



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
RECESSED MEETING
WEDNESDAY, JUNE 16, 2021**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, June 16, 2021 at 9:00 a.m. for a Recessed Meeting. The Town continues to adhere to COVID state and local guidelines.

Board members Present: Mayor Ben Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley (participated via Zoom Platform)

Board members Absent: Mayor Pro Tem Michael Siers and Comr. Renée Cahoon

Others present: Interim Town Manager Andy Garman; Attorney John Leidy; Michael Zehner; Amy Miller; Phil Webster; Randy Wells; Michelle Gray; and Town Clerk Carolyn F. Morris

CALL TO ORDER

Mayor Cahoon called the meeting to order at 9 am. Mayor Cahoon recognized resident Jerry McManus who passed away this week; Mr. McManus was significant to the Town - he served for years as captain of the Nags Head Volunteer Fire Dept, served on the Town's Planning Board, and made other contributions as well; Mayor Cahoon expressed condolences to his family.

Mayor Cahoon also pointed out that Mayor Pro Tem Siers and Comr. Renée Cahoon have both been excused from today's meeting; Comr. Brinkley was participating remotely.

ADOPTION OF AGENDA

MOTION: Comr. Fuller made a motion to adopt the June 16th agenda as presented. The motion was seconded by Comr. Brinkley.

Attorney Leidy pointed out that since one member is participating via Zoom platform, votes must be by roll call.

CONTINUATION OF MOTION: Mayor Cahoon confirmed via roll call AYE votes from Comr. Brinkley, Comr. Fuller, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.).

PUBLIC COMMENT

No one spoke during Public Comment.

CONSENT AGENDA

The Consent Agenda consisted of the following item:

Budget Adjustment #16 to FY 20/21 Budget

MOTION: Comr. Brinkley made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Fuller. Mayor Cahoon confirmed via roll call AYE votes from Comr. Brinkley, Comr. Fuller, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.)

Mayor Cahoon wanted to make sure the public was aware that Budget Adjustment #16 was for the application of the American Rescue Act Funds to be used for Old Nags Head Cove waterline replacements.

Budget Adjustment #16, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

NEW BUSINESS

Approval of Pay Plan Recommendations - effective July 1, 2021

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

"The Board has been working with Becky Veazey of the MAPS Group to develop a pay and classification study for the town. The Board discussed the goals of the study with Ms. Veazey in several work sessions. Based on input from the Board, pay ranges were adjusted 3% from the original study recommendations to advance the town's competitiveness in the market. Additionally, the Board has authorized a 2.6% cost of living adjustment for FY 22. Staff is requesting the Board approve the attached pay scale and pay grade classifications which reflect the aforementioned adjustments. It should be noted that some job titles have changed as recommended based on a revised description of job function. The study recommended three options to address compression and place employees in the appropriate point in the salary range. Based on prior feedback, Option III has been incorporated into the revised budget. A description of the options is attached.

'Per the study, the revised budget increases the town's 401(K) contribution from two to three percent and no longer requires a match. A modification to the personnel policy is included later in the agenda to allow for this. The budget has also been revised to reflect an increase in life insurance from \$30K to 1x an employee's salary. A sheet is attached which shows benefit recommendations. Ms. Veazey also recommended a modification to the on-call time; staff needs more time to evaluate the cost of this. We anticipate bringing this back at a later date.

'Finally, the MAPS Group has provided a draft Personnel Policy which is currently under review. This will take several months. In the meantime, several amendments to the Personnel Policy have been recommended and are included later in the agenda. These allow for the implementation of the pay portion of study recommendations until the larger personnel policy update can be completed.

Attached please find the following items for your consideration on June 16th:

- a. Implementation of Pay Plan Option III
- b. Pay Scale (with 2.6% COLA)
- c. Pay Grade Classifications
- d. Life insurance (1X salary)"

Ms. Becky Veazy of The MAPS Group forwarded a letter to the Town, dated June 10, 2021, containing a summary of the changes to the study recommendations resulting from discussions on June 9, 2021 with Department Heads. The letter is attached to and made a part of these minutes as shown in Addendum "B".

Interim Manager Garman also noted that the 401K and Life Insurance changes have been budgeted and included in the FY 21/22 Budget Ordinance.

Comr. Fuller confirmed with Interim Manager Garman that the 401K contribution adding 1% to all positions does not include the Police Dept as the Town is required to contribute 5% for Police Officers.

Mayor Cahoon thanked staff for their time/efforts across all departments and The Maps Group for their excellent work.

Comr. Brinkley also thanked staff for their time/efforts; he was appreciative and felt the changes were good for the employees. He also stated that based on his experience in the position he held as Police Chief, the position did not warrant being raised two grades. He emphasized that it had nothing to do with the Police Chief's performance, he stated that he felt compelled to relate his personal experience and could not understand the increase of two grades for the Police Chief position.

Comr. Fuller said that changing one may mean Ms. Veazy would want to change all of the positions in the same grade as the Police Chief position – for equity reasons.

Mayor Cahoon suggested moving all grade 20 positions to grade 19 and the grade 19 position to grade 18. He feels this would give an opportunity for the new Town Manager to confirm/affirm what Ms. Veazy has found in her report.

Comr. Brinkley noted that he only wanted to comment on the one position - the Police Chief position - not all of them.

MOTION: Mayor Cahoon made a motion to adopt the Pay Plan with the following modifications: that those positions listed as grade 20 become grade 19, and those at grade 19 become grade 18. The motion was seconded by Comr. Fuller. Mayor Cahoon confirmed via roll call AYE votes from Comr. Fuller, Comr. Brinkley, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.)

MOTION: Comr. Fuller made a motion to adopt the new Pay Scale as presented. The motion was seconded by Mayor Cahoon. Mayor Cahoon confirmed via roll call AYE votes from Comr. Fuller, Comr. Brinkley and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.)

MOTION: Comr. Fuller made a motion to affirm the 401K and Life Insurance items as presented - recognizing that the 401K does not include law enforcement. The motion was seconded by Comr. Brinkley.

Comr. Fuller pointed out that State Legislature mandated certain 401K provisions for law enforcement and this 401K adoption makes all employees more equitable.

CONTINUATION OF MOTION: Mayor Cahoon confirmed AYE votes via roll call from Comr. Brinkley, Comr. Fuller, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.).

Approval of updates to Personnel Policy - effective July 1, 2021

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

"After review by The Maps Group, attached please find the following amendments to the Personnel Policy for your consideration on June 16th:

- a. Article IV. Section 6 - Promotion
- b. Article IV. Section 8 - Pay for Temporary and Part-Time Work
- c. Article V. Section 10 - Probationary period of employment
- d. Article V. Section 11 - Promotion
- e. Article X. Section 8 - State 401K Deferred compensation plan"

Comr. Brinkley asked about the probationary period of employment; he confirmed with Finance Director Miller that the Town contributes to the 401K retirement plan during an employee's probationary period.

MOTION: Comr. Fuller made a motion to adopt all proposed Personnel Policy changes as presented, recognizing the clarification that staff gave to Comr. Brinkley's question which noted that the Town begins contributing to 401K on an employee's first day. The following sections are affected:

- Article IV, Section 6 – Promotion
- Article IV, Section 8 – Pay for Temporary and Part-Time Work
- Article V, Section 10 – Probation
- Article V, Section 11 – Promotion
- Article X, Section 8 – State 401K Deferred compensation plan

The motion was seconded by Comr. Brinkley. Mayor Cahoon confirmed AYE votes via roll call from Comr. Brinkley, Comr. Fuller, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.)

Adoption of FY 21/22 Budget

- a. Capital Improvement Program
- b. Consolidated Fee Schedule
- c. Debt Lease Schedule
- d. Adoption of FY 21/22 Budget Ordinance
- e. Resolution for Committed Fund Balance LEO Separation Allowance

Comr. Fuller questioned stormwater work in the Old Nags Head Place Subdivision and the agreement that \$100,000 would be provided by their Homeowners Association; he questioned the formula staff used to come up with this cost figure.

Mayor Cahoon suggested a formula that can be used for future reference as other similar situations may come up. Staff is to come up with a formula to provide to the Board.

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

"At the May 5th Board of Commissioners meeting, then Interim Town Manager Greg Sparks presented highlights of his recommended FY 22 Budget. At that time the proposed budget was distributed to Board members. A Public Hearing was subsequently held at the June 2nd Board meeting; Budget Workshops were held on May 12th and May 19th.

The following (attached) budget documents are provided for Board consideration on June 16th:

- a. Capital Improvement Program
- b. Consolidated Fee Schedule
- c. Debt Lease Schedule
- d. Adoption of FY 21/22 Budget Ordinance
- e. Resolution for Committed Fund Balance LEO Separation Allowance"

On the proposed budget, Mayor Cahoon asked about tipping fees and what drives these costs; Ms. Miller said that rising fuel costs have been added by companies to the tipping fees.

Comr. Brinkley confirmed with staff that if the Town went with the Demo Fire Truck, the contract would need to be signed by July 1st – he thought not everyone was sold on the Demo model. Interim Manager Garman stated that the Demo Fire Truck is available now rather than waiting 400+ days for a custom-made truck. The Town would save approximately \$40,000 and it would be received a year ahead of schedule. Fire Chief Wells is to obtain additional information concerning the progress of the Fire Truck.

Comr. Fuller confirmed with staff that the bidding for the demo model was done through the Town of Duck and was already pre-bid. He felt that it should be purchased if it meets the Fire Dept's needs.

Comr. Fuller stated that the budget as presented is fiscally conservative and he feels fortunate to be sitting on this Board to be able to 1) Get pay/class plan and employee salaries where they need to be; 2) Get projects on the CIP that have been deferred a lot and 3) have MSD's created as relate to beach nourishment. He expressed his appreciation to staff being able to get the budget to this point and that the Town is now looking at a more equitable look at beach nourishment and a way to pay for it.

Mayor Cahoon said that he agreed with Comr. Fuller's comments.

MOTION: Comr. Brinkley made a motion to adopt all budget documents as follows, as presented:

- Capital Improvement Program
- Consolidated Fee Schedule
- Debt Lease Schedule
- FY 21/22 Budget Ordinance
- Resolution for Committed Fund Balance LEO Separation Allowance

The motion was seconded by Comr. Fuller. Mayor Cahoon confirmed AYE votes via roll call from Comr. Brinkley, Comr. Fuller, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.).

The FY 21/22 Budget Ordinance is attached to and made a part of these minutes as shown in Addendum "C".

The resolution for Committed Fund Balance LEO Separation Allowance, as adopted, read in part as follows:

"WHEREAS, the Government Standards Accounting Board (GASB) has issued Statement No. 54 establishing a hierarchy clarifying the constraints that govern how a government entity can use amounts reported as fund balance; AND

'WHEREAS, the Board of Commissioners is the highest level of decision-making authority, and has the authority to commit, assign, or evaluate existing fund balance classifications and identify the intended uses of committed or assigned funds; AND

'WHEREAS, the committed fund balance classification reflects amounts subject to internal constraints self-imposed by the Board of Commissioners; AND

'WHEREAS, once the committed fund balance constraints are imposed, it requires the constraint to be removed by the Board of Commissioners prior to redirecting the funds for other purposes.

'NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners has determined it will commit \$53,902 of fund balance from the Law Enforcement Officer Special Separation Allowance committed fund balance for the year ending June 30, 2022, for the purpose of funding the Law Enforcement Officer Special Separation Allowance."

Consideration of resolution opposing HB 496 re: Authority to limit tree removal

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

"Attached for the Board's consideration is a resolution voicing the Town's opposition to House Bill 496, *An Act Providing that Counties and Cities Shall Not Adopt Ordinances Regulating the Removal of Trees from Private Property Without the Express Authorization of the General Assembly*; the status and current version of the Bill may be accessed at the following link: <https://www.ncleg.gov/BillLookup/2021/h496>

'Essentially there are two principal effects of the Bill: 1) the requirement that authorization from the General Assembly be sought and received for new local government tree protection ordinances, and 2) the voiding of existing local laws which have not previously received special authorization from the General Assembly. While the Town does have session laws and local acts that provide authorization for some aspects of the various regulations concerning tree removal, as follows, these authorizations do not address all aspects of the Town's regulations:

- This act <https://www.ncleg.gov/enactedlegislation/sessionlaws/pdf/1987-1988/sl1987-187.pdf> provides that the Town "may by ordinance define, prohibit, or regulate acts, omissions, or conditions that damage, destroy, or remove any maritime forest or kill, destroy, or remove any vegetation growing in any maritime forest." This likely ensures that regulations in the SED-80 district remain intact, but may not extend authorization beyond that district; and
- This act <https://www.ncleg.gov/Sessions/1997/Bills/House/PDF/H437v3.pdf> allows the Town to "adopt ordinances to regulate the planting, removal, and preservation of trees on public and

private property within the municipality. Any ordinance adopted pursuant to this section shall exclude property to be developed for single-family or duplex residential uses;" while this act likely ensures that our regulations pertaining to commercial property remain intact, it does bring into question numerous other provisions, perhaps most notably the Town's protection of the Live Oak as the Town Tree.

'Given these potential impacts on the Town's regulatory authority, as well as the potential impacts to character-defining and environmental conditions in the Town, the Board may wish to share any concerns with the General Assembly in the form of the attached resolution."

Director Zehner pointed out one typo in the second WHEREAS "Indian Trail" should be "Nags Head". He also noted that the Bill has passed the House and is currently in the Senate.

MOTION: Comr. Fuller made a motion to adopt the resolution opposing House Bill 496 re: Authority to limit tree removal with the corrected typo in the second WHEREAS statement. The motion was seconded by Comr. Brinkley. Mayor Cahoon confirmed AYE votes via roll call from Comr. Brinkley, Comr. Fuller, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.)

The resolution, as adopted, read in part as follows:

"WHEREAS, the North Carolina General Assembly is considering House Bill 496, entitled "An Act Providing that Counties and Cities Shall Not Adopt Ordinances Regulating the Removal of Trees from Private Property Without the Express Authorization of the General Assembly"; AND

'WHEREAS, the legislation proposed in HB496 is of great concern to the citizens and Elected Officials of the Town of Nags Head and other municipalities within North Carolina; AND

'WHEREAS, provisions within the proposed legislation, to restrict local tree ordinances, would severely diminish or even eliminate the ability of local government to determine what is best for its community and the ability to protect the rights of existing property owners; AND

'WHEREAS, the proposed legislation would require all local governments to obtain special authorization from the General Assembly prior to enacting a tree protection ordinance and void all existing ordinances protecting existing trees that were established without special authority; AND

'WHEREAS, the proposed legislation is inconsistent with the State's laws regarding tree removal and preservation around outdoor advertising in addition to the State's historic preservation laws that allow local governments to protect the vegetation of historic sites; AND

'WHEREAS, the proposed legislation conflicts with G.S. 160D-921 regarding the ability of local jurisdictions to delay approvals following clear-cutting; AND

'WHEREAS, the proposed legislation creates a conflict with any prior development agreement planned development or special use permit approval that included tree preservation as a condition of approval; AND

'WHEREAS, the proposed legislation interferes with the ability of local governments to provide supplemental credit towards landscaping requirements for retained/preserved existing vegetation; AND

'WHEREAS, the proposed legislation could result in a more confusing regulatory framework as local governments would be required to receive individual express authority from the General Assembly.

'NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Town of Nags Head North Carolina, expresses opposition to HB 496 and urges the North Carolina General Assembly and the Governor of the State of North Carolina to oppose the proposed legislation."

BOARD OF COMMISSIONERS AGENDA

Comr. Fuller – Traffic Control Map

Comr. Fuller asked to work with staff to look at the Town's Traffic Control Map - which is adopted by the Board – and verify all are in concert with the actual ground signs. The end result is for staff to bring back an updated TCM for Board adoption. The TCM should be digitized and available for the public to view.

It was Board consensus to direct staff to update and bring back to the Board the Town's Traffic Control Map as described in today's discussion which includes a digitized version.

Mayor Cahoon - Meeting with Construction Community

Mayor Cahoon reported that he and Planning Director Zehner would be participating in a meeting this afternoon with the construction community re: residential stormwater ordinance and the low impact development manual.

Mayor Cahoon - Meeting with other Mayors

Mayor Cahoon reported that in response to a previous Board discussion he has been speaking with other mayors re: essential issues such as housing - he has been in conversation with Kill Devil Hills Mayor Sproul and they have been exploring all kinds of housing options. He will continue to engage in these discussions.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Interim Town Manager Garman - Request for Closed Session

Interim Town Manager Garman requested a Closed Session to discuss possible property acquisition.

CLOSED SESSION

MOTION: Mayor Cahoon made a motion to enter Closed Session to discuss possible acquisition of property located at 105 W Seachase Drive in accordance with GS 143-318.11(a)(5). The motion was seconded by Comr. Brinkley. Mayor Cahoon confirmed via roll call AYE votes from Comr. Fuller, Comr. Brinkley, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.) The time was 10:17 a.m.

OPEN SESSION

The Board re-entered Open Session at 10:40 a.m. Mayor Cahoon pointed out that Comr. Brinkley was present by telephone. Attorney Leidy reported that during Closed Session, the Board participated with a quorum of the Board but no actions were taken.

ADJOURNMENT

MOTION: Comr. Brinkley made a motion to recess to a recessed meeting on Tuesday, June 29, 2021 at 9 am in the Board Room. The motion was seconded by Comr. Fuller. Mayor Cahoon confirmed AYE votes via roll call from Comr. Brinkley, Comr. Fuller, and himself. (Mayor Pro Tem Siers and Comr. Renée Cahoon were not present.) The time was 10:41 a.m.

Carolyn F. Morris, Town Clerk

Date Approved: July 7, 2021

Mayor: _____
Benjamin Cahoon