



# TOWN OF NAGS HEAD

## AGENDA

**TOWN OF NAGS HEAD BOARD OF COMMISSIONERS  
NAGS HEAD MUNICIPAL COMPLEX - BOARD ROOM**

**WEDNESDAY, MAY 6, 2020; 9:00 A.M.  
REGULAR SESSION**

In order to view and listen to the Board meeting remotely, please register here:

[https://nagsheadnc.zoom.us/webinar/register/WN\\_X3rSOv97QACYiHGinxB1Qw](https://nagsheadnc.zoom.us/webinar/register/WN_X3rSOv97QACYiHGinxB1Qw)

Please email your comments for the Public Comment portion or for the Public Hearings here:

[publiccomment050620@nagsheadnc.gov](mailto:publiccomment050620@nagsheadnc.gov)

(Emailed comments will also be accepted during the Board meeting until the end of  
the Public Comment portion of the meeting or up until each Public Hearing is closed)

Comments should include your name and address and

Should be limited to five minutes when read aloud.

If you would like to participate in any of the Public Hearings, please contact Carolyn F Morris at  
[carolyn.morris@nagsheadnc.gov](mailto:carolyn.morris@nagsheadnc.gov) or at 252-449-2009 until 9 am on May 6, 2020

(The town will provide a means to participate in the meeting remotely using video conferencing  
software)

If you need special accommodations, please contact Carolyn F Morris

### **A. CALL TO ORDER / PLEDGE OF ALLEGIANCE**

### **B. ADOPTION OF AGENDA**

### **C. PUBLIC COMMENT**

1. Proclamation Declaring May 10 - 16, 2020 Police Week

Documents:

[5 C POLICE WEEK PROC SUMMARY.PDF](#)  
[5 C POLICE WEEK PROC.PDF](#)

### **D. CONSENT AGENDA**

1. Consideration Of Tax Adjustment Report

Documents:

5 D1 TAX ADJUST REPORT SUMMARY.PDF  
5 D1 TAX ADJUSTMENT MSD.PDF  
5 D1 TAX ADJUSTMENT TOWN-WIDE.PDF

2. APPROVAL OF MINUTES

Documents:

5 D2 MINUTES SUMMARY.PDF  
5 D2 MINUTES MAR 4 2020 BOC MINS.PDF  
5 D2 MINUTES APR 15 2020 BOC MINS.PDF

3. Request For Public Hearing To Consider Citizen Comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021, proposed CIP requests for FY 20/21 through FY 24/25, and updated Consolidated Fee Schedule

Documents:

5 D3 RPH BUDGET CITIZEN COMMENT SUMMARY.PDF

4. Request For Public Hearing To Consider A Text Amendment to the UDO submitted by Kim Cowen and Megan Dixon to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District

Documents:

5 D4 RPH LEARNING CENTER TEXT AMEND SUMMARY.PDF

**E. PUBLIC HEARINGS**

1. Public Hearing To Consider A Text Amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Documents:

5 E1 PH OUTDOOR STANDS SUMMARY.PDF  
5 E1 PH OUTDOOR STANDS PN.PDF  
5 E1 PH OUTDOOR STANDS MEMO ORD.PDF

2. Public Hearing To Consider A Text Amendment To The Unified Development Ordinance To Correct Identified Errors

Documents:

5 E2 PH UDO CORRECTIONS SUMMARY.PDF  
5 E2 PH UDO CORRECTIONS PN.PDF  
5 E2 PH UDO CORRECTIONS MEMO.PDF  
5 E2 PH UDO CORRECTIONS ORD.PDF

3. 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

Documents:

[5 E3 PH FLOOD DAMAGE PREV ORD SUMMARY.PDF](#)  
[5 E3 PH FLOOD DAMAGE PREV ORD PLNG BD MTG PRES.PDF](#)  
[5 E3 PH FLOOD DAMAGE PREV ORD.PDF](#)

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

1. Update From Planning Director

Documents:

[5 F1 PLNG DIRECTOR UPDATE SUMMARY.PDF](#)  
[5 F1 PLNG DIRECTOR UPDATE MEMO.PDF](#)

2. Consideration Of A Major Site Plan For Gone Coastal Shopping Center  
7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann  
**THE APPLICANT HAS REQUESTED A CONTINUANCE TO THE JUNE 3, 2020 BOC MEETING**
3. Continued Consideration Of A Preliminary Plat For A Major Subdivision, Known As Coastal Villas,  
for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements  
**THE APPLICANT HAS REQUESTED A CONTINUANCE TO THE JUNE 3, 2020 BOC MEETING**

## **G. OLD BUSINESS TABLED FROM PREVIOUS MEETINGS**

1. From Apr 15th Board Meeting - Discussion Of 2020 Fireworks

Documents:

[5 G2 FIREWORKS 2020 SUMMARY.PDF](#)

2. From Apr 15th Board Meeting – Discussion Of Status Of Recycling Program

Documents:

[5 G3 RECYCLING STATUS SUMMARY.PDF](#)  
[5 G3 RECYCLING STATUS MEMO.PDF](#)

## **H. NEW BUSINESS**

1. COMMITTEE REPORTS

Documents:

[5 H1 COMMITTEE REPORTS SUMMARY.PDF](#)

