirements, that were applicable to hotels located in the CR zoning district:

- a. *A hotel lot shall have a minimum width of 150 feet.*
- b. *A minimum setback of 45 feet is required from the right-of-way line of South Virginia Dare Trail (NC 12) or South Old Oregon Inlet Road (NC 1243).*
- c. *A minimum setback for any structure from a side yard property line other than a property line along a state or town street right-of-way shall be ten feet. 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 the greater of either the front yard setback or side yard setback. For hotel buildings higher than 35 feet, the side yard setback shall be ten feet plus an additional one foot for each foot over 35 feet.*
- d. *The maximum height of a structure shall be 60 feet.*

- e. *Maximum lot coverage for hotel sites with an accessory fishing pier shall not exceed 45 percent and shall otherwise be in accordance with subsection (d)(2) of this section.*
- f. *A minimum of 50 percent of the required setbacks on the north, south, east and west shall be left undeveloped and landscaped as open space. Subterranean sewage systems and repair areas are allowed in the required setbacks.*
- g. *The density of hotel units shall not exceed 16 hotel units or hotel efficiency units for the first acre and 20 hotel units or hotel efficiency units for each additional acre.*
- h. *Hotel units shall be at least 300 square feet in area. Hotel efficiency units shall be at least 400 square feet in area. No hotel unit or hotel efficiency unit shall be greater than 700 square feet in area.*
- i. *Unless the public safety department has approved an alternate life safety/fire evacuation plan, a 12-foot wide paved vehicular access along all four sides of principal structures shall be provided suitable for firefighting and rescue equipment. The edge of the paved access nearer the structure shall be no closer than ten feet, nor farther than 30 feet, from the sides of the structure.*
- j. *Containers for garbage and refuse shall be provided in accordance with chapter 30 of this Code. Areas for screened dumpsters shall be provided so as to be out of the traffic flow and accessible to garbage trucks at all times.*
- k. *A sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site except where passageways cross traffic lanes. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.*
- l. *No portion of any building shall be farther than 250 feet or closer than 50 feet to a fire hydrant.*
- m. *Fire hydrants shall be protected from traffic in accordance with section 20-1 and shall be marked with painted stripes on the pavement within the protected area.*
- n. *The structures shall be sprinkler protected in accordance with section 20-121 et seq. A fire flow test of the water supply for the sprinkler system serving or intended to serve the structures shall be conducted at the developer's expense by the town fire department or by an independent testing firm. If the test is conducted by an independent testing firm, it shall be made under the direct supervision of the town fire chief or his designee. A fee, in accordance with the most recently adopted consolidated fee schedule, shall be paid by the developer. If the flow is found to be deficient according to the insurance service office standards applicable to the town, the developer shall bring the fire flow up to the established requirements set out in the insurance service office standards. The fire flow test shall be made prior to the issuance of a building permit.*
- o. *Automatic emergency electric generators, to provide lighting in hallways and stairwells during periods of public utility power outages, shall be installed and tested regularly at the expense of the developer.*
- p. *A minimum of 600 feet of frontage along a street shall be required before two accessways are permitted to the same street. A minimum of 900 feet of frontage shall be required before three accessways are permitted. No hotel development shall have more than three accessways to one street. The accessways shall comply with the following standards:*

1. *Accessways shall not be less than 30 feet or more than 40 feet in width at their intersection with the property line and shall be installed with curbs of asphalt or concrete at street connections to prevent damage to roadways.*
  2. *The principal accessways shall have an exit lane for left turns where permitted and an exit lane for right turns and one entrance lane. The lanes shall be appropriately marked to indicate exit and entrance.*
  3. *At its intersection with the property line, an accessway shall not be less than 100 feet from another accessway or 50 feet from a corner of the property. At least one accessway will be allowed for each hotel development.*
- q. *Each hotel site with its buildings, parking lots and driveways shall be physically separated from each adjoining street by a curb or other suitable barrier to prevent unchanneled vehicular ingress or egress.*
- r. *Lighting in accordance with article IX of this chapter of this chapter shall be installed in all parking and service areas.*
- s. *Where the provisions of this subsection are in conflict with the provisions of subsection (d) of this section, dimensional requirements, the more stringent of the provisions shall apply.*
- t. *Hotel sites may include the following accessory uses: fishing pier (with CAMA authorization), restaurant, indoor entertainment facility, indoor public assembly, retail, office and on-site rental of beach chairs and umbrellas provided that:*
1. *Storage of such items, overnight and during hours of operation shall be located westward of the static line and shall not be visible from the beach.*
  2. *Beach chairs and umbrellas to be placed upon the beach shall contain no commercial signage. Property identifiers such as initials and numbering shall be located on the interior or underside of any chair or umbrella. Any other signage shall not be visible from the beach.*
  3. *Placement of beach chairs and umbrellas upon the beach shall not restrict or impede the flow of vehicular, pedestrian or emergency services traffic. All public access points shall be free and clear of all obstructions and rental equipment for a minimum distance of 50 feet in any direction.*
  4. *All transactions involved in the operation of this rental service, including tips, shall occur inside the principal structure, i.e.; the hotel or west of the static line.*
  5. *Rentals shall be limited to hotel patrons.*
  6. *Under no circumstance shall beach chairs and umbrellas be left on the beach or be east of the static line overnight.*
  7. *At the close of business hours the beach upon which rentals occur shall be cleaned of all loose trash and debris.*
  8. *Beach chairs and umbrellas shall only be set up when requested by the customer, beach chairs and umbrellas shall not be pre-set.*

9. *Emergency services personnel have the right to move beach chairs and umbrellas as necessary to ensure a clear line of sight for safety purposes.*

10. *Any violation of these regulations may result in any of the following actions:*

- i. Removal of equipment left on the beach overnight;*
- ii. Issuance of civil penalty pursuant to section 1-6 of this Code; or*
- iii. Immediate revocation of the zoning permit.*

*u. A pre-application conference shall be held between the planning board and the applicant. The applicant shall present at least a survey and conceptual site plan.*

#### **'POLICY CONSIDERATIONS**

In general terms, the policies in the Comprehensive Plan support the development of new hotels in specific areas of the Town that do not include the oceanfront and CR zoning district, while supporting flexibility with respect to preexisting hotels. The Comprehensive Plan specifically notes that "Large scale hotels and multi-family buildings with higher heights are incompatible with the desired scale and character of the oceanfront and are difficult to manage with respect to beach erosion. In the future, new oceanfront structures should generally be limited to 5,000 square feet of heated area and 35 feet in height (this could be higher to accommodate architectural requirements)."

'More specific and expanded policy considerations have previously been presented to the Board in their consideration of the text amendment to allow a Conditional Use Permit to be sought for a preexisting nonconforming hotel.

#### **'PLANNING BOARD RECOMMENDATION**

With respect to the first proposal to address preexisting nonconforming hotels and accessory uses as part of fishing piers, the Planning Board has taken several votes recommending approval, with the most recent being at their meeting on February 16, 2021. With respect to the amendment to allow hotels in the CR zoning district, the Planning Board voted 7-0 to recommend approval of the amendment, subject to a limitation that only hotels and sites used as hotels prior to January 1, 2021 would be considered to be a permitted use.

