



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR MEETING (COVID-19)  
WEDNESDAY, APRIL 15, 2020**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, April 15, 2020 at 9:00 a.m. The following instructions were provided to the public for meeting participation – in response to the COVID-19 pandemic.

*"In order to view and listen to the Board meeting remotely, please register here:  
[https://zoom.us/webinar/register/WN\\_YqmiLnuR-CUDH5LI0svCg](https://zoom.us/webinar/register/WN_YqmiLnuR-CUDH5LI0svCg)*

*'Please email your comments for the Public Comment portion or for the Public Hearing here:  
[publiccomment041520@nagsheadnc.gov](mailto:publiccomment041520@nagsheadnc.gov) (Comments will also be accepted during the Board meeting)*

*'Comments should include your name and address and be limited to five minutes when read aloud.'*

Board members Present:	Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley (all present in the Board Room)
Board members Absent:	None
Others present:	Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; and Amy Miller (all present in the Board Room); Karen Snyder (in the BOC Conference Room)
Present Electronically:	Planning Director Michael Zehner; Town Engineer David Ryan; and Town Clerk Carolyn Morris; Registered attendee list provided as Addendum "A"

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9:00 a.m. He welcomed all those listening electronically explaining that the different format for today's meeting is in response to the declared state of emergency due to the Corona Virus pandemic and is intended to keep everyone safe. He thanked caregivers, medical personnel, public works staff, and all others working during this pandemic.

Mayor Cahoon asked that everyone listening to please keep in mind those affected by the COVID-19 pandemic during a moment of silent meditation. The moment of silent meditation was followed by the Pledge of Allegiance.

## **ADOPTION OF ELECTRONIC MEETING POLICY**

A proposed electronic meeting policy was presented for Board consideration.

**MOTION:** Comr. Fuller made a motion to approve the Electronic Meeting Policy as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

The policy, as approved, read in part as follows:

"The Town of Nags Head Board of Commissioners (the "Board") is committed to conducting its meetings in compliance with Article 33C of Chapter 143 of the North Carolina General Statutes ("the North Carolina Open Meetings Law"). To enable all Board members to participate fully in Board meetings, the following requirements shall apply whenever Board member(s) are unable to be physically present and are only able to participate in a Board meeting through electronic means:

1. **Where a quorum of the Board members are physically present** in the Board chambers for the meeting:
  - A. A remote Board member must be able to hear the Board's discussion and any presentations made to the Board during the meeting.
  - B. Technical arrangements must be made so that a remote Board member's comments can be heard by all present for the meeting, including the public.
  - C. A remote Board member must notify the Town Clerk sufficiently in advance of the meeting to ensure that all requirements for remote participation, including technical and equipment needs can be addressed in advance of the meeting.
  - D. A remote Board member may not vote on any matter.
  - E. A remote Board member will not be included in determining whether a quorum is present for the meeting.
  - F. A remote Board member may not participate in a closed session.
  - G. A remote Board member may not participate in any quasi-judicial proceeding.
  - H. The Board minutes must reflect that a remote Board member was not physically present.
  - I. A Board member is discouraged from participating remotely in more than 3 regular Board of Commissioners meetings in a 12-month period.
2. **In the event of a declared State of Emergency** and/or when health or safety of the public, the Board of Commissioners members and Town staff may be adversely affected by the presence of Board of Commissioners members in the Board chamber or in the same meeting room, the following rules apply:
  - A. The Board may meet electronically pursuant to this policy without a quorum physically present in the Board chambers so long as a quorum of the Board is participating, regardless whether the Board members are acting remotely or present in the Board chambers. A remote Board member must be able to hear the Board's discussion and any presentations made to the Board during the meeting.
  - B. A remote Board member must notify the Town Clerk sufficiently in advance of the meeting to ensure that all requirements for remote participation, including technical and equipment needs can be addressed in advance of the meeting. Technical arrangements must be made so that a remote Board member's comments can be heard by all present for the meeting, including the public.
  - C. Remote Board members may vote on matters before the Board as if they are present in the Board chambers.
  - D. The Board may hold a closed session if otherwise allowed by law when it would be unreasonable to wait until a future in-person meeting to hold the closed session, and when the

- Board can confirm that the technology being used does not allow anyone who would not be allowed to participate in the closed session to intercept or participate in the closed session.
- E. The Board should take reasonable precautions to limit voting actions to those items which must be voted on at that time or within the time that an in-person meeting could safely and conscientiously occur. Except for exigent circumstances and then only with the applicant's consent, quasi-judicial proceedings should be rescheduled, postponed or continued to the time when an in-person meeting can safely and conscientiously occur.
  - F. The Board shall comply with N.C. Gen. Stat. Sec. 143-318.13 as same may be amended from time to time, including providing a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by law shall specify that location. A fee of up to twenty-five dollars (\$25.00) may be charged to each listening member of the public to defray in part the cost of providing the necessary location and equipment. In addition, the Board shall make a reasonable attempt to allow for:
    - i. Real time transmission of audio of the meeting to the public, and if such transmission is not possible, then a reasonable attempt to publish the audio and video, if any, on the Town's website as soon as reasonably possible;
    - ii. Public participation during a public comment period if the meeting is a regular meeting and the only regular meeting of the Board that month; and
    - iii. Public participation for any public hearings required by law for the decisions being made during the meeting.
  - G. The Board should also consider taking action at the next meeting having an in-person quorum to ratify any actions taken electronically under this provision which occurred without a physically present quorum and without all the necessary votes for the action physically present in the Board chambers.
  - H. This section to of this policy shall also apply to all boards or committees appointed by the Board of Commissioners."