2. Consideration Of Board/Committee Appointments

Documents:

[5 H2 APPOINTMENTS SUMMARY.PDF](#)  
[5 H2 CURRENT - PLANNING BD.PDF](#)  
[5 H2 CANDIDATE - PLANNING BD.PDF](#)  
[5 H2 CURRENT - BOA.PDF](#)  
[5 H2 CANDIDATE - BOA.PDF](#)  
[5 H2 CURRENT - PGP.PDF](#)  
[5 H2 CURRENT FIREMENS RELIEF.PDF](#)

**I. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**

**J. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**

1. Update On Plans For Summer 2020  
re: tents on the beach, lifeguards, and enforcement of social distancing on the beach

Documents:

[5 J1 TM UPDATE ON BEACH PLANS SUMMARY.PDF](#)  
[5 J1 TM UPDATE ON BEACH PLANS MEMO.PDF](#)  
[5 J1 TM UPDATE ON BEACH PLANS SOCIAL DISTANCE SIGN.PDF](#)

**K. BOARD OF COMMISSIONERS AGENDA**

**L. MAYOR'S AGENDA**

1. Future Town Envision

Documents:

[5 L1 MAYOR ENVISION THE TOWN SUMMARY.PDF](#)

**M. OTHER BUSINESS**

**N. ADJOURNMENT**

**O. FULL AGENDA In .PDF Format With Bookmarks**

---

**5401 S. Croatan Hwy, Nags Head, NC 27959**  
**252-441-5508**



## Agenda Item Summary Sheet

Item No: **C**  
Meeting Date: **May 6, 2020**

**Item Title:** Public Comment Period

Consideration of Proclamation proclaiming May 10 – 16, 2020 Police Week

**Item Summary:**

The attached proclamation declaring May 10 – 16, 2020 as Police Week is provided for your approval on May 6<sup>th</sup>. Police Chief Phil Webster presented the proclamation for inclusion on this agenda.

Number of Attachments: 1

---

**Specific Action Requested:**

Provided for Board approval/adoption.

Submitted By: Administration

Date: April 28, 2020

---

**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

N/A

Signature: Cliff Ogburn

Date: April 28, 2020



## Proclamation for National Police Week

**WHEREAS**, The Congress and President of the United States have designated May 15<sup>th</sup> as Peace Officers' Memorial Day, and the week in which May 15<sup>th</sup> falls is National Police Week; AND

**WHEREAS**, The members of the Nags Head Police Department play an essential role in safeguarding the rights and freedoms of the residents and visitors of the Town of Nags Head; AND

**WHEREAS**, It is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; AND

**WHEREAS**, The men and women of the Nags Head Police Department unceasingly provide a vital public service; AND

**WHEREAS**, Let each of us take the time to reflect on the ultimate sacrifice Sgt. Earl Murray, Jr. made for the Town of Nags Head on May 15, 2009 and the rest of the officers that have done so nationwide. And let each of us keep their family, friends, and all fellow officers in our thoughts and prayers.

**NOW, THEREFORE**, the Nags Head Board of Commissioners calls upon all citizens of the Town of Nags Head and upon all patriotic, civic, and educational organizations to observe the week of May 10 - 16, 2020 as Police Week with appropriate ceremonies and observances in which all our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

**THEREFORE**, we do hereby proclaim the week of May 10 - 16, 2020, as Police Week and call upon all citizens of Nags Head to observe the 15<sup>th</sup> day of May 2020, as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

This the 6<sup>th</sup> day of May 2020.

---

Benjamin Cahoon, Mayor  
Town of Nags Head

ATTEST

---

Carolyn F. Morris, Town Clerk



## Agenda Item Summary Sheet

Item No: **D-1**  
Meeting Date: **May 6, 2020**

**Item Title:** Consideration of Tax Adjustment Reports

**Item Summary:**

Attached please find the list of adjustments to the 2019 Tax Levy (per information received from Dare County) for Property and for MSD valuations.

These reports are submitted for your approval at the May 6<sup>th</sup> Board of Commissioners meeting.

Number of Attachments: 2

---

**Specific Action Requested:**

Tax reports provided for Board review and approval.

Submitted By: Linda Bittner, Tax Collector

Date: April 28, 2020

---

**Finance Officer Comment:**

No unbudgeted fiscal impact.

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

I concur with staff.

Signature: Cliff Ogburn

Date: April 28, 2020

**Town of Nags Head, North Carolina**  
**ANALYSIS OF CURRENT 2019 MSD TAX LEVY**  
**As of April 30, 2020 for the May 6, 2020 BOC Mtg**