#### **'STAFF RECOMMENDATION**

Planning Staff believes both amendments have merit and achieve similar or the same outcomes, and therefore recommends adoption of either of the amendments as proposed. For consideration, Staff has included a provision in the ordinance for the text amendment to allow hotels in the CR zoning district consistent with the Planning Board's recommendation that the use allowance be limited to hotels in existence as of January 1, 2021.

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

#### **3.5.3. Action by the Planning Board.**

**3.5.3.1.** *Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

3.5.3.2. *Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

3.5.3.3. *Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

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, March 24, 2021 and on Wednesday, March 31, 2021 as required by law.

It was Board consensus to not want to limit the size of a suite – Board members indicated that they do not want to micro-manage the interior of a building.

Mayor Cahoon suggested a change in terms of room size and density. The Town has tweaked the hotel ordinance with the hope of getting hotels to come to the area but it is still not clear what triggers would work; he would like to hear from an actual hotel developer.

Comr. Fuller would like hotels to be permitted in the CR Zone as the current standard. Mayor Cahoon said that he thought Nags Head didn't want hotels on the oceanfront, but that there was a strong desire to keep the hotels we have. Comr. Fuller said that the Town was more geared toward large residential homes not wanted on the oceanfront, not hotels.

Ken Simpler, Surf Side Hotel owner, spoke via the Zoom platform: He stated that he is highly supportive of the proposed changes – one item that he may address differently pertains to his site and if the site is looked at as only one site or separately from the two adjoining parcels that he also owns. He does feel that the hotel market meets the needs of a different market than the Airbnb market. He appreciates Director Zehner's team and staff and the thoughtful consideration of the Planning Board. Comr. Fuller confirmed with Mr. Simpler that he has three separate pieces of property (hotel, condo, and a third piece of property) that are not connected.

There being no one else who wished to speak, Attorney Leidy concluded the Public Hearing at 10:46 a.m.

Comr. Renée Cahoon said that she is interested in pursuing modifications but is not prepared to discuss today any changes re: how to develop the oceanfront.

Mayor Pro Tem Siers confirmed that the proposal does not modify the current standard of oceanfront hotels not being allowed.

**MOTION:** Comr. Renée Cahoon made a motion to adopt the ordinance as presented with one change: to remove maximum unit size for rooms. The motion was seconded by Mayor Pro Tem Siers.



FRIENDLY AMENDMENT: Comr. Fuller made a friendly amendment to clarify by including the removal of the maximum unit size for rooms, efficiencies, and suites. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

Mayor Cahoon confirmed that the ordinance adopted does not change building size.

MOTION TO DENY: Comr. Fuller made a motion to deny the original text amendment pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers. The motion was seconded by Comr. Brinkley which passed unanimously.

MOTION TO RATIFY: Mayor Pro Tem Siers made a motion to ratify the previous motion as amended by the Friendly Amendment. The motion was seconded by Comr. Brinkley which passed unanimously.

Public Hearing to consider text amendments to the Unified Development Ordinance pertaining to outdoor lighting and lighting for signage

Attorney John Leidy introduced the Public Hearing to consider text amendments to the UDO pertaining to outdoor lighting and lighting for signage.

The time was 11:12 a.m.

Planning Director Michael Zehner summarized staff's memo which read in part as follows:

OVERVIEW AND BACKGROUND

At their February 3, 2021 meeting, following Staff's presentation on a review of the Town's outdoor lighting regulations and best practices, the Board of Commissioners directed Staff to prepare amendments addressing deficiencies in current regulations with respect to adequate limits on commercial site and signage lighting.

Staff presented amendments pertaining to the lighting of wall signs, the lighting of roof signs, specifications associated with the external illumination of signs, and technical limits on LED lights and parking lot lights to the Planning Board at their February 16, 2021 meeting. Following a discussion, the Planning Board voted 6-0 to recommend approval of the proposed text amendments as presented. The Board indicated an interest in exploring additional changes further.

CODE CONSIDERATIONS

In varying degrees, regulations related to outdoor lighting are included in the following articles of the Unified Development Ordinance:

- Article 4 - Development Review Process
- Article 5 - Nonconformities
- Article 7 - Supplemental Regulations
- Article 8 - District Development Standards
- Article 9 - The Village at Nags Head SPD-C Zoning Ordinance
- Article 10 - Performance Standards
- Appendix A - Definitions

Given the direction provided by the Board of Commissioners, amendments are focused on the following lighting regulations:

- The lighting of commercial wall signs (Sec. 10.24.2.1.) and roof signs (Sec. 10.24.2.4.) as contained in the Sign Ordinance, where internal illumination of signs is not currently limited by individual or overall sign area;
- Technical provisions specific to the use of LED lights as contained in Section 10.34 of the Outdoor Lighting ordinance, which does not currently regulate the Correlated Color Temperature of LED lamps;
- Limits on the intensity of light fixtures at their source for lights used in parking lots, as contained in Section 10.37.1. of the Outdoor Lighting Ordinance, which currently regulates footcandles measured at the ground, but not the intensity of light at the source;
- Specifications for the external illumination of signs, as contained in Section 10.37.6.2., which does not currently require external illuminated signs to be downlit only, or specify limits on the intensity of lights; and
- Definitions contained in Appendix A, which need to be updated for consistency with proposed amendments.

#### POLICY CONSIDERATIONS

The Comprehensive Plan contains numerous applicable policies related to the proposed amendments, generally addressing 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 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 provide support for the proposed amendments, as well as broader efforts:

*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.*

**PLANNING BOARD RECOMMENDATION**

At their February 16, 2021 meeting the Planning Board voted 6-0 to recommend approval of the proposed text amendments as presented. The Board indicated an interest in exploring additional changes further.

**STAFF RECOMMENDATION**

To address the direction by the Board of Commissioners, it is Staff's recommendation that the following amendments to the UDO be adopted (these amendments are included in the attached draft adoption ordinance)."

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

Mayor Pro Tem Siers questioned how many structures would become nonconforming with the proposed changes; Per Mr. Zehner that analysis has not been done.

Mayor Cahoon read the Public Comment from Karen M. Reeder as follows:

"I am aware that the issue at hand involves commercial outdoor lighting concerns. Yet, the same concerns should follow suit for residential lighting. My new neighbor, at 305 W. Soundside Rd, is a builder and in my opinion, is treating this other home of theirs in Dare County, as partly commercial. I have sent pictures of my concerns to Michael Zehner on 12/2/20. All of the interior and exterior lighting at this home are LED lights with the intense brightness. The parking/driveway lighting stays on past midnight at minimum every night. The Dark Sky initiative for Nags Head is being completely erased with the allowance of their lighting. It is especially worrisome due to the location of these lights also affecting wildlife across the street at Jockey's Ridge State Park.

"If you look at the pictures sent to Mr. Zehner, you will see I no longer have any darkness no matter the time of night. The entire east side of my property is lit up. I am unable to block light from entering all bedroom and living area windows. Again, I have not seen any other residential area have to accept this amount and intensity of light.

"Please follow the recommendations for all of Nags Head:

"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.

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

"Thank you,  
Karen M Reeder; W Soundside Road"

There being no one else who had comments on the proposed text amendments, Attorney Leidy concluded the Public Hearing at 11:28 a.m.

Mayor Cahoon confirmed that the direction to staff was that the Board is not interested in regulating residential lighting - as noted at the last meeting. He thanked Director Zehner and his staff because of the nature and technical issues involved, he felt staff did a good job of bringing this forward.

Comr. Renée Cahoon stated that the Town has chosen to not have residential lighting standards - it would be up to the public to bring forward an amendment. She also appreciated staff's work and asked if anything can be done re: the business on US 158 (Sugar Kingdom); Director Zehner stated that nothing can be done as the business does comply with the lighting standards.

**MOTION:** Comr. Renée Cahoon made a motion to continue this agenda item re: outdoor lighting and lighting for signage to the first meeting in May and that staff be directed to provide additional language re: uplighting in neighborhoods. The motion was seconded by Comr. Brinkley which passed unanimously.

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

### Update from Planning Director; includes consideration of scope for Estuarine Shoreline Management Plan

Planning Director Michael Zehner summarized his memo 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 April 7, 2021.

#### 'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for February 2021*. In addition to permitting, inspections, code enforcement, and Todd D.Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, February 2 - Public Works Master Plan Discussion
- Tuesday, February 2 - Technical Review Committee Meeting
- 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
- Tuesday, February 9 - Dominion Substation Meeting
- Tuesday, February 9 - ETIPP Grant Meeting
- Wednesday, February 10 - Arts & Culture Committee Meeting
- Thursday, February 11 - Coastal Villas Preconstruction Meeting
- Tuesday, February 16 - Planning Board Meeting
- Wednesday, February 17 - Board of Commissioners Meeting
- Thursday, February 18 - Planning & Development Department Staff Meeting
- Tuesday, February 23 - DCM/CAMA Meeting on Kitty Hawk Watersports
- Thursday, February 25 - Dominion LED Streetlight Conversion Meeting
- Thursday, February 25 - DWMP Staff Kickoff Meeting
- Thursday, February 25 - CAMA LUP Meeting with DCM Staff

#### 'Report on Permitting - 2<sup>nd</sup> and 3<sup>rd</sup> Quarters FY 20-21

Please find attached an updated report to include the 2<sup>nd</sup> Quarter of FY20-21 (October 2020 - December 2020), as well as for the majority of the 3<sup>rd</sup> Quarter, from January 1, 2021 through March 19, 2021.

`Dumpster Conversion Lot Coverage Exemption

As the Board is aware, the Town's Public Works Department has been working through a process to convert side-load dumpsters to front-load dumpsters. To aid in this effort and to reduce complications involving alterations and/or expansions to dumpster locations or pad dimensions, Staff would request the Board's authorization to begin development of a text amendment to the UDO to address potential increases in lot coverage that may be associated with these changes.

`Draft Scope for Estuarine Shoreline Management Plan

For the Board review and feedback, please find attached a draft scope for the proposed Estuarine Shoreline Management Plan to be developed. Based on the Board's feedback, this scope would serve as the basis for the eventual RFQ soliciting consultant services to assist in the development of the Plan.

`Planning Board - Pending Applications and Discussions

The March 16, 2021 meeting of the Planning Board (held remotely) included consideration of text amendments to update the UDO for N.C.G.S. 160D, text amendment to allow hotels in the CR zoning district, a text amendment to allow religious complexes as part of mixed-use developments, 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*, text amendments address EV charging stations, consideration of a preliminary plat for a 2-lot subdivision at 468 W. Villa Dunes Drive, and further review of the Planning & Development Department's Work Plan (current FY status, and plans for FY21-22).

`The Board's next meeting is scheduled for March 20, 2021. At this time, the agenda is expected to include further consideration of text amendments to update the UDO for N.C.G.S. 160D, and consideration of text amendments concerning lot coverage related to dumpster conversions. 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 March meeting to the April meeting, however, further continuance requests are not unanticipated.

`Additional Updates

- CAMA Land Use Plan Update - Staff participated in virtual meetings with DCM staff on January 13, 2021 and February 25, 2021 to review the comments returned as part of the State review. Before proceeding to local adoption, Staff is working to schedule an additional meeting with DCM staff for further guidance.

- Outdoor Lighting - A public hearing to consider associated amendments is on the Board's April 7, 2021 agenda. It should be noted, in their review of the amendments, the Planning Board did indicate an interest in wanting to consider additional changes in the future.

*April 1, 2021 Memo Planning and Development Director's Report*

`Related to these considerations, Town Staff was recently contacted by Dominion Energy regarding plans to convert the Town's streetlights to LED. Staff is expecting to review LED fixtures that have already been installed in Town, as well as review potential sites for the use of "amber" fixtures that are more consistent with the needs of nesting turtles.

- Level 2 Charger - Included on the Board's April 7, 2021 consent agenda is a request to schedule a public hearing on text amendments to support the installation and use of Electric Vehicle Charging Stations within the community, including on Town-owned properties. Staff continues to consider opportunities to source a charger for location on Town property through a "host" arrangement.

- Town Workforce Housing Study & Plan/RFI - The Board's consideration of a draft RFI is included on

the April 7, 2021 agenda.

- Nonconforming Hotels and Fishing Piers - Legacy Establishments/ Structures - A public hearing to consider associated amendments is on the Board's April 7, 2021 agenda.
- Review of Residential Stormwater Regulations - Staff is awaiting further direction from the Board of Commissioners as to whether the Board wishes to discuss the Town's Residential Stormwater Regulations at a workshop, potentially with the Planning Board. At the Planning Board's March 16, 2021 meeting, members indicated an interest in requiring maintenance plans in association with installation of SCMs, noting that if we are providing incentives based upon these improvements, that ongoing maintenance should be ensured.

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*; a request to schedule a public hearing on these amendments is on the Board's April 7, 2021 agenda.

- Provisions for the Registration of Events Held at Residential Properties - When it is appropriate, Staff would request feedback from the Board of Commissioners as to whether they would like to consider for adoption provisions requiring the registration of events held at residential properties. As noted in the memorandum to the Planning Board ([LINK](#)), 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 - A survey seeking input from the community with regard to potential future improvements to the Skate Park is active, receiving over 300 responses as of April 1; the survey will remain open for a few more weeks.

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 - Implementation of this project is now complete with the installation of the 4 completed Art Masts at beach access during the week of March 29, 2021.
- Decentralized Wastewater Management Plan - Initial kickoff meetings have been held with Town Staff and the Steering Committee.
- Dowdy Park Farmer's Market - A presentation is on the April 7, 2021 Board agenda to review the 2020 season and discuss plans for the 2021 season.
- 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 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 coordinated the installation of a gauge on a dock in the Village at Nags Head.
- 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.

- Staff recently applied for assistance under the Energy Transitions Initiative Partnership Project (ETIPP) Community Technical Assistance Program offered by the U.S. Department of Energy and the National Renewable Energy Laboratory (NREL) for assistance in addressing electric utility resilience for the Town and the Outer Banks, with a focus on renewable energy sources. Related, Staff also worked to submit for a technical assistance opportunity from the North Carolina Chapter of the American Institute of Architects to develop best practices for building design related to renewable energy and energy and water efficiency, a request which was recently approved.

#### Upcoming Meetings and Other Dates

- Wednesday, April 7 - Board of Commissioners Meeting
- Thursday, April 8 - Board of Adjustment Meeting
- Monday, April 12 - Planning & Development Department Staff Meeting
- Wednesday, April 14 - Arts & Culture Committee Meeting
- Tuesday, April 20 - Planning Board Meeting"

Comr. Fuller volunteered his services as Board member liaison for the Estuarine Shoreline Management Plan as needed.

**MOTION:** Comr. Brinkley made a motion to approve the scope for the Estuarine Shoreline Management Plan as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

#### Consideration of request to improve the existing paper street known as Fourth Street (W. Coastal Way)

Mayor Cahoon asked to be recused as his firm is serving as consultant to the property owner.

MOTION: Comr. Renée Cahoon made a motion to recuse Mayor Cahoon from this agenda item. The motion was seconded by Comr. Brinkley which passed unanimously.

Mayor Cahoon left the meeting.

The agenda summary sheet read in part as follows:

"A request from Cabeach, LLC seeking the Board's approval of proposed improvements to the paper street right-of-way known as Fourth Street, to result in the proposed dedication of improvements and conveyance of the right-of-way to the Town.

Staff Recommendation

Staff recommends the Board's authorization of the improvements to the right-of-way as proposed, to be memorialized in an agreement executed between the Town and Cabeach, LLC stipulating the following, and authorize the Town Manager to execute such an agreement on behalf of the Town:

1. Prior to the Town's acceptance of improvements, Cabeach, LLC shall properly convey an easement to the Town, with Nags Head Construction, to encompass the reconstructed waterline running east-west along the northern property line common between the two properties; and
2. To coincide with a future request to dedicate improvements within the right-of-way to the Town, Cabeach, LLC shall present a quitclaim deed to the Town for all portions of the right-of-way not determined to be currently owned by the Town."

Planning Director Michael Zehner summarized staff's memo which read in part as follows:

"BACKGROUND AND OVERVIEW

Please find attached a letter from Mike Morway, P.E., with Albemarle & Associates Ltd., on behalf of Cabeach, LLC, the owner of six (6) undeveloped lots along the paper street right-of-way known as Fourth Street (see attached "Map of Old Hotel Lots" from 1932, identifying the 6 lots and right-of-way), located immediately south of the recently approved Coastal Villas Subdivision, and immediately north of the Nags Head Post Office; as noted in the letter, Cabeach LLC is seeking the Board's authorization of the proposed improvements to the right-of-way consistent with applicable Town requirements and specifications, and will eventually seek the Town's acceptance of these improvements and the street right-of-way. Improvement of this street will allow for the issuance of building permits for construction on the six lots.





'Also included as attachments are a letter dated March 3, 2021 to Michael Zehner, providing responses to Town Staff review comments, and two (2) plan sheets providing plans for the roadway improvement and waterline extension. The plan sheets also address two (2) additional Staff comments not referenced in the March 3, 2021 letter, as follows:

1. The detectable warning surface for the multi-use path ramp transitions shall span the entire width of the ramp in accordance with Public Rights-of-Way Accessibility Guidelines R305.1.4.
2. It is the Town's understanding that it has been determined to be feasible to install a cross for the water line tie-ins, as opposed to two tees.

'The proposed improved street would align and connect with the to-be-constructed W. Coastal Way in the Coastal Villas Subdivision to the north (eliminating the need for the temporary cul-de-sac to be established within that subdivision), and the request and plans propose to change the name of Fourth Street to W. Coastal Way as a continuation of this street. Additionally, the proposed waterline will be an extension of the service being improved as a part of the Coastal Villas Subdivision. Town Staff have reviewed the request and submitted plans, determining them to be compliant with Town requirements and specifications.

**'STAFF RECOMMENDATION**

Based upon the sufficiency of the submitted plans, Staff recommends the Board's authorization of the improvements to the right-of-way as proposed, to be memorialized in an agreement executed between the

Town and Cabeach, LLC stipulating the following, and authorize the Town Manager to execute such an agreement on behalf of the Town:

1. Prior to the Town's acceptance of improvements, Cabeach, LLC shall properly convey an easement to the Town, with Nags Head Construction, to encompass the reconstructed waterline running east-west along the northern property line common between the two properties; and
2. To coincide with a future request to dedicate improvements within the right-of-way to the Town, Cabeach, LLC shall present a quitclaim deed to the Town for all portions of the right-of-way not determined to be currently owned by the Town."

Comr. Renée Cahoon asked if there was a reason to have another curb cut since they already connect to Coastal Way. Director Zehner noted that there was not sufficient room for a turn around.

**MOTION:** Comr. Renée Cahoon made a motion to approve the request to improve the existing paper street known as Fourth Street (W Coastal Way) as presented with the Staff conditions as listed and with the stipulation that when the multi-use path is built that the appropriate lighting is installed for safety. The motion was seconded by Comr. Brinkley which passed 4 - 0 (Mayor Cahoon was recused.).

Mayor Cahoon returned to the meeting.

#### **RECESS FOR LUNCH/RECONVENE FROM LUNCH**

The Board recessed for lunch at 12:05 p.m. and reconvened at 1:25 p.m.

Mayor Cahoon stated that the Jockey's Ridge/Soundside Road agenda item, with Board concurrence, is moved to just before New Business.

Consideration of a Preliminary Plat for a Major Subdivision, titled Louisa Farr, Lot 4, Ralph Buxton Division, for an approximately 4.06 acre property, zoned SED-80 and SPD-20, located at 468 W. Villa Dunes Drive (Parcel# 008536000; PIN# 989214321617); the Preliminary Plat proposes to divide the existing lot into 2 lots, requiring the modification of a condition imposed upon the original Preliminary and Final Plat titled Division for Ralph Buxton, et al

Mayor Pro Tem Siers asked to be recused from this discussion as he was involved in this property sale.

**MOTION:** Comr. Brinkley made a motion to recuse Mayor Pro Tem Siers from this agenda item discussion. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Mayor Pro Tem Siers left the meeting.

Attorney Womble participated, in place of Town Attorney John Leidy, in support of the Town.

The agenda summary sheet read in part as follows:

"The subject application is a Preliminary Plat for a Major Subdivision, titled Louisa Farr, Lot 4, Ralph Buxton Division. The proposal is for a division of an approximately 4.06-acre property located on the west side of Villa Dunes Drive, just north of the Villas. The proposal would create two (2) lots. Proposed lot 4A

is split zoned between the SED-80 and SPD-20 District, as proposed it does meet the dimensional requirements, including lot area and frontage for the SED-80 District. Proposed lot 4B, located entirely within the SPD-20 District, as proposed would also meet the dimensional requirements, including lot area and frontage, for the SPD-20 District. A subdivision request of this nature would typically be considered a Minor Subdivision; however, it has been elevated to a Major Subdivision given that the Board of Commissioners approval of the original plat for this property included a condition, also memorialized on the recorded plat, precluding the further subdivision of lots within the 4-lot subdivision.

**Planning Board/Staff Recommendation**

Staff recommends approval of the Preliminary Plat with conditions.

At their meeting on March 16, 2021, the Planning Board voted 6-0 (1 recusal) to recommend approval of the Preliminary Plat to the Board of Commissions, with the conditions recommended by Staff.

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

The subject application is a Preliminary Plat for Major Subdivision of an approximately 4.06-acre property located on the west side of Villa Dunes Drive just north of the Villas. The Proposed Subdivision would create two (2) lots. Proposed lot 4A is approximately 2.84 acres in area and is split-zoned between the SED-80, Special Environmental District, and the SPD-20, Special Planned Development District. Proposed Lot 4B is approximately 1.22 acres and is located entirely within the SPD-20, Special Planned Development District. The image below is to identify the property and does not reflect the proposed subdivision; the intervening line through the property is the right-of-way of S. Old Nags Head Woods Road.



While proposed Lot 4A is split-zoned between the SED-80 and SPD-20 District, as proposed it does meet the dimensional requirements, including lot area and frontage for the SED-80 District. Proposed Lot 4B, located entirely within the SPD-20 District, as proposed does meet the dimensional requirements, including lot area and frontage for the SPD-20 District. The right-of-way for Old Nags Head Wood Road bisects the parcel, however, the applicant is proposing a shared access to proposed Parcels 4A and 4B via a shared driveway from W. Villa Dunes Drive.

'A request of this nature would typically be considered a Minor Subdivision, however, the Board of Commissioners approval of the original plat for this property, titled Division for Ralph Buxton et. al., included a condition, also memorialized on the recorded final plat, precluding the further subdivision of lots within the 4-lot subdivision (see attached minutes of the September 8, 1986 Board of Commissioners meeting). In consultation with the Town's attorney, this plat is to be reviewed as a Major Subdivision to request removal or modification of the condition by the Board of Commissioners. Based upon the record, Staff understands the condition prohibiting further division of the lots was based upon a waiver requested, and granted, because the properties lacked frontage along a public street, W. Villa Dunes Drive being a private street at the time; W. Villa Dunes Drive is now a public street, no longer necessitating a similar waiver for this proposed subdivision.

#### 'PROCEDURAL REQUIREMENTS/CONSIDERATIONS

The procedural requirements applicable to subdivisions are provided in Article 4, *Development Review Process*, Part IV, *Subdivision Procedures*, of the UDO; requirements or considerations of note are as follows:

- Pursuant to Section 4.22, *Initial Conference; Preliminary Sketch*, the applicant was first required to submit a preliminary sketch of the proposed subdivision and confer with the UDO Administrator. These requirements were completed, with authorization on March 2, 2021 to prepare a preliminary plat to be submitted to the Planning Board.
- The following subsections, or parts thereof, to Section 4.24, *Review Procedure for Major Subdivisions*, 4.24.1, *Preliminary Plat*, are applicable to the proposed subdivision:
  - 4.24.1.2., in part, "...the UDO Administrator who shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator will solicit and receive comments from other persons or agencies before making final recommendations. If the application is complete, the UDO Administrator will submit it to the Planning Board..."

'It has been determined by the UDO Administrator that the plan for the Proposed Development meets the requirements of the UDO, to be discussed further below under REGULATORY & DESIGN REQUIREMENTS/CONSIDERATIONS.

'Additionally, comments were solicited and received from Town Staff during the March 2<sup>nd</sup> Technical Review meeting; two comments of note suggested that an easement be shown for the anticipated shared driveway, and that the applicant demonstrate that the requirements of Section 11.6.2. pertaining to stormwater runoff for residential subdivisions are met. In both cases, Staff would suggest that conditions of approval are appropriate, as noted under Staff Recommendation.

- 4.24.1.3., in part, "The Planning Board shall forward its recommendation to the Board of Commissioners within thirty (30) days after first consideration by the Planning Board. If the Planning Board fails to act within the 30-day period, the subdivision will be placed on the next available Board of Commissioners agenda. The Board of Commissioners shall consider the preliminary plat and approve, approve with conditions acceptable to the applicant, or disapprove the plan."
- 4.24.1.4., in part, "the Planning Board shall determine whether the preliminary plat meets the policy, purposes, and standards established by this Part and shall study its practicability, taking into consideration the requirements of the community and the best of use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future

development of adjoining lands, construction plans, erosion control plans and the requirements of the masterplan and the official map, if such exists, the zoning requirements and this UDO. The Planning Board shall submit its findings and recommendations to the Board of Commissioners at their next regularly scheduled meeting. The Board of Commissioners may approve, reject or grant conditional approval of the preliminary plat. The Planning Board or the Board of Commissioners, in its discretion, if it deems that health and sanitary conditions in the area, the subdivision plans and planned population density warrant, may require percolation tests of the soil by the subdivider and the installation of appropriate sanitary and waste disposal facilities as a condition of approval."

○ 4.24.1.5., Conditional Approval, "When recommending conditional approval of a preliminary plat, the Planning Board shall state in writing the conditions of such approval, if any, with respect to:

4.24.1.5.1. The specific changes which it will require in the preliminary plat;

4.24.1.5.2. The character and extent of these required changes; and

4.24.1.5.3. The amount of all bonds which will be required as a prerequisite to the approval of the preliminary plat.

'Conditional approval of a preliminary plat shall not constitute approval of the final subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final plat, which will be submitted for approval by the UDO Administrator, and for recording upon fulfillment of the requirements of this Part and the conditions of the conditional approval, if any. The Planning Board or the Board of Commissioners may require additional changes as a result of further study of the subdivision plans or as a result of new information obtained subsequent to the time of conditional approval. The fulfillment of these conditions and the incorporation of these conditions into the preliminary plat shall be determined by the UDO Administrator in accordance with the instructions of the Board of Commissioners. At such time, the Board of Commissioners' approval shall become final as to the preliminary plat, and the UDO Administrator shall so signify on the plat."

#### 'REGULATORY & DESIGN REQUIREMENTS/CONSIDERATIONS

The regulatory and design requirements applicable to subdivisions are provided in Article 10, *Performance Standards*, Part V., *Subdivision Regulations*, Division II., *Approval and Platting Requirements*, and Division III., *Improvements*, of the UDO; requirements or considerations of note are as follows:

- Section 10.51.1.19., *Contents of Preliminary Plat*. The location of any natural or manmade features which may affect the suitability of the land for subdivisions. Such features shall include, but not be limited to, drainageways, flood hazard areas, wetlands, and drainage ditches. When applicable, the boundaries of flood hazard areas, wetlands, and other features shall be shown on the plat along with a notation indicating the date of determination and that the boundaries are subject to change.

'The applicant has addressed this requirement with flood hazard areas and wetland areas designated on the Preliminary Plat with Environmental Evaluations noted in the Preliminary Plat Narrative.

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

'This is provided in Note #12 on the Preliminary Plat.

- Section 10.62, *Required Improvements Enumerated*, indicates the improvements required to be provided by the subdivider, as follows:
  - Street rights-of-way and paved streets; water lines, mains, fire hydrants and services;
  - Electric and telephone lines and conduit;
  - Streetlights and supports and related electric wires and conduit; provided, however, that within the SED-80 district, street lighting shall neither be required nor permitted;
  - Easements of right-of-way for utilities, where such are not within the street right-of-way.

These improvements have been shown where applicable, no streetlights and supports are shown in either the SPD-20 or SED-80 District.

- Section 10.63, *Dedications*, indicates the improvements and easements required to be offered to the Town of utility authorities for dedication:
  - Streets and street rights-of-ways;
  - Water lines, mains, fire hydrants and services;
  - Easements of right-of-way for construction, operation and maintenance of utilities and cable television lines;
  - Streetlights and supports and related electric wiring and conduit;
- Section 10.68 *Lots*, reiterates zoning requirements frontage and lot area.

Proposed Lots 4A and 4B are compliant with the dimensional requirements for the zoning districts in which they are located.

- Section 10.72, *Stormwater Runoff, Storm Drains, and Sewer Lines and Mains*, indicates that "stormwater runoff from lots shall be managed in accordance with Article 11 of this UDO pertaining to Stormwater Management (Part I) and Soil Erosion and Sedimentation Control (Part II)."

#### POLICY CONSIDERATIONS

Policy specific to subdivisions is established in Article 10, *Performance Standards*, Part V., *Subdivision Regulations*, Division I., In General, Section 10.41, Jurisdiction; Policy, Section 10.41.2 of the UDO, as follows:

*10.41.2.* It is declared to be the policy of the Board of Commissioners and the Planning Board of the Town to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the Town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood erosion or other menace; that proper provisions shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient system conforming to the official map, if such exists and shall be properly related to the proposals shown on the master plan, if such exists and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of firefighting equipment to buildings, and to conform with existing or planned streets and with other public facilities; that a dedication of streets and rights-of-way or easements for pedestrian and utility purposes shall be made; that proper provisions shall be made for the distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and general welfare; and that proper provisions shall be made for open spaces for parks, playgrounds and public beaches.

With regard to the area of the Proposed Subdivision and applicable policies of the *Comprehensive Plan*, this is considered to be within the *Conservation Area* and *Significant Natural Areas Character Area*. Pages 2-56 and 2-57 note that the intent of the SPD-20 district is to promote low-density residential development and residential uses in a manner that protects and preserves natural topography and vegetation. The purpose of the of the SED-80 District is to permit low-density residential development of those portions of the SED-80 district suitable for residential use and to encourage open space and limited passive recreational use of portions not suitable for residential use. The regulations in place in this area are intended to be an implantation of these policies, and the proposed division complies with all applicable regulations; development of the lots will be subject to additional regulations.

#### STAFF RECOMMENDATION

Staff is of the opinion that the submitted Preliminary Plat, with the attachment of the following conditions, complies with all applicable requirements, and therefore, based upon the above, Staff recommends approval of the Preliminary Plat as presented, modifying the condition previously imposed precluding further division of lots depicted as part of the Division for Ralph Buxton et. al. plat, to allow this division and only this division without further future action.

1. As part of the final plat for the Louisa Farr, Lot 4, Ralph Buxton Division, an easement for driveway access to lot 4A, across lot 4B, shall be provided, with a separate instrument recorded at the Dare County Register of Deeds.

2. In addition to the requirements of Section 11.5, *General Standards for Residential or Duplex Development on Individual Lots*, of the UDO, the development of lots 4A and 4B individually shall demonstrate compliance with Section 11.6.2. of the UDO, with the higher standards controlling; such compliance shall be documented in a stormwater plan to be approved by the Town prior to the issuance of any land disturbance and/or building permits.

#### PLANNING BOARD RECOMMENDATION

At their meeting on March 16, 2021, the Planning Board voted 6-0 (1 recusal) to recommend approval of the Preliminary Plat for this two-lot subdivision to the Board of Commissioners with the two conditions noted in the Staff Recommendation pertaining to the recordation of a driveway access easement and compliance with the provisions of Section 11.5 of the Unified Development Ordinance, Stormwater management standards for residential or duplex development on individual lots."

Comr. Fuller questioned where the actual property line is located - between SED20 and SED80 districts; Ms. Wyatt noted that a Board condition could require the final plat division to be clarified. Mr. Rubino said that he feels it is located as accurate as it can be.

Comr. Fuller confirmed with Ms. Kelly that there are no requests to abandon any portions of Nags Head Woods Road.

**MOTION:** Comr. Renée Cahoon made a motion to deny the request to divide the existing lot into two lots based on the decision made by the Board of Commissioners in the 1980's that decided no further subdivision will be allowed. The motion was seconded by Comr. Fuller.

Attorney Womble stated that the request is a legal request – it was subdivided correctly – it is up to the Board today whether or not it is willing to relieve that prohibition from further subdividing.

Mr. Rubino said that the intent to not subdivide was due to road conditions; he has worked with the other property owners and received approval to consent to the conditions on the 1986 plat. The lot is entirely in

the SED-20 district. Everyone he has spoken with indicate that the intent on the 1986 plat was because of the condition of the road which is not an issue now.

Comr. Fuller disagreed stating that he feels that the intent was due to density and not road conditions.

CONTINUATION OF MOTION: The motion passed 4 - 0 (Mayor Pro Tem Siers was recused.).

MOTION: Comr. Fuller made a motion to have Mayor Pro Tem Siers return to the meeting. The motion was seconded by Comr. Brinkley which passed unanimously.

Mayor Pro Tem Siers returned to the meeting.

#### Consideration of a draft Request for Information to address Town Seasonal Workforce Housing Needs

The agenda summary sheet read in part as follows:

"As included in the Town's recently adopted Strategic Plan 2020-2025, Staff is initiating discussion with the Board on two first-year actions pertaining to housing: *identify housing needs (RFI)* and *re-initiate seasonal employees housing conversation*. Staff understands that the Board's intent with respect to both actions is to focus on the housing needs of the Town's seasonal employees. Following up on direction provided to Staff by the Board of Commissioners at their December 16, 2020 meeting, Staff is providing the attached draft Request for Information ("RFI") seeking *Solutions for Town Seasonal-Employee Housing Needs*. This RFI and the information which it intends to solicit is working to address two first-year actions as contained in the Town's adopted Strategic Plan 2020-2025: *identify housing needs (RFI)* and *re-initiate seasonal employees housing conversation*.

'Staff Recommendation

Discuss, provide feedback and further direction."

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

"Following up on direction provided to Staff by the Board of Commissioners at their December 16, 2020 meeting, Staff is providing the attached draft Request for Information ("RFI") seeking *Solutions for Town Seasonal-Employee Housing Needs*. This RFI and the information which it intends to solicit is working to address two first- year actions as contained in the Town's adopted *Strategic Plan 2020-2025: identify housing needs (RFI)* and *re-initiate seasonal employees housing conversation*. At the December 16, 2020 meeting, the Board authorized Staff to prepare a draft RFI for their review and consideration before releasing, to generally seek solutions to the housing needs for the Town's lifeguard staff from the private market.

'Generally, Staff would suggest that the Board focus on parts 1.0 through 5.0 of the RFI;the following is a summary of these parts:

'1.0 Description: Summarizes the basic purpose of the RFI, which is to "gather information from private entities as to how they may propose to provide housing to meet the needs of the Town's seasonal Ocean Rescue lifeguardstaff."

'2.0 Background: Provides a general overview of the Town and the housing conditions, along with a focus on the value and needs of the Town's seasonallifeguard staff, and impacts to housing availability.



'3.0 Description of Needs: Identifies the general needs, as well as preferences, for lifeguard staff housing.

'4.0 Additional Considerations, Preferences, and Limitations: Provides guidance to potential RFI respondents on considerations, preferences, and limitations that may inform responses.

'5.0 Requested Information: Identifies the basic information that should be provided as part of any submission.

'Staff believes this RFI will assist the Town in identifying potential opportunities or concepts to address the housing needs of the Town's lifeguard staff. The RFI is not a binding solicitation of proposals, and does not commit or require the Town to take any actions; rather, it will allow interested respondents the opportunity to present information for the Town's consideration, which may inform future actions.

'Beyond this activity, this group of Staff responsible for these two actions contained in the *Strategic Plan 2020-2025* continue to discuss additional and alternative actions that may serve to address the housing needs of the Town's lifeguards (for example, tax incentives, which may be limited). Staff does not believe that the release of this RFI will foreclose the opportunity to consider such alternatives, and it may serve to identify options that were not previously considered.

'Staff requests the Board's feedback and direction as to whether they would like for the RFI to be released."

MOTION: Comr. Renée Cahoon made a motion to approve the draft Request For Information re: Town Seasonal Workforce Housing Needs as presented and to direct staff to proceed. The motion was seconded by Comr. Brinkley which passed unanimously.

Discussion of various text amendments to update the Unified Development Ordinance as required by N.C.G.S. 160D; Request for Public Hearing

Dep Planning Director Kelly Wyatt summarized the agenda summary sheet which read in part as follows:

"In 2014, the Zoning, Planning, and Land Use section of the North Carolina Bar Association initiated an effort to modernize the framework of the State's enabling statutes for planning and development regulations. After extensive review and revision from various entities, the legislation moved through the General Assembly, the Senate Judiciary Committee and the House and Senate with the Governor signing the legislation on July 11, 2019. The new Chapter 160D of the North Carolina General Statutes consolidates current city- and county- enabling statutes (now found in Chapters 153A and 160A, respectively) into a single, unified chapter, and pulls in related statutes previously scattered throughout the General Statutes. All city and county zoning, subdivision, and other development regulations, including unified development ordinances, will need to be updated by July 1, 2021 to conform to the new law. Planning Staff has been working on, and continues to work on, the required update of the Unified Development Ordinance for consistency and conformance with the new NCGS Chapter 160D laws.

'Staff Recommendation/Planning Board Recommendation

With the need to adopt amendments to the UDO to reflect Chapter 160D revisions no later than the Board of Commissioners regular meeting in June 2021, Staff intends to have the completed update to the Planning Board at their April 20<sup>th</sup> meeting for their review and recommendation to the Board of Commissioners. Staff is requesting that the Board of Commissioners act at their April 7<sup>th</sup> meeting to schedule the Public Hearing for consideration the 160D Updates at their May 5<sup>th</sup> meeting, noting the ability

for staff to bring this back to the Board of Commissioners at their June 2<sup>nd</sup> meeting should revisions be necessary prior to the required adoption of the 160D revisions before July 1, 2021.”

MOTION: Mayor Pro Tem Siers made a motion to schedule a Public Hearing to consider updates to the UDO Ordinance as required by GS 160D for the May 5<sup>th</sup> Board meeting. The motion was seconded by Comr. Brinkley which passed unanimously.

## **NEW BUSINESS**

### Committee Reports

There were no Committee Reports provided.

### Report from Jockey’s Ridge State Park/Soundside Access Working Group

Mayor Cahoon read comments received via email concerning the Jockey’s Ridge State Park/Soundside Access which are attached to and made a part of these minutes as shown in Addendum “G”.

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

“At the November 4th Board of Commissioners meeting, the Board discussed a white paper presented by staff summarizing the evolution of the Jockey’s Ridge Soundside Access, including how the access was initially developed, changes to operations and management over time, as well as community concerns. The Board established a working group of staff, residents, Mayor Pro Tem Michael Siers, and the Park Superintendent to explore solutions to mitigate resident concerns and clarify management responsibilities moving forward. A total of five meetings were held between December and the end of March. A number of issues were discussed including traffic speed, volume, enforcement, parking along W. Soundside Road and other nearby streets, traffic calming measures, parking along the entrance to the access, events and large groups, alternative sound access locations, and other topics. The working group developed a series of recommendations which are attached for Board review and discussion. It is anticipated that any recommendations or requests for changes to operation of the access would need to be reviewed by North Carolina State Parks. Many of the other recommendations in the document can be initiated by the Town independent of the state.

‘Minutes from the working group can be found here -> <https://www.nagsheadnc.gov/1043/Jockeys-Ridge-Soundside-Rd-Access>.”

The final recommendations from the Working Group, as presented, read in part as follows:

“The following recommendations to the Board of Commissioners are intended to address the issues and concerns raised by residents of the neighborhood, while balancing the interests of the general public and recognizing the mission of Jockey’s Ridge State Park. Given her role, Park Superintendent Joy Greenwood, while a member of the Working Group, participated in the discussions but did not believe it was appropriate to vote on the recommendations. The remaining members of the committee voted 5-0 to approve the following recommendations.

- ‘1. Traffic Study

The Town, using appropriate means, resources, and professional methodology, shall have a traffic study conducted to determine the traffic impacts associated with the Soundside Access.

'2. Parking Restrictions along W. Soundside Road.

The Town should prohibit on-street parking within the right-of-way of W. Soundside Road, S. Thirteenth Street, and Deering Street.

'3. Improvements to W. Soundside Road.

The Town should conduct an audit of existing parking and traffic regulation signs along affected streets, and consider existing signs when instituting additional no-parking areas and traffic regulations.

'The Town should review the appropriateness of establishing a 3-way stop along W. Soundside Road, at the entrance to the Soundside Access. The Town should explore the feasibility and appropriateness of other traffic calming measures along W. Soundside Road that would physically limit or discourage the ability to speed such as a chicane or other measure.

'4. Access Hours

The Town should request Jockey's Ridge State Park's commitment to limit open hours, as follows:

'April 1 to September 30: 8:00am to 7:00pm

October 1 to March 31: 8:00am to 5:00pm

'And, further, that gates be opened no earlier than 7:50am, and that vehicles be physically restricted from entering the access after the signed closing time (i.e., 5:00pm or 7:00pm). These hours should be consistently posted whether through signage or through other methods of communication including internet and social media sites.

'5. Traffic Counts

The Town should request Jockey's Ridge State Park to maintain their traffic counter at the Soundside Access gate, support the installation of a counter that can provide hourly counts, and share such data monthly with the Town.

'6. Events and Groups

The Town should request that Jockey's Ridge State Park limit events held at the Soundside Access to 50 or fewer participants, that events held at the Access after open hours shall not utilize W. Soundside Road for access, and that the Town be notified of scheduled events.

'The Town should request that Jockey's Ridge State Park require that group education activities with 15 or more participants utilize shared transportation and not allow participants to individually travel to the Access.

'7. Alternative Sound Access

The Town should seek out and promote alternative Sound access in other town locations for the general public and for education and recreation groups. The Town should strongly encourage and support efforts by North Carolina State Parks to develop a separate sound access facility at Jockey's Ridge State Park that addresses current demand which is accessed internally within the park.

'8. Enforcement

The Town should commit to continued coordination between its Police Department and Park Rangers, performing routine visits to the Soundside Access when open. The Town should work with Jockey's Ridge

State Park on supervision of the beach and water during the season, and request that North Carolina Marine Patrol dedicate attention to this area.

`9. Access Infrastructure

Parking spaces have increased over time through use of parking in the shoulder of the unimproved drive aisle but not through a formal plan that was developed in partnership between the Town and the North Carolina State Parks. This has resulted in an increase in capacity of the access. If there is an interest in increasing the capacity of the access, it should be done through a formal planning process and not in the method that it has occurred. The members of the W. Soundside neighborhood serving on the task force are opposed to an increase in the capacity of the access in its current location and configuration along W. Soundside Road. At this time, the task force recommends no parking along the access drive aisle.

`10. Beach Access

The task force recommends addition of accessible parking to the existing parking lot and removal of the accessible parking space along the drive aisle. The beach walkover closest to W. Soundside Road should be removed once the structure reaches the end of its useful life.

`11. Neighborhood Coordination

The Town, Jockey's Ridge State Park, and neighborhood representatives should establish a standing committee that meets at least twice annually, prior to the season and following the season, and as needed to address concerns and issues.

`12. Operational Agreement

The Town and North Carolina State Parks should develop a new agreement that reflects the roles of each party in the operation and future maintenance of the access."

Mayor Pro Tem Siers thanked all involved in the working group - especially Megan Vaughan and Bobbie Murray for working with the Town. Interim Town Manager Greg Sparks clarified that there was no formal proposed parking lot – no formal proposed increase in the Town for any access.

Comr. Fuller suggested making a change to the policy indicating that the use applies to vehicles and not pedestrians.

Mayor Pro Tem Siers look at other soundside sites such as the Harvey Access and the Event Site where both have plentiful parking; however the geography is very different from the Jockey's Ridge soundfront access where it is much more shallow.

Mayor Cahoon thanked Mayor Pro Tem Siers and everyone involved for their input into the working group. He also asked that today's minutes reflect what actions are being requested of Jockey's Ridge State Park, per the recommendations of the working group and to formalize these actions for the State Park to address at its earliest opportunity.

**MOTION:** Comr. Renée Cahoon made a motion to endorse the recommendations from the Jockey's Ridge/Soundside Road Working Group as presented. The motion was seconded by Comr. Fuller.

Staff is to bring back an amendment to the Traffic Control Map establishing the 3-way stop sign and the No Parking/Tow Away Zone designations - for consideration at the May 5<sup>th</sup> Board meeting.

Comr. Renée Cahoon also mentioned the endorsement by State Parks of the hours of operation and the posted walkovers. Comr. Brinkley expressed his appreciation to all on the committee/working group who worked together to establish these recommendations.

CONTINUATION OF MOTION: The motion passed unanimously.

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

### Town Attorney Leidy - Request for Closed Session

Attorney Leidy agreed with Mayor Cahoon to consider all the Closed Sessions together at the end of the meeting.

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

### Interim Town Manager Sparks - Beach Nourishment Project Update

Interim Manager Sparks provided an update on the Beach Nourishment Project:

- The Municipal Service District (MSD) mailing has gone out
- The Public Hearing on the proposed MSD's is scheduled for May 5<sup>th</sup>
- 126 oceanfront easements are still needed

Comr. Brinkley said that some people spoke to him indicating that the mailer was confusing.

Comr. Renée Cahoon asked staff to put some easy-to-understand language on the web site re: the MSD process.

### Interim Town Manager Sparks - Consideration of removal of street lights at US 158/Oak Knoll Drive

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

"In late 1999, the Board approved the installation of streetlights on US 158, near the entrance of Nags Head Pond subdivision in response to citizen complaints of dangerous conditions regarding late night pedestrian crossings from Kelly's and Slammin' Sammy's. Commissioner Fuller brought forward a request for staff to review the current conditions and make recommendations for maintaining or removing the lights. Staff has reviewed the history for the necessity of the additional light in this vicinity for pedestrian safety and believes the lights are no longer warranted. Removal of the lights would be consistent with Nags Head philosophy of "dark sky".

'The cost of electricity for these lights is as follows:

- (1) 250W HPS Cobra/Enclosed at \$19.80/month or \$237.60 annual
- (3) 400W HPS Cobra/Enclosed at each at \$31.27/month or \$1,125.72 annual
- (1) 400W Equivalent Tier 8 LED Cobra/Enclosed at \$22.33/month or \$267.96 annual

'TOTAL ANNUAL SAVINGS: \$1,631.28

'Staff has confirmed with Dominion that there is no cost associated with removal of the poles.

“Staff recommends Board approval for removal of the five streetlights and replacement with low level lighting consistent with neighborhood entrance standards.”

MOTION: Mayor Pro Tem Siers made a motion to approve the request to remove the street lights at US 158/Oak Knoll Drive. The motion was seconded by Comr. Brinkley which passed unanimously.

## **BOARD OF COMMISSIONERS AGENDA**

### Comr. Kevin Brinkley – Opening up Town Hall

Comr. Brinkley asked about opening up Town Hall for access by residents and those needing to do business with the Town. Interim Manager Sparks stated that the plan is to have Town Hall fully opened up by the May 5<sup>th</sup> Board of Commissioners meeting; he is to look into the Town Hall front entrance signage and modify as appropriate.

### Comr. Webb Fuller - Discussion of Vehicle Use Policy

The summary sheet read in part as follows:

“Comr. Fuller, at the April 7<sup>th</sup> Board of Commissioners meeting, will discuss the Town’s Vehicle Use Policy with Board members.

“Attached please find a memo from Interim Town Manager Greg Sparks dated March 11, 2021 detailing recent concerns with the use of Town Vehicles and determine what, if any, action is necessary.”

Comr. Fuller spoke of the Town’s Vehicle Use policies - both Board and Admin. The Board’s policy allows for certain vehicles to be assigned for commuting purposes when in the best interest of the Town for purposes of improved response time, etc. He stated that it appears that several of the administrative actions that have taken place have not followed Board policy.

Mayor Cahoon asked Board members if there was interest in following up on vehicle use.

It was Board consensus that staff review the Vehicle for Use Board and Admin policies and return to the Board if necessary with proposed policies that may need tweaking when an Admin policy does not match a Board policy.

### Comr. Webb Fuller - Beach driving

Comr. Fuller noted that conflicts between beach drivers and beach goers/sunbathers are becoming more frequent and earlier - and later - in the season.

It was Board consensus to direct staff to obtain additional information re: surveying of the beach, keeping track of conflicts, etc. and to prepare any changes, if necessary, for Board consideration, prior to the 2021 Fall Beach Driving season.

Police Chief Webster stated that they have noticed several conflicts on the beach and taken action as necessary.

Comr. Renée Cahoon - Request for Closed Session

Comr. Renée Cahoon requested a Closed Session to consider the acquisition of real property, located at 103 W Seachase Court, in accordance with GS 143-318.11(a)(5).

Comr. Renée Cahoon - Keeping track of contract timelines

Comr. Renée Cahoon asked staff to prepare a spreadsheet to provide to the Board that would keep track of approved contracts and their appropriate timelines. The spreadsheet is to include contracts for studies, consultants, projects, etc. that have been approved by the Board; she would like to see a status of each included.

**MAYOR'S AGENDA**

Mayor Cahoon – NC League of Municipalities (NCLM) Board

Mayor Cahoon reported that he has been asked to submit his name as a candidate for the NCLM Board representing the NC Towns and Convention Cities.

**CLOSED SESSION**

MOTION: Comr. Brinkley made a motion to enter Closed Session to discuss and preserve attorney/client privilege, to consider the acquisition of real property located at 103 W Seachase Drive, and to discuss a confidential personnel issue in accordance with GS 143-318.11(a)(3), (5), and (6) respectively. The motion was seconded by Comr. Renée Cahoon which passed unanimously. The time was 3:20 p.m.

**OPEN SESSION**

The Board re-entered Open Session at 5:05 p.m. Attorney Leidy reported that no actions were taken during Closed Session.

**ADJOURNMENT**

MOTION: Mayor Pro Tem Siers made a motion to recess to Friday, April 16, 2021 at 2:30 p.m. in the Board Room. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 5:06 p.m.

Date Approved:           **May 5, 2021**          

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

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