## **ADOPTION OF AGENDA**

**MOTION:** Comr. Renée Cahoon made a motion to approve the April 15, 2020 Board agenda with the removal of the March 4<sup>th</sup> Board of Commissioners minutes for additional detail re: presentation by Outer Banks Visitors Bureau Executive Director Lee Nettles concerning the Event Site. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

## **PUBLIC COMMENT**

Mayor Cahoon and Town Manager Ogburn read the public comments received that were sent to [publiccomment041520@nagsheadnc.gov](mailto:publiccomment041520@nagsheadnc.gov) - These comments are attached to and made a part of these minutes as shown in Addendum "B".

Mayor Cahoon closed this Public Comment period and stated that he would return to read any additional public comments received, prior to entering Closed Session, at the end of the meeting.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #10 to FY 19/20 Budget  
Consideration of Tax Adjustment Report  
Approval of minutes

Consideration of resolution in support of NCDOT lowering speed limit from Juncos Street south from 45 MPH to 35 MPH - for one speed limit on SR 1243

Consideration of (K9) Handler Compensation Policy – for inclusion in Town Personnel Policy

Request for Public Hearing to consider numerous text amendments to the Unified Development Ordinance as it pertains to the updated flood maps and update of the Flood Damage Prevention Ordinance

Request to continue to May 6<sup>th</sup> Board meeting – Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by property owner to expand principal sale items from outdoor stands to include reservations and tickets for events/activities

Request to continue to May 6<sup>th</sup> Board meeting - Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors

Comr. Renée Cahoon asked that the March 4<sup>th</sup> Board minutes be removed from the Consent Agenda; she would like to see more detail re: the Dare County Tourism Board's item re: the Event Site. Comr. Fuller suggested that OBVB Executive Director Lee Nettles' memo, that he read from, be included in the minutes to provide additional detail.

Comr. Fuller confirmed with staff that the Consent Agenda items re: moving the public hearings to the May Board meeting was with the consent of all parties involved.

**MOTION:** Comr. Renée Cahoon made a motion to approve the Consent Agenda as amended (with the removal of the March 4<sup>th</sup> Board minutes). The motion was seconded by Comr. Brinkley which passed unanimously.

Mayor Cahoon confirmed that the March 4<sup>th</sup> Board minutes, with the requested additional detail, would be included on the May 6<sup>th</sup> Board meeting Consent Agenda for approval.

Budget Adjustment #10 to the FY 19/20 Budget, 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".

The summary sheet in support of NCDOT lowering speed limit to 35 MPH from Juncos Street south on SR1243 read in part as follows:

"The NC Dept of Transportation (NCDOT) form entitled *Certification of Municipal Declaration To Repeal Speed Limits and Request for Concurrence* is required in order to repeal the 45 MPH speed limit on S Old Oregon Inlet Road (SR 1243).

'At its March 4, 2020 meeting, the Board approved the reduction in speed limit from 45 MPH to 35 MPH from Juncos Street south to the Town line and authorized forwarding to NCDOT. The remainder of SR 1243 is 35 MPH.

'Attached please find the required NCDOT form, an ordinance amending the Town's Traffic Control Map, and an applicable map. NCDOT staff has indicated that the speed limit signage will be replaced after receipt of the attached form."

The resolution (required NCDOT form), as adopted, is attached to and made a part of these minutes as shown in Addendum "E". The ordinance amending the Traffic Control Map, as adopted, is attached to and made a part of these minutes as shown in Addendum "F".

The K9 Handler Compensation Policy, as approved, read in part as follows:

"In an effort to follow best practices we would like to add Handler Compensation to the Personnel Policy as it relates to the Pay Plan. Handler Pay is often referred to as Garcia Pay. Garcia v San Antonio Metropolitan Transit Authority was a 1985 case that essentially extended FLSA to state and local governments. This case directly affects how and when K9 officers are to be compensated for the at-home care of their dog. We researched department records and found that a Caring for Police K-9 Supplement Agreement was made in 2007 between the Town and then-handler Paul Lipscomb. Although the courts have not ruled directly on the amount of compensation for handling, there is one case, Levering v District of Columbia, that states the "appropriate time" of such activity. This case states "30 minutes per day", seven days per week is a reasonable compensation. We feel this method of calculation is a reasonable estimate of the actual amount of time spent. The Handler Compensation section will be located in Article IV. The Pay Plan, Section 20:

'Section 20. Handler Compensation

Police Officers assigned as canine handlers shall receive additional compensation of \$200.00 per pay period for a total of \$5,200.00 annually. This supplemental pay is to compensate a canine officer for his or her off duty time caring for their assigned partner. Care is defined as, but not limited to, bathing, brushing, exercising, the act of feeding, grooming, administering medication, training the dog at home, cleaning of the dog's kennel and vehicle. The handler compensation will continue until the officer is reassigned from the K-9 unit."

The Request for Public Hearing re: Flood Insurance Rate Maps and Flood Insurance Study, as approved, read in part as follows:

"The proposed text amendments serve to adopt the updated Flood Insurance Rate Maps and Flood Insurance Study by amendment of the Flood Damage Prevention Ordinance; additionally, amendments are included to Article 4, Development Review Process, Section 8.6.4., Building Height, Section 11.5.3. Standard for Depth or Elevation of Fill, and Appendix A. Definitions. In addition to the Ordinance, also attached is the PowerPoint presentation made to the Planning Board at the meeting on April 1, 2020 and a letter from the Outer Banks Home Builders Association providing comments on the draft ordinance that was submitted during the Planning Board's meeting.

'Planning Board/Staff Recommendation

Staff recommended to the Planning Board that the text amendments be adopted as proposed, with changes requested by the State's NFIP Office. The Planning Board recommended unanimous approval

at their meeting on April 1, 2020, with the incorporation of those requested changes. The attached draft of the Ordinance includes these changes. The Planning Board meeting materials and a recording of the meeting are available at [www.nagsheadnc.gov/floodmaps](http://www.nagsheadnc.gov/floodmaps)."

The Request to continue Public Hearing re: outdoor stands to the May 6<sup>th</sup> Board meeting, as approved, read in part as follows:

"The proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) is seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2). The original proposal sought to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities; the applicant had explained that a vendor had approached the Outlets about the idea of having a kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Based upon input from the Planning Board, the original proposal was revised to the current version. The attached adoption ordinance and markup are as prepared by the applicant.

Planning Board/Staff Recommendation

Staff recommended to the Planning Board that the amendment be adopted with modifications to the standards to require that the sale and advertisement of items be confined to stands and to allow a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. Additionally, it is suggested that Sections 7.76.3 and 7.76.4. also be amended to provide for a maximum stand area and any time limitations, respectively, for the sale of tickets and reservations; a limitation of 150 square feet and a time limitation consistent with produce stands are likely sufficient. Finally, Staff recommended that the definition of Outdoor Stand be amended consistent with the amendment of Section 7.76.1.

"The Planning Board, at their February 18, 2020 meeting, voted 6-0 to recommend amendments to UDO as recommended by Staff. In making their recommendation, the Planning Board acknowledged their opinion that the proposed amendments were consistent with the relevant policies contained in the Comprehensive Plan."

The Request to continue Public Hearing re: errors in the UDO to the May 6<sup>th</sup> Board meeting, as approved, read in part as follows:

"Since the adoption of the Unified Development Ordinance (UDO) on August 7, 2019, Staff has located minor numbering, punctuation, grammatical, consistency and contextual errors within the document; this amendment is intended to correct these identified errors. It is anticipated that Staff will periodically propose similar amendments in the future to correct any further errors identified through the administration of the UDO. Staff recommends that the amendment be adopted as outlined in the attached adoption ordinance, and the Planning Board agreed at their February 18<sup>th</sup>, 2020 meeting."

## **PUBLIC HEARINGS**

Public Hearing to consider the adoption of resolutions authorizing the Town to enter into an Installment Purchase contract to finance the cost of the Sidewalk Pedestrian Path, Fuel Tank Conversion, and Dowdy Park improvements as identified in the FY 2019/2020 Budget

Town Attorney John Leidy introduced the Public Hearing concerning the adoption of resolutions authorizing the Town to enter into an Installment Purchase contract to finance the cost of the Sidewalk Pedestrian Path, Fuel Tank Conversion, and Dowdy Park improvements as identified in the fiscal year 2019/2020 Budget. The time was 10:07 a.m.

Finance Officer Amy Miller summarized the agenda summary sheet which read in part as follows:

"Attached please find a staff memo with recommendation for financing budgeted 2019/2020 real property improvements. The approved projects to be financed are the Sidewalk Pedestrian Path, Fuel Tank and Pump Conversion, and Dowdy Park improvements.

"The lowest bid of PNC Bank with an interest rate of 2.42% has been recommended. Attached please find a resolution approving the financing and a second resolution authorizing the required filing of an application to the Local Government Commission."

Staff's memo read in part as follows:

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

	<u>Interest Rate</u>
PNC Bank	2.42%
BB&T	2.65%
Towne Bank	Unable to bid
Southern Bank	Unable to bid

"The lowest total bid in aggregate has been selected. Staff is recommending accepting the proposal received from PNC Bank, which offered the most competitive financing bid within the requested financing guidelines."

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, April 1, 2020 and on Wednesday, April 8, 2020 as required by law.

Attorney Leidy opened the Public Hearing at 10:09 a.m. As there was no one present who wished to speak and no comments forwarded, Attorney Leidy closed the Public Hearing at 10:10 a.m.

Comr. Fuller confirmed with staff that these funds were already committed/approved in the budget – these are not new funds - he wanted to make sure this was clear.

**MOTION:** Comr. Renée Cahoon made a motion to adopt the resolution authorizing the Town to file an application for approval of a financing agreement authorized by GS 160A-20 to finance the cost of the Sidewalk Pedestrian Path, Fuel Tank Conversion, and the Dowdy Park improvements as identified in the FY 19/20 Budget. The motion was seconded by Comr. Brinkley which passed unanimously.

The resolution re: authorization to file an application for approval of a financing agreement, as adopted, read in part as follows:

“Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement Authorized by NCGS 160A-20

‘WHEREAS, the Town of Nags Head, North Carolina desires to finance the construction of a pedestrian path project, Dowdy Park improvements, and Public Works fuel tank and pump replacements as identified in the fiscal year 2019-2020 budget and Reimbursement Resolution Number 19-07-019 (the “Project”) to better serve the citizens of Nags Head; and

‘WHEREAS, The Town of Nags Head desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

‘WHEREAS, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract.

‘NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Nags Head, North Carolina, meeting in regular session on the 15th day of April 2020, make the following findings of fact:

‘1. The proposed contract is necessary because the Town wishes to construct a pedestrian path based on the highest-ranking projects from its pedestrian plan in order to provide better connectivity throughout Town. The Town’s fuel tanks need to be converted to above ground tanks to eliminate water intrusion. The re-location of the tanks requires new fuel pumps due to the additional burden put on the pumps. Finally, Dowdy Park improvements are necessary in order to complete implementation of the master plan and the intent of the original site design. All applicable permits and easements will be obtained prior to LGC approval.

‘2. The sums to fall due under the contract are adequate and not excessive for the proposed purpose as in accordance with the amended budget for FY 2019-2020 and Reimbursement Resolution Number 19-07-019.

‘3. The Town of Nags Head’s debt management procedures and policies have been carried out in strict compliance with the law, and assurance is provided that debt management will hence forth be so carried out.

‘4. The Town of Nags Head is not in default in any of its debt service obligations.

‘5. The attorney for the Town of Nags Head has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

‘NOW, THEREFORE, BE IT FURTHER RESOLVED that the Manager is hereby authorized to act on behalf of the Town of Nags Head in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.”

**MOTION:** Comr. Renée Cahoon made a motion to adopt the resolution authorizing the financing terms for the cost of the Sidewalk Pedestrian Path, Fuel Tank Conversion, and the Dowdy Park improvements as presented at an amount of \$1,401,396.00, at a term to not exceed five (5) years from closing with an annual interest rate to not exceed 2.42%. The motion was seconded by Comr. Brinkley which passed unanimously.

The resolution re: authorization of financing terms, as adopted, read in part as follows:

**“Resolution Approving Financing Terms**

‘WHEREAS: The Town of Nags Head (the “Town”) has previously determined to undertake a project for financing of the Pedestrian Multi-use Path, Fuel and Pump Tank Replacement, and Dowdy Park improvements, (the “Project”), and the Finance Director 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 PNC Bank (PNC), in accordance with the proposal dated April 3, 2020. The total amount financed shall be \$1,401,396.00 and the term shall not exceed five (5) years from closing and the annual interest rate shall not exceed 2.42%.

‘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. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as PNC may request.

‘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 director's final approval of the Document's final form.

‘4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Town hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified, tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

‘5. 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 PNC 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.

‘6. 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.”

Mayor Cahoon – Dare County Chairman Woodard broadcast

Mayor Cahoon noted that the time is now 10:20 a.m. and that the Dare County Board of Commissioners Chairman, Bob Woodard, has a planned broadcast at 11:00 a.m. Mayor Cahoon thanked all those participating/listening electronically to today's Town meeting.

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

### Discussion of FY 2020-2021 Public Beach and Coastal Waterfront Grant pre-application

Planning Director Michael Zehner summarized the agenda summary sheet which read in part as follows:

"The Division of Coastal Management ("DCM") has notified local governments in the 20-county coastal area that grant funding is available for Public Beach and Coastal Waterfront Access projects for the upcoming 2020-21 fiscal year. Local governments are invited to apply for funding for projects with pre-applications due on Friday, May 15, 2020. The Town has identified Huron Street Beach Access as the focus of a grant application for funding in this upcoming Fiscal Year. Staff would request the Board's feedback with respect to an application for improvement to the Huron Street access."

### The staff memo was presented and read in part as follows:

"The Division of Coastal Management ("DCM") has notified local governments in the 20-county coastal area that grant funding is available for Public Beach and Coastal Waterfront Access projects for the upcoming 2020-21 fiscal year. Local governments are invited to apply for funding for projects that are anticipated to begin after January 2021 and to be completed by July 2022. The application process has three (3) steps: the pre-application, invitation to submit a final application, and grant contract approval. DCM will review the pre-applications and select a number of proposals for further consideration based on available funding. DCM has extended the deadline for the 2020-21 Public Beach and Coastal Waterfront Access Grant pre-applications to Friday, May 15, 2020.

'The Town was awarded CAMA Public Access Grants in 2018 and 2019 to make improvements at the Jacobs Street and Islington Street accesses. Grant funding for the two projects totals approximately \$169,000, with local matching funds totaling \$96,103.

'The Town has identified Huron Street Beach Access as the focus of a grant application for funding in this upcoming Fiscal Year. The pre-application grant package notes the following criteria used to prioritize and select projects to receive grant assistance:

- Lack of access opportunities in the area;
- Demonstrated need for the project due to high demand and limited opportunities;
- Project is identified in a local beach or waterfront access plan or certified CAMA Land Use Plan;
- Community has not received previous assistance from this grant program;
- The commitment of matching funds exceeds the minimum required local match;
- Project proposal includes multiple funding sources (in addition to DCM);
- Location includes donated land deemed "unbuildable" due to regulations or physical limitations and;
- The community has demonstrated its ability to complete previous projects and/or has demonstrated its ability to operate and maintain facilities previously funded.

'Staff discussed the potential of a pre-application with DCM staff for the replacement of the beach access crossover at Huron Street. This access is currently not ADA accessible, but does have an improved parking area. DCM staff noted that in addition to the criteria listed above, applications for new beach accesses are given greater preference than those for replacement. It was also noted that there are situations where dunes are so high that ADA accessibility cannot be achieved, and this is understood. In these cases, replacement in kind would be acceptable. Staff has determined that replacement as an ADA

access in this location would require the elimination of several existing parking spaces. Also, there are several ADA compliant access points in this vicinity. For these reasons, staff is recommending replacing the walkover as is. Staff is also recommending this project based on its small scope given that there may be limited funds available for a match.

'While a local match was initially considered to be included as part of the Town's FY20-21 CIP (\$40,000), if available, a Tourism Impact Grant from the Dare County Tourism Board will be pursued to cover this amount. If no DCTB grant funds are available due to a reduction in revenue, the Board could decide later in the year if town funds are available to provide the match.

'Staff would request the Board's feedback with respect to an application for improvement to the Huron Street access. Including the improvement of accesses, the following are examples of eligible projects provided by DCM:

- Land acquisition - purchase of land for future public access facilities.
- Land easement acquisition - purchase of easements for public access.
- Parking areas, restrooms and other facilities.
- Urban waterfront access sites - improved public access to deteriorating or under-utilized urban waterfronts through reconstruction or rehabilitation.
- Reconstruction or relocation of existing damaged public access facilities. Primarily for sites not originally funded by this program or for improvements to any sites at least fifteen (15) years old.
- Handicap facilities - Local governments are encouraged to submit proposals designed to enhance handicap accessibility at existing facilities.
- Boat Launch facilities- boat launch and ramp facilities, whether motorized or not, may be part of a project provided pedestrian access is still a major component of the project."

Comr. Renée Cahoon asked how many parking spaces are expected to be lost for the access; Director Zehner stated that it depended on if the access was going to be ADA compliant.

Comr. Renée Cahoon, as a Board member on the Coastal Resources Commission (CRC), explained that the CRC has nothing to do with grants given by the Division of Coastal Management; she wanted to be transparent and make sure everyone was aware.

Director Zehner reported that all he needed was consensus to move forward.

Comr. Fuller said that he was not in favor of moving forward with the grant pre-application as he does not want to commit any taxpayer funds until there is a better sense of what is going to happen.

Comr. Brinkley clarified with staff that the grant can be applied for without committing to/obligating any funds. Director Zehner stated that he believed that to be the case but would confirm with DCM.

Board members Comr. Renée Cahoon and Mayor Pro Tem Siers also agreed to move forward as long as no funds were being obligated.

It was Board consensus, with one dissent from Comr. Fuller, to move forward to submit the pre-application for the FY 20/21 Public Beach and Coastal Waterfront Grant, keeping an eye on the Town's budget.

## **NEW BUSINESS**

### Committee Reports

Comr. Brinkley – Jennette’s Pier – Comr. Brinkley reported he recently received an email from Director Mike Remige indicating that Jennette’s Pier, which closed on March 17<sup>th</sup> would have all programs closed until May 15<sup>th</sup>.

Comr. Fuller – Dare County Tourism Board (DCTB) – The DCTB Budget and Finance Committee met recently and will be providing recommendations to the full Board tomorrow.

Comr. Fuller – County-owned South Beach Grille – the South Beach Grille building, with its open doors and windows is currently under contract to be demolished but the contractor is an out-of-County vendor and is unable to get into the County. Comr. Brinkley pointed out that vendors are allowed into the County with a pass from the County.

Comr. Fuller – Soundside Event Site - in response to one of the letters read during public comment, Comr. Fuller said that it was his understanding from the DCTB that there is no interest in negotiating a settlement with the Town re: paying the Town back / transferring the Town’s property until a determination is made re: what will be done with the Event Site.

Mayor Cahoon – Dare County Control Group – as a member of the Control Group, Mayor Cahoon reported that other than today and one other weekend the Control Group has met every day since the first day of the pandemic; there has not been discussion yet concerning the reopening of the beach. He stated further that Chairman Woodard has asked members to assemble their thoughts for discussion at a meeting the end of this week with a full discussion next week when the Health Director and the Emergency Management Director will provide a briefing.

Comr. Renée Cahoon said that she doesn’t know why certain dates are being mentioned for a reopening of the beach, such as August, and she confirmed with Mayor Cahoon that no date has been mentioned yet in the Control Group.

### Update on/Discussion of Corona Virus-19

Town Manager Cliff Ogburn summarized the agenda summary sheet which read in part as follows:

“Consideration of resolution authorizing fees waived until June 30, 2020 - Attached please find a proposed resolution authorizing waiving the following fees until June 30<sup>th</sup> in accordance with the Governor’s Executive Order #124:

- Water late fees and reconnection fees
- Tax penalty fees
- E-check/debit/credit card fees for paying of water and taxes

‘Consideration of Emergency Paid Sick Leave Policy – Attached please find a proposed Emergency Paid Sick Leave Policy for Board consideration; the Policy, in accordance with the Families First Coronavirus Relief Act, provides emergency paid sick leave regardless of an individual’s length of employment. The policy as mandated terminates December 31, 2020.

'Impact on current/future budgets

Town Manager Ogburn will present potential budget impacts due to COVID-19 along with possible solutions for Board discussion."

- *Consideration of resolution authorizing fees waived until June 30, 2020*

**MOTION:** Comr. Renée Cahoon made a motion to adopt the resolution authorizing waiving of the fees listed (debit/credit/e-check to pay taxes, utility fees) to include the addition of late filing penalties for personal property taxes [as noted this does not refer to real property taxes]. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

- *Consideration of Emergency Paid Sick Leave Policy*

Town Attorney Leidy explained the federal mandate with guidelines from the Dept of Justice is to be included into Town Policy. Mayor Pro Tem Siers asked about the 10-day period; Attorney Leidy said that the employee is without pay for the first 10 days but if they qualify would be entitled for the remainder of their FMLA period.

**MOTION:** Comr. Fuller made a motion to approve the Emergency Paid Sick Leave Policy as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

"The Town provides eligible employees with emergency paid sick leave and emergency FMLA leave under certain conditions as required by the Families First Coronavirus Relief Act. These are two separate forms of leave that in some cases are governed by different rules, as set forth below.

'Eligibility

All classes of employees are eligible for emergency paid sick leave and emergency FMLA leave. All employees are eligible for emergency paid sick leave under this policy regardless of the length of their employment. To be an "eligible" employee for purposes of emergency family or medical leave available under this policy, the employee must have been employed by the Town for at least 30 calendar days before requesting the leave.

'A. Reason for Emergency Paid Sick Leave

You may take Emergency Paid Sick Leave if you are unable to work (or telework, if allowed) due to a need for leave because:

1. You are subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. You are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
4. You are caring for an individual who is subject to an order as described in 1, above or who has been advised to quarantine or isolate due to concerns related to COVID-19;
5. You are caring for your own child (i) because their school or place of care is closed, or (ii) because your child's childcare provider is unavailable, due to COVID-19 precautions; or
6. You are experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

'Duration/Compensation

Employees are entitled to Emergency Paid Sick Leave:

- Full-time employees: Up to 80 hours of pay for non-exempt employees, two weeks of pay for exempt employees, or a two-week equivalent of pay for fire and police, at their regular pay rate. However, when caring for a family member (for reasons 4, 5, and 6 above), Emergency Paid Sick Leave is paid at two-thirds the employee's regular rate.
- Part-time employees: Emergency Paid Sick Leave provided under this Policy is calculated based on the number of hours the employee works, on average, over a two-week period. Except in extraordinary circumstances, the two-week period used will be the two full weeks immediately preceding the date the leave is requested.
- Paid leave under this shall not exceed \$511 per day (\$5,110 in total) where leave is taken for reasons 1, 2, and 3 described above (generally, an employee is unable to work because of their own illness or quarantine); or \$200 per day (\$2,000 in total) where leave is taken for reasons 4, 5, or 6 (where the employee is unable to work due to a need to care for others or school closures).

#### `Leave Rules

- You may elect to use Emergency Paid Sick Leave before using any accrued paid leave. You are not required to use any other paid leave before using Emergency Paid Sick Leave.
- No leave provided by the Town before April 1, 2020 may be credited against your leave entitlement. In addition, Emergency Paid Sick Leave provided under this Policy cannot be carried over after December 31, 2020 and will not be paid out upon termination.

#### `Requesting Emergency Paid Sick Leave

- If you need to take Emergency Paid Sick Leave, provide notice as soon as possible. Normal call-in procedures apply to all absences from work. You are not required to search for or find a replacement employee to cover the hours during which you are using leave under this policy.

#### `B. Reason for Emergency FMLA Leave

An eligible employee is entitled to Emergency FMLA Leave if the employee is unable to work (or telework, if allowed) due to a need for leave to care for their own child < 18 year old because the school or childcare facility for the child has been closed due to public health emergency, or because the childcare provider of such child is unavailable due to a public health emergency.

#### `Duration/Compensation

- No pay is available for first 10 days of leave unless the employee elects to substitute any accrued vacation leave, sick leave or Emergency Sick Leave.
- After 10 days, part-time and full-time employees will receive two-thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.

#### `Leave Rules

You may elect to use any accrued paid leave during the first 10 days of Emergency FMLA Leave.

#### `Requesting Emergency FMLA Leave

Where the need for Emergency FMLA Leave provided for in this policy is foreseeable, the employee must provide their supervisor with as much notice of the leave as is practicable.

#### `Job Restoration

The return to work provision of the Town's FMLA Leave policy shall apply to an employee who takes Emergency FMLA leave under this policy.

#### `C. General Provisions

##### Retaliation

The Town will not retaliate against any employee who requests or takes Emergency Paid Sick Leave or Emergency FMLA Leave in accordance with this policy.

Expiration

This policy and the leave options provided by it expires on December 31, 2020."

*- Impact on current/future budgets*

Town Manager Ogburn spoke concerning the remainder of this year's budget and next year's budget; his presentation slides were presented and are attached to and made a part of these minutes as shown in Addendum "G".

Budget for remainder of FY 2019/2020 – Board members questioned to what extent the public would even be taking a vacation this year, and if so, to what extent they would be spending. Comr. Fuller stated that some of this is also determined by how insurance covers cancelled vacations, etc. Most companies will try to be as accommodating as possible. The big factor is when the area will open.

The recommended budget schedule, as presented on screen by Town Manager Ogburn, read in part as follows:

Presentation of Manager's Recommended budget	Wed, May 20 <sup>th</sup> – 7 pm [modified later to 9 am]
Budget Workshop	Wed, May 27 <sup>th</sup> – 9 am
Second Budget Workshop (if needed)	(TBD)
Public Hearing	Wed, Jun 3 <sup>rd</sup> – 9 am
Budget Workshop (incorporated comments from Public Hearing)	Wed, Jun 10 <sup>th</sup> – 9 am
Adoption of Budget – mid-month meeting	Wed, Jun 17 <sup>th</sup> – 7 pm

Town Manager Ogburn emphasized that waiting as long as possible would allow him and staff to have as much knowledge/information as possible prior to presenting his budget to the Board. Board members agreed.

Comr. Renée Cahoon said that she did not want to hurry through the budget starting at 7 pm at the May 20<sup>th</sup> mid-month meeting; she suggested that this be a 9 am meeting when the budget is presented. Board members agreed.

Comr. Fuller commented concerning revenue vs expenditure – to do everything possible to get expenditures as low as possible which he feels is being done. In order to balance the budget he suggested Capital Funds be put on hold and he would like to see no movement of any capital money into the operating budget to balance the budget.

Comr. Renée Cahoon stated that while she loves fireworks, the reality is changing and as a community with visitors, she does not want to encourage mass gatherings at this time. She would like to see fireworks removed from this year's budget in order to be more cognizant of the current COVID-19 situation.

Staff is to include the July 4<sup>th</sup>, 2020 Fireworks Display on the May 6<sup>th</sup> agenda for discussion.

Mayor Cahoon asked Board members if they had any other guidance for Town Manager Ogburn, to provide it to Town Manager Ogburn.

Town Manager Ogburn - Discussion of recycling contract for remainder FY 1/20 and FY 20/21

The agenda summary sheet read in part as follows:

"Attached please find a memo from Town Manager Ogburn with details re: recycling. As attachments to his memo please find a letter from the Solid Waste Section of the NC Division of Waste Management authorizing use of the Wheelabrator facility in Portsmouth, Virginia for the Town's recyclables. A Draft Single Stream Recyclables Processing Agreement with Recycling Disposal Solutions (RDS) of Virginia Beach, Virginia is also an attachment."

Town Manager Ogburn summarized his memo which read in part as follows:

"One of the items you will consider at the upcoming meeting is the continuation of recycling service within the Town. As you know, the town may cancel the current contract with Bay Disposal with 30 days' notice due to changes that the provider made to the service last year. All recyclables currently collected by Bay Disposal are being diverted to an incinerator in Portsmouth, Virginia due to lack of cost effective market alternatives for recyclable materials. We are viewing this as a temporary measure until such time that a viable alternative is available. We have now been informed that a new recycling facility is available in Portsmouth, Virginia to process and market our recycling materials; a cost proposal has been provided to the town.

'Attached are two items: 1) a letter from the Solid Waste Section of the NC Division of Waste Management granting permission for the Town to continue to send its recyclable material to the Wheelabrator incinerator facility in Portsmouth, Virginia, and 2) a draft of the Single Stream Recyclables Processing Agreement provided for consideration to contract with Recycling Disposal Solutions (RDS) to receive or recycled material, which includes a pricing schedule labeled as Schedule 1 – Recoverable And Marketable Recovered Material Standards.

'While RDS has secured verified long-term markets for container and fiber recyclables, their prices are considerably higher than what we pay now.

'The Town has several options:

'1- continue to collect and divert recyclable materials to an incinerator; continue to use Bay Disposal for collection during the summer months.

'2- contract with RDS to process and sell recyclable materials at the pricing schedule provided; continue to use Bay Disposal for collection during the summer months.

'3- cancel the recycling contract with Bay Disposal; suspend recycling and send all materials to the landfill using town forces.

'Option 1 would not change what we are currently doing. Option 2 would increase the cost of the recycling service primarily due to higher cost of processing materials. A final cost for this has not been determined,

however the quoted price per ton is currently \$95. Option 3 would eliminate the service which provides a cost savings to the town of approximately \$195,000 for a full year (approximately \$39,000 per month for five months). However, there would be a tipping fee increase of approximately \$25,000 to account for the recycling materials that are currently included in Bay Disposal's contract as well as a \$6 per ton increase to divert the recycling materials we collect to the landfill. Therefore, the total savings would be approximately \$170,000 per year.

'Also under a separate agreement is the collection of recyclables that are dropped off at a container at Town Hall, which cost \$7,500 last year. I would suggest adding the same container at our Public Works facility.

'One unknown at this time is whether Bay Disposal will raise the \$70/ton cost we are charged for material we deliver to them. That price is considerably lower than the cost for other municipalities. I would expect the cost to increase if we were to cancel the \$195,000 contract.

'The Town is facing what could be one of its toughest economic periods due to the impacts of COVID-19. For this reason, combined with the limited cost effective options to properly process recyclable materials, I would suggest the Town suspend its recycling program at this time and reevaluate the program's viability at a later date when market conditions evolve. We believe we could do this with minimal changes to the current schedule. It's my opinion that the majority of our citizens are proud of the fact that we have provided curbside recycling to date and would prefer that we continue. As an alternative, we can reinstate the franchise agreement and provide an opportunity for our citizens to voluntarily subscribe to a recycling service as well as providing two locations for them to drop their materials off."

Mayor Cahoon stated that a decision needs to be made re: Bay Disposal and recycling. Comr. Fuller said that the public is prioritizing expenditures right now and public policy right now is not on the side of recycling.

It was Board consensus to focus on prioritizing expenditures at this time and to suspend the Town's recycling contract with Bay Disposal for the remainder of this fiscal year, and to reconsider after that time. Town Manager Ogburn is to return to the Board with actions that need to be taken to finalize this arrangement.

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

### Town Attorney Leidy - Request for Closed Session

Attorney Leidy requested a Closed Session, at the appropriate time, to confer with the Board re: potential claims/litigation and matters that are protected by the attorney/client privilege.

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

### Town Manager Ogburn - Coastal Storm Damage Mitigation Fund

Town Engineer David Ryan summarized the agenda summary sheet which read in part as follows:

"In accordance with Session Law 2019-224, \$11,500,000 has been allocated to the N.C. Department of Environmental Quality (NCDEQ), Division of Water Resources Coastal Storm Damage Mitigation Fund to

help NC coastal cities and towns recover from hurricane damage. Funding may only be used for costs associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the state. The amount shall not exceed \$2.5 million for each unit of local government and no cost-share will be required.

'All applications will be evaluated to determine if the proposed beach nourishment or dune project meets the minimum requirements and will be ranked according to six criteria. The six criteria include environmental benefits, social benefits, economic benefits, life of the project, financial resources and project efficiency. The submission deadline for the grant is April 30, 2020.

'Staff requests the Board to authorize the Town Manager to proceed with the submission of the FY 2019-2020 Coastal Storm Damage Mitigation grant application."

**MOTION:** Comr. Renée Cahoon made a motion to authorize the Town Manager to proceed with the submission of the FY 2019/2020 Coastal Storm Damage Mitigation grant application as presented. The motion was seconded by Comr. Fuller which passed unanimously.

## **BOARD OF COMMISSIONERS AGENDA**

### Comr. Renée Cahoon – Consideration of GEACC 2020-2021 Annual Budget

Comr. Renée Cahoon presented the annual budget for the Government Education Access Channels Committee and pointed out one change from previous years - it focuses on budget spending to match yearly revenue which means that the LPDI funding for 2020-2021 fiscal year is cut 50% from \$10,000 to \$5,000 per entity.

The *Introduction to the GEACC 2020-2021 Annual Budget* was presented and read in part as follows:

"Government Education Access Channels Committee 2020-2021 Proposed Budget

'The following item is presented for the Town of Nags Head Board of Commissioners review and approval.  
Specific Action Requested:

1. Approve the proposed 2020-2021 GEACC Budget.

'Budget Summary

The Government Education Access Channels (GEAC) Committee has reviewed and approved the proposed 2020-2021 budget for the operation of the Government and Education Channels. The proposed budget, which would take effect July 1, 2020, must be approved by every participating member entity of the Channels, which includes the towns of Duck, Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, Manteo, and Dare County, Dare County Schools, College of The Albemarle, and Coastal Studies Institute - ECU.

'The budget as proposed requires no additional funding from the participating entities other than the current annual \$1000 membership fee. The budget is funded from the North Carolina Video Programming Distribution proceeds, which are dispersed quarterly by the State to certified members of the GEACC. These funds must be used for the operation of the two channels and no other purpose. Additionally, the legislation that originally established the video distribution funding required that the proceeds not supplant current funding. Accordingly, the annual \$1000 membership fee that was in place when the program began must remain, or the Channels would lose all video distribution funding from the state.

'The GEAC committee recommends the budget, which includes, in part, the following: funding for two full-time staff positions and a Local Programming Development Initiative to assist members in the development of programming for the Government and Education Channels. The funding also includes the continued funding of two regular news magazine shows that highlight each of the participating members of the GEAC on the Education Channel and the Government Channel.

'To maintain the fund balance at the recommended level, the proposed budget sets forth a plan to reduce the amount of fund balance being used for operations and strategically focuses budget spending to match yearly revenue. This includes a 50% cut to LPDI funding in the 2020-2021 fiscal year (from \$10,000 to \$5,000 per entity), followed by a gradual 50% cut to Contractual Services over the next 3 years."

**MOTION:** Comr. Renée Cahoon made a motion to approve the 2020-2021 GEACC Annual Budget as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

#### Comr. Renée Cahoon – Local comments being made amid COVID-19 situation

Comr. Renée Cahoon pointed out that hard times bring out the best and sometimes the worst in people. The best are those that volunteer at food banks, donate to food banks and other places where needed, provide groceries to those in need, etc. Some people do not have in-state license tags on their vehicles such as Coast Guard personnel – and there are others that are here legally with out-of-state license tags as they are here taking care of family members; some came in prior to the closing; some were snuck in by some of our own citizens – many of these people have experienced being yelled at, received gestures and had others exhibit bad behavior toward them even though they may be here legally. She stated further that how people act towards each other determines our character and how we are perceived which makes many not even want to come here. This doesn't say a lot for those who are being ugly and she thanked others who are being nice to all. Some people have come into her store and indicated they were afraid to leave their residences because of how they were being treated because of an out-of-state vehicle.

Mayor Cahoon said that Comr. Renée Cahoon's comments needed to be said as many of the comments spoken and on social media have been extremely unfortunate.

#### Comr. Fuller – Budget

Because of the efforts by the Town to conserve due to the COVID-19 situation, Comr. Fuller suggested that Board members waive their monthly stipend that is provided by the Town for their service as Mayor/Commissioners.

**MOTION:** Comr. Fuller made a motion that Board members waive their monthly stipend from the Town. The motion was seconded by Comr. Brinkley.

Comr. Fuller accepted Comr. Renée Cahoon's friendly amendment that this be in effect for the remainder of the fiscal year.

**CONTINUATION OF MOTION:** The motion, as amended to be in effect through this fiscal year, passed unanimously.

Comr. Fuller – Dare County Control Group

Comr. Fuller confirmed with Attorney Leidy that the Dare County Control Group was subject to the Open Meetings Law.

Comr. Fuller – Closed Session

Comr. Fuller confirmed with Attorney Leidy that a personnel matter would be discussed during the upcoming Closed Session.

Comr. Brinkley – Request for Closed Session

Comr. Brinkley requested a Closed Session to discuss the status of the Town-owned property at the Soundside Event Site.

**MAYOR'S AGENDA**

Mayor Cahoon - Future Town Envision

Mayor Cahoon mentioned the future vision of the Town, a standing agenda item, and noted that this discussion would be more appropriate at a later time.

Mayor Cahoon – Public Comments (continued)

Town Manager Ogburn read the additional public comments received after this morning's public comments. All public comments received are attached to and made a part of these minutes as shown in Addendum "B".

Mayor Cahoon – Request for Closed Session

**CLOSED SESSION**

**MOTION:** Comr. Fuller made a motion to enter Closed Session to confer with the Town Attorney re: potential claims or litigation and matters that are protected by the attorney/client privilege and to protect that privilege in accordance with GS 143-318.11(a)(3); and to consider the Town Manager's Review in accordance with GS 143-318.11(a)(6). The motion was seconded by Comr. Brinkley which passed unanimously. The time was 11:54 a.m.

**OPEN SESSION**

The Board re-entered Open Session at 1:08 p.m. Attorney Leidy reported that the Board did discuss matters pertaining to possible litigation and attorney/client privilege as well as the Town Manager's Review and did take action but nothing that is to be reported at this time.