	<b>BEACH NOURISHMENT DISTRICT</b>			MSD Excluding Registered Motor Vehicles	Registered Motor Vehicles
	MSD Valuation	Rate	Total Levy		
<b>Original MSD Levy:</b>					
MSD Beach Nourishment at current year's rate	809,869,299	0.00175	1,417,272.90	1,417,272.90	
Registered Motor Vehicles at current year's rate	1,372,061.00	0.00175	2,387.29		2,387.29
Registered Motor Vehicles at 2018 year's rate	754,172.00	0.00175	1,319.80		1,319.80
Registered Motor Vehicles at 2017 year's rate	66,748.00	0.00175	116.81		116.81
Penalties			0.00	0.00	
<b>Total</b>	<b>812,062,280</b>		<b>1,421,096.80</b>	<b>1,417,272.90</b>	<b>3,823.90</b>
<b>Discoveries &amp; Adjustments:</b>					
Current year discoveries & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Discoveries			0.00	0.00	
<b>Total</b>			<b>0.00</b>	<b>0.00</b>	
<b>Releases &amp; Adjustments:</b>					
Current year releases & adjustments	0.00		0.00	0.00	
Town wide beach nourishment			0.00	0.00	
Penalty Releases			0.00	0.00	
<b>Total</b>			<b>0.00</b>	<b>0.00</b>	
<b>Write-offs or Adjustments:</b>					
			0.00	0.00	
<b>Total MSD Valuation</b>	<b>812,062,280</b>				
<b>Net levy</b>		<b>1,421,096.80</b>		<b>1,417,272.90</b>	<b>3,823.90</b>
<b>TOTAL UNCOLLECTED MSD AS OF 04/30/20:</b>		<b>(3,891.44)</b>		<b>(3,891.44)</b>	<b>0.00</b>
<b>CURRENT YEAR MSD COLLECTED:</b>		<b>1,417,205.36</b>		<b>1,413,381.46</b>	<b>3,823.90</b>
<b>CURRENT MSD COLLECTION PERCENTAGE:</b>		<b>99.726%</b>		<b>99.725%</b>	<b>100.000%</b>

**Town of Nags Head, North Carolina**  
**ANALYSIS OF CURRENT 2019 TAX LEVY**  
As of April 30, 2020 for the May 6, 2020 BOC Mtg

	Town-Wide Tax			Total Levy	
	Property Valuation	Rate	Total Levy	Property Excluding Registered Motor Vehicles	Registered Motor Vehicles
<b>Original levy:</b>					
Property taxed at current year's rate	2,383,436,490	0.00317	7,555,496.64	7,555,496.64	
Registered Motor Vehicles at current year's rate	24,945,401.00	0.00317	78,358.14		78,358.14
Registered Motor Vehicles at 2018 year's rate	9,488,179.00	0.00307	29,128.71		29,128.71
Registered Motor Vehicles at 2017 year's rate	69,970.00	0.00297	207.81		207.81
Registered Motor Vehicles at 2015 year's rate	(2,011.00)	0.00267	(5.37)		(5.37)
Penalties			5,460.81	5,460.81	
<b>Total</b>	<b>2,417,938,029</b>		<b>7,668,646.74</b>	<b>7,560,957.45</b>	<b>107,689.29</b>
<b>Discoveries &amp; Adjustments:</b>					
Current year discoveries & adjustments tax	1,686,283.00		4,309.89	4,309.89	
Town wide beach nourishment tax			455.29	455.29	
Corporate Utilities discoveries & tax	22,078,064.00		64,026.38	64,026.38	
Corporate Utilities beach nourishment tax			5,961.09	5,961.09	
Penalty Discoveries			2,075.47	2,075.47	
<b>Total</b>	<b>23,764,347</b>		<b>76,828.12</b>	<b>76,828.12</b>	
<b>Releases &amp; Adjustments:</b>					
Current year releases & adjustments	(309,694.00)		(898.12)	(898.12)	
Town wide beach nourishment			(83.60)	(83.60)	
Penalty Releases			(574.94)	(574.94)	
<b>Total</b>	<b>(309,694)</b>		<b>(1,556.66)</b>	<b>(1,556.66)</b>	
<b>Write-offs or Adjustments:</b>			0.00	0.00	
<b>Total Property Valuation</b>	<b>2,441,392,682</b>				
<b>Net levy</b>		<b>7,743,918.20</b>		<b>7,636,228.91</b>	<b>107,689.29</b>
Uncollected Taxes		(33,079.57)		(33,079.57)	0.00
Uncollected Town Wide Beach Nourishment		(3,066.39)		(3,066.39)	0.00
<b>TOTAL UNCOLLECTED TAXES AS OF 04/30/20:</b>		<b>(36,145.96)</b>		<b>(36,145.96)</b>	<b>0.00</b>
<b>CURRENT YEAR TAXES COLLECTED:</b>		<b>7,707,772.24</b>		<b>7,600,082.95</b>	<b>107,689.29</b>
<b>CURRENT LEVY COLLECTION PERCENTAGE:</b>		<b>99.533%</b>		<b>99.527%</b>	<b>100.000%</b>



## Agenda Item Summary Sheet

Item No: **D-2**  
Meeting Date: **May 6, 2020**

**Item Title:** Approval of minutes from Board of Commissioners meetings/workshops

**Item Summary:**

Attached for Board review and approval are the following Board of Commissioners meeting minutes:

**March 4, 2020 Regular Session**

(with expansion of comments re: Event Site made by Outer Banks Visitors Bureau Executive Director Lee Nettles during Public Comment)

**April 15, 2020 Regular Session**

---

Number of Attachments: 2

**Specific Action Requested:**

Provided for Board review and approval.

Submitted By: Carolyn F. Morris, Town Clerk

Date: April 28, 2020

---

**Finance Officer Comment:**

No unbudgeted costs associated with this agenda item.

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

N/A

Signature: Cliff Ogburn

Date: April 28, 2020



**DRAFT MINUTES**  
**TOWN OF NAGS HEAD**  
**BOARD OF COMMISSIONERS**  
**REGULAR MEETING**  
**WEDNESDAY, MARCH 4, 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, March 4, 2020 at 9:00 a.m.

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

Board members Absent: None

Others present: Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; Phil Webster; Perry Hale; Randy Wells; Shane Hite; Michael Zehner; David Ryan; Amy Miller; Brie Floyd; Roberta Thuman; Karen Snyder; Chris Flynn; Carolyn Brooker; Lee Nettles; David Bragg; Ellen Heatwole; Lauren Kickard; Nelene Gibbs; John Ratzenberger; Arnold Vass; Donald Williams; Geraldine Williams; Donny King; Susan Burroughs; Ralph Buxton; Ginny Flanders; and Town Clerk Carolyn Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9:00 a.m. A moment of silent meditation was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

**MOTION:** Comr. Brinkley made a motion to approve the March 4<sup>th</sup> agenda as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

**RECOGNITION**

NEW EMPLOYEE – Dep Town Manager Andy Garman introduced new employee Information Technology Assistant Karen Snyder who was welcomed by the Board to town employment.

TEN YEARS – Police Chief Phil Webster introduced Dep Police Chief Perry Hale who was recognized by the Board for ten years of service.

PROCLAMATION IN SUPPORT OF SAFETY WEEK – Dep Fire Chief Shane Hite announced Safety Week which is scheduled for March 9 – 13, 2020; he introduced the Safety Committee members: Brie Floyd, Nancy Caraway, Jackie Hart, Ed Snyder, Perry White, Ron Watson, and Ray Schoonmaker. Other

members Trey Allen, Greg South, Keith White and Eddie Hawley were not able to attend. Dep Chief Hite detailed the work of the Safety Committee and the upcoming activities planned for Safety Week.

Mayor Cahoon read the proclamation as follows:

"WHEREAS, the Town of Nags Head Board of Commissioners, employees and citizens are committed to the maintenance of a safe and healthful workplace; AND

'WHEREAS, the Town has assumed an active role in the promotion of a safe and healthful work environment by a program of regular occupational worksite evaluations and employee safety education; AND

'WHEREAS, the Town strives to stimulate and maintain the interest in loss control and accident prevention and recognizes past and future services to the employees and citizens of Nags Head; AND

'WHEREAS, the Town seeks to guide and encourage the adoption and institution of safe work practices by all employers and employees in Nags Head.

'NOW, THEREFORE, the Nags Head Board of Commissioners does hereby proclaim March 9 - 13, 2020 as

'ACCIDENT PREVENTION WEEK  
in the Town of Nags Head, and commends this observance to our citizens.

'FURTHERMORE, in recognition of this proclamation, I invite all Nags Head employees to attend the annual Nags Head Safety Luncheon on Thursday, March 12, 2020 from 12:00 Noon to 2:00 p.m. at the Douglas A. Remaley Fire Station 16."

Mayor Cahoon noted fewer claims in the workplace due to the committee's work.

**MOTION:** Comr. Fuller made a motion to adopt the Safety Week Proclamation as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

**PRESENTATION** - Dowdy Park Review of 2019 Season and Plans for 2020 Season  
Dep Planning Director Kelly Wyatt summarized accomplishments of the Town's Art and Culture Committee of 2019 and plans for the upcoming year. Committee members and Coordinator Paige Griffin were present and displayed slides of a successful 2019 season at Dowdy Park.

**PRESENTATION** – 2<sup>nd</sup> Annual Community Clean Up – March 28, 2020

Public Works Office Manager Karen Heagy and Public Works Office Assistant Sue Cummings detailed the upcoming 2<sup>nd</sup> Annual Community Clean Up which is scheduled for Saturday, March 28 beginning at 8 am at Dowdy Park. Ms. Heagy stated that she hopes next year to schedule a more widely-participated clean up with representatives from each of the town's neighborhoods.

## **PUBLIC COMMENT**

### PUBLIC COMMENT – DAVID BRAGG

David Bragg, Village at Nags Head resident; all recycling is being incinerated not recycled; it appears that the contractor was not forthcoming; he is concerned that the 6/30/20 date will come and go with no changes made – he would like a public forum scheduled with Town officials; trash cart rollback issue – the Town pays two people to roll carts back only on the Beach Road; on the Town’s Facebook page – the Town limits postings with no opinions included – he has four pages of why incineration is a terrible idea; he read from a page re: climate rising and other predictions starting from the 1970’s; these things have been linked to the scientists who were sure these things were going to happen just like global warming.

### PUBLIC COMMENT – DONNY KING

Donny King, Better Beaches OBX; lives in Nags Head and is owner of Ocean Boulevard Restaurant; he is requesting that more sand fencing be installed for additional beach stabilization; the last fencing installed has done its part and is mostly covered; there is a lot of representation of Better Beaches OBX volunteers in the audience; he would like to help coordinate grass planting on the beach; he would like the town to allocate more funds for sand fencing and to catch more sand in the right places; grass would work now through November which is the next opportunity to plant; in recognition of the recent Town Beach Nourishment Project he applauds the town’s efforts; he thanked the Board.

### PUBLIC COMMENT – ELLEN HEATWOLE

Ellen Heatwole, Seagull Drive; she applauded the town for Beach Nourishment Projects which have been fantastic and sand fencing has done its job; a lot of the grass planted however has not survived; she supports Mr. Donny King of Better Beaches OBX and spoke in support of his initiative to install more sand fencing and grass on the beach.

### PUBLIC COMMENT – LEE NETTLES

Lee Nettles, Outer Banks Visitors Bureau Executive Director; he spoke of planning discussions that have taken place re: the Soundside Event Site; the proposed facilities are expected to draw new visitors to the area to support year-round visitation to the Outer Banks. His addressed the Board as follows:

“Good morning Mr. Mayor, Board of Commissioners. My name is Lee Nettles, I'm the Executive Director of the Outer Banks Visitors Bureau, and I come before you today to ask for your guidance with regard to planning discussions currently underway for The Soundside Event Site.

‘As you are aware, the Tourism Board has appointed an Advisory Committee to consider options for the development of a multi-use Event Center on the site. These options have been informed by two separate consultant studies and preliminary work done by a local engineering firm.

‘The Event Center that's recommended within the consultant's study includes a net useable space of 30,000 square feet. Two of the three options also include a separate ballroom of 5,400 square feet and a hotel with approximately 200 rooms. These facilities are expected to draw *new* visitors to the Outer Banks - 80% of the hotel's guests, for instance, are projected to be first-time visitors to the Outer Banks. Uses of the Center include sport tournaments, concerts, banquets, consumer tradeshows, meetings and conventions -- in addition to continuing to host outdoor events on the site. Importantly, the focus of the Event Center and the site is to attract visitors to the Outer

Banks during spring, fall and winter, helping to support a year-round tourism economy and driving incremental visitation to existing area businesses.

'Early work conducted by Albemarle & Associates indicates that the facilities can fit on the site within the current ordinance, but doing so may not represent the best possible solution. We can physically fit the maximum required number of paved parking spaces on the site, for example, but doing so compromises the remaining green space and greatly impacts stormwater run-off. A smaller number of spaces may be more appropriate given the particular site uses and the scale of the development.

'In terms of wastewater management, septic can be addressed on-site, but again, at the expense of green space, and when a more environmentally protective option may be possible. Specifically, the committee is interested in the Board of Commissioners' view on tapping into an existing off-site sewage system.

'Please understand that no decisions have been made at this point, neither at the committee level nor at the Tourism Board level. The committee, which has only met two times so far, is simply trying to evaluate the options and prepare its recommendations for the Tourism Board's consideration. Your direction will allow the committee to concentrate its efforts in the most productive manner as we move forward.

'The Advisory Committee recognizes the importance of the Unified Development Ordinance and the possible precedents set by your actions. That said, we also recognize that a building of this type, and scale, has never existed in the Town before nor in the Outer Banks.

'We welcome any opportunity to assist in this discussion as you see fit. Thank you for your consideration and your guidance.'

There being no one else present who wished to speak, Attorney Leidy concluded Public Comment at 9:41 a.m.

Mayor Pro Tem Siers commented that instead of the Tourism Board purchasing property, that their money could be spent on keeping the beaches nourished – this money could be put into a sustainable beach and have the beaches around a little bit longer.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #9 to FY 19/20 Budget

Consideration of Tax Adjustment Report

Report of Tax Delinquent List to be advertised

Approval of minutes

Consideration of resolution clarifying Dare County Control Group / Town MOA of Oct 2015

Consideration of resolution authorizing an installment finance direct borrowing contract to finance the vehicles and equipment identified in the fiscal year 2019/2020 Budget

Request for Public Hearing to consider adoption of a resolution authorizing the Town to enter into an Installment Purchase contract in an amount not to exceed \$1,449,793 to finance cost of the Sidewalk Pedestrian Path, Fuel Tank Conversion, and Dowdy Park improvements as identified in FY 19/20 Budget

Request for Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Request for Public Hearing to consider a text amendment to the UDO to correct identified errors

**MOTION:** Comr. Renée Cahoon made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

Budget Adjustment #9, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

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

The Tax Delinquent List summary sheet, as approved, read in part as follows:

"At the February 5<sup>th</sup> Board of Commissioners meeting, Board approval was received to advertise tax liens in the newspaper on March 18, 2020 in accordance with NCGS 105-369.

'Attached please find preliminary tax delinquent listing as of February 27, 2020.

'(Property owners have up to March 1, 2020 to pay to be removed from delinquent list before advertisement is posted.)"

The Resolution clarifying the Dare County Control Group / Town Memorandum of Agreement, as adopted, read in part as follows:

"WHEREAS the document entitled *Memorandum of Agreement Between Dare County Municipalities And The County Of Dare Concerning Emergency Coordination* was presented to municipalities for execution in 2015; AND

'WHEREAS The Memorandum of Agreement (MOA) between the Town and Dare County was signed by the Mayor on October 19, 2015 but was never presented for consideration by the entire Board; AND

'WHEREAS The Town Attorney has stated that the MOU is not enforceable and is more of a statement and that from a legal perspective, he has no major concern with the document; AND

'WHEREAS As noted by Norma Houston of the UNC School of Government, the MOA does not mandate partner municipalities to surrender any legal authority to the County but recognizes that "all municipalities have the authority to declare and manage an emergency independently ..."; AND

'WHEREAS The MOA encourages "cooperation and coordination" among the local municipalities and the county through the Control Group which is described as a "collaborative body that convenes to facilitate decision-making ...to achieve unity of effort.."; AND

'WHEREAS This collaboration between local municipalities and the county is extremely important when dealing with evacuation and re-entry since this impacts everyone.

'NOW, THEREFORE, BE IT RESOLVED that the Town of Nags Head Board of Commissioners does hereby ratify the MOA dated October 19, 2015 and authorizes it as official and binding in the spirit of cooperation among all municipalities and the county through the Dare County Control Group."

The resolutions authorizing three and five year loans for financing vehicles/equipment identified in FY 19/20, as adopted, read in part as follows:

Three-year loan

"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:

'The Town hereby determines to finance the Project through Southern Bank & Trust Company, in accordance with the proposal dated February 24, 2020. The amount financed shall not exceed \$584,701.00 the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.74%, and the financing term shall not exceed two (2) years from closing.

'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 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.

'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.

'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."

Five-year loan

"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:

'The Town hereby determines to finance the Project through Southern Bank & Trust Company, in accordance with the proposal dated February 24, 2020. The amount financed shall not exceed \$306,328.00 the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.74%, and the financing term shall not exceed four (4) years from closing.

'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 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.

'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.

'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 first Request for Public Hearing summary, as approved, read in part as follows:

"Staff is requesting that a Public Hearing be scheduled for the April 15<sup>th</sup> Board of Commissioners meeting for the adoption of a resolution authorizing the Town to enter into an Installment Purchase contract in an amount not to exceed \$1,449,793.

'These funds are to finance the cost of the following items as identified in the 2019/2020 budget:

- Sidewalk Pedestrian Path
- Fuel Tank Conversion, and
- Dowdy Park improvements"

The second Request for Public Hearing summary, 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, 2019 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."

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

### Update from Planning Director - Flood Map ordinance overview

Planning Director Michael Zehner summarized his memo with several updates. He discussed with Board members the flood map ordinance and the state's proposed flood maps. The Flood Map Informational Meeting flyer was displayed – the meeting is scheduled for Monday, March 9<sup>th</sup> in the Board Room from 5:30 to 6:30 p.m.

Mayor Pro Tem Siers expressed his concern about the flood maps which he feels have no sustainability.

Director Zehner explained that free board is not being removed – if the Board is interested staff can look at raising standards for elevation on the west side of SR1243.

Comr. Renée Cahoon agreed with Mayor Pro Tem Siers – that most of the modeling for the maps is done on the oceanfront yet most of the flooding does not occur there; don't need to go back and retrofit need to look at places that are flooding now and modify standards as appropriate. What we know as reality is not which is indicated on the flood maps.

Mayor Cahoon stated that it would be beneficial for the Board to see the information that is to be presented at next week's informational session as soon as possible; make sure elevation standards we are proposing are adequate.

## **OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS**

Mayor Cahoon noted that both of these items have been continued by the applicants:

- Consideration of Southridge Subdivision Coastal Villas Subdivision Preliminary Plat
- Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S. Virginia Dare Trail, submitted by Jim and Stephanie Selckmann

## **NEW BUSINESS**

### Committee Reports

Comr. Fuller – Dare County Tourism Board (DCTB) – the Tourism Board Advisory Committee is moving forward; he wanted to make sure Board members understood what Executive Director Lee Nettles was speaking about during Public Comment earlier today. Director Nettles was asking if the Board would consider the following concerning proposals for the event site:

- Will the Board consider a reduction in parking standards? and
- Will the Board consider allowing central sewage already located in Nags Head (Village at Nags Head) to be extended to the DCTB event site?

It was Board consensus that there is no interest in reducing parking standards nor allowing an extension of central sewage to the event site and that there is, therefore, no action for staff to take at this time.

Mayor Pro Tem Siers also noted that he has not heard any interest from citizens for an event site hotel and did not see the need for staff time and money to be spent in research re: reduction in parking standards and extending central sewage from the Village at Nags Head to the event site.

### Consideration of recommendations for services:

- Beach Surveying Services
- Coastal Engineering and Design Services

Dep Town Manager Andy Garman summarized his memo which read in part as follows:

"The Town recently issued two separate requests for qualifications (RFQ) to solicit consulting services for the town's ongoing shoreline management efforts. The first RFQ related to coastal engineering and design services. The second RFQ related to providing surveying services to document project performance as part of the town's annual maintenance and monitoring plan.

'Although the Town is not anticipating constructing another nourishment project for several (5-8) years, the Town wishes to obtain consulting assistance now as we consider refinements to our approach, including development of long-term strategies, alternative approaches and associated funding mechanisms, and revisions to the Town's maintenance and monitoring plan. The Town will also need to maintain an ongoing contract for annual shoreline maintenance and monitoring. It is anticipated that the consultants selected for these RFQs will continue working with the Town to plan and design its next nourishment project.

'For the coastal engineering RFQ, the Town was particularly interested in firms that had a breadth of knowledge, experience, and demonstrated success with creating multi-pronged and adaptive shoreline management approaches considering how we may leverage other county-wide initiatives to maximize the efficiency and economy of our efforts. We are also interested in considering how legislative efforts and broader funding schemes may enhance our capacity to support future projects.

'The Town received three RFQs for coastal engineering: Coastal, Science & Engineering (CSE), Applied Technology and Management (APTM), and Moffat & Nichol. The selection process involved reviewing each proposal and conducting interviews with each consultant team. Based on the criteria established in the RFQ, with a particular focus on the aforementioned capabilities, staff is recommending the consultant team of Moffat & Nichol for coastal engineering and design services. Moffat & Nichol has extensive experience in shoreline management and nourishment projects. M&N is well known for its work in Carteret County where they developed a 50-year plan for shoreline management involving the County and several municipalities. This included the development of a programmatic EIS, which has enabled the County to more efficiently navigate the planning and design stages for nourishment efforts, particularly when there is a declared disaster and they become eligible for FEMA funds. The programmatic EIS and associated permitting mechanisms have significantly reduced the timeframe and administrative work to initiate projects. This plan also considers varying erosion rates for different parts of the County and establishes staggered nourishment thresholds for these areas as part of a maintenance and monitoring plan. We believe the skills presented to us through this RFQ are most well suited to our needs as we explore ways to evolve our nourishment strategy, considering new approaches that leverage additional resources while exploring opportunities to work with neighboring communities. Moffat & Nichol staff would support this project primarily from their Raleigh, NC and Norfolk, VA offices.

'For the beach surveying RFQ, the Town received four submissions to include Coastal Science & Engineering, Precision Measurements Land Surveyors, So Deep/SAM LLC, and McKim & Creed. After conducting the proposal reviews and consultant interviews, staff is recommending the firm of McKim and Creed based on their overall qualifications, firm capacity, as well as direct experience with similar projects. McKim & Creed staff would support this project primarily from their Wilmington, NC office.

'If the Board agrees with staff's recommendation, we will work with each consultant to develop an initial scope of work. We anticipate the two scopes to consider the following tasks:

- Establishing data collection protocols for the town's annual maintenance and monitoring plan.
- Establishing a schedule for annual surveys/monitoring.
- Establishing protocols and requirements for conducting assessments/surveys on an as-needed basis pre- and post-storm events.
- Examining the town's existing reports and historical data to understand past project performance.
- Analyzing data and developing/refining models that will become the basis for design criteria and future project assumptions. Adjusting reach boundaries accordingly to consider how the town aggregates areas with similar performance. Establishing protocols for and considering revisions to the town's maintenance and monitoring plan.
- Working with the Town Board of Commissioners and staff to establish preferred strategies for planning, permitting and design of future projects. This would include consideration of timing of future

efforts in conjunction with other local projects, permitting strategies and timing, and providing input to assist with the development of the town's funding strategy.

Staff anticipates that these initial services would form the basis for the initial project ordinance for the next nourishment project and funding cycle. If the Board chooses to move forward with additional municipal service districts for the purpose of partially funding future projects, it is anticipated that these costs could be funded using revenue generated from these additional districts. Staff anticipates a nominal MSD tax rate would be necessary to fund these costs.

If the Board of Commissioners is in agreement with these recommendations, a motion will be in order to:

- Authorize the Town Manager to enter into contractual negotiations with Moffat and Nichol for coastal engineering and design services for an agreed upon fair and reasonable compensation.
- Authorize the Town Manager to enter into contractual negotiations with McKim and Creed for beach surveying and monitoring services for an agreed upon fair and reasonable compensation.

Upon completion of these negotiations, staff will present to the Board, for their consideration, a professional services fee proposal and draft contract for each service. It is anticipated that the scope of work may be partitioned, as necessary, so as to permit services to be initiated quickly for supporting beach surveying and monitoring services.

Recommendation – Moffatt & Nichol for Beach Surveying Services  
Recommendation – McKim & Creed for Coastal Engineering and Design Services”

Mayor Cahoon clarified that the first step would be to determine the company – and to then approve a scope of services; McKim & Creed is a very capable firm and he has no problem identifying them with the understanding that the Board will be seeing the scope.

#### Beach Nourishment Project – Beach Surveying Services

**MOTION:** Comr. Renée Cahoon made a motion to invite Moffatt & Nichol to make a presentation to the Board, and to authorize the Town Manager to enter into contractual negotiations with them for Beach Nourishment Project coastal engineering and design services with all relevant material to come back to the Board. The motion was seconded by Comr. Brinkley.

Attorney Leidy reminded the Board that proposals were solicited based on qualifications and not cost.

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

#### Beach Nourishment Project – Coastal Engineering and Design Services

**MOTION:** Comr. Fuller made a motion to authorize the Town Manager to enter into contractual negotiations with McKim & Creed for Beach Nourishment Project surveying services. The motion was seconded by Comr. Brinkley which passed unanimously.

Discussion/Consideration of proposed Municipal Services Districts

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

“At its February 5, 2020 meeting, the Board considered the establishment of proposed municipal service districts that would be utilized for future beach erosion control, hurricane protection works, and drainage projects. Three new districts were presented to the Board to include additional areas west of NC 12 and SR 1243. The Board is considering how to distribute the costs for completing these projects proportionate to the benefits received by property owners in geographically distinct areas of town. Staff presented a process and timeline for establishing these new districts. Based on the Board’s direction, staff is presenting the Board with the requisite documents needed to initiate this process. Attached for Board review and discussion on March 4<sup>th</sup> are the following documents pertaining to the creation of Municipal Service Districts:

- Report on establishment of three (3) proposed Municipal Service Districts
- Municipal Service District Timeline
- Existing MSD Map
- Proposed MSD Map
- Notice of Public Hearing on proposed MSD”

Town Manager Ogburn summarized the proposed districts:

District 3 – Eighth Street (northern town line) south to Bonnett Street  
(includes all properties east of Wrightsville Avenue)  
Eventually this northern mile may need nourishment

District 4 – Bonnett Street south to Gulfstream Street  
(from Bonnett Street to Bainbridge Street - includes all properties east of Wrightsville Avenue; from Bainbridge Street to Hollowell Street – includes all properties with frontage on and east of Memorial Avenue; from Hollowell Street to Gulfstream Street – includes all properties east of US 158).

District 5 – Gulfstream Street south to southern town line  
(includes all properties south of Gulfstream Street).

**MOTION:** Comr. Fuller made a motion to schedule a Public Hearing to consider the Municipal Service Districts as presented, to include Old Nags Head Place, for the May 6<sup>th</sup> Board of Commissioners meeting. The motion was seconded by Comr. Brinkley which passed unanimously.

Consideration of Board/Committee appointments

**MOTION:** Comr. Renée Cahoon made a motion to reappoint Angelina Lowe and John Mascaro to additional three-year terms on the Board of Adjustment. The motion was seconded by Comr. Fuller which passed unanimously.

**MOTION:** Comr. Brinkley made a motion to reappoint Perry White and Sandra Futrell to additional three-year terms on the Personnel Grievance Panel. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

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

### Town Manager Ogburn - Sanitation and Recycling – Consideration of trash cart rollback ordinance

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

“At its February 5, 2020 meeting, the Board, at the manager’s request, delayed any decision on action regarding the section of town code regulating proper placement of trash and recycling until its March 4, 2020 meeting. This was done in order to facilitate a meeting with concerned citizens/neighborhood associations that have expressed opposition to this approach.

‘The issue of the town’s ability to enforce this ordinance with available resources is the primary reason staff recommended it be rescinded. The amount of time and staff resources involved in issuing notices of violation for improperly placed trash and recycling carts seems somewhat unproductive. Complaints are primarily isolated to a few sections of town; however, if there is an expectation that the ordinance be fully enforced, more resources would be necessary and the expense associated with this effort would likely not be justified in light of other town goals. Previously, some Board members have resisted the idea that the town would act as the ‘cart police’ in these instances.

‘On February 20, 2020 staff met with residents that would like to see the ordinance remain in place for fear that removing it would cause disregard for cart placement with no mechanism for regulation. Their further concerns relate to community aesthetics, the amount of trash blown from carts left in the right-of-way, and the smell from trash as they walked through their neighborhoods. Discussion focused on the importance of increased education targeted primarily to visitors by the town and property management companies. However, there was a strong opinion that staff would have to issue violations along with civil penalties in order to affect any change towards increased compliance.

‘In lieu of rescinding the ordinance at this time, staff requests the ability to work towards a resolution of this matter through a combined effort of strong education and enforcement for habitual offenders. Staff would evaluate the performance of this approach and report our findings to the Board at the end of the tourist season.”

Town Manager Ogburn asked Board members to authorize him to work with neighborhood homeowners’ associations concerning the trash cart rollback issue and to not rescind the ordinance at this time.

Comr. Fuller noted that there are some ordinances on the books that are not specifically enforced but remain on the books and he feels this one could be the same.

Board members agreed with Town Manager Ogburn to take no action at this time on the trash cart rollback ordinance allowing him to continue working with neighborhood associations on this issue.

### Town Manager Ogburn - Consideration of contract for beach sprigging and sandfencing

Comr. Renée Cahoon spoke of Figure Eight Island who is a big supporter of installing bales of hay on their beaches. Town Manager Ogburn indicated that he would like to do a test project and noted that it would not require a General Contractor license to do this work.

It was Board consensus to authorize Town Manager Ogburn to conduct a test pilot project on the beach with hay bales in addition to the sand fencing/sprigging.

**MOTION:** Comr. Renée Cahoon made a motion to approve Budget Amendment #8 to the Beach Nourishment Capital Project Ordinance as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

The Beach Nourishment Project Capital Project Ordinance, amendment #8, as adopted, is attached to and made a part of these minutes as shown in Addendum "C".

Town Manager Ogburn - Discussion/Consideration to request NC DOT reduce the speed limit on NC 1243 from Juncos Street Beach Access south to NC Hwy 12 from 45 mph to 35 mph

**MOTION:** Comr. Brinkley made a motion to authorize staff to request that NCDOT reduce the speed limit on SR 1243 from Juncos Street south to the town line from 45 MPH to 35 MPH. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Town Manager Ogburn – Recycling with other municipalities

Town Manager Ogburn announced that on March 30<sup>th</sup> at the Dare County offices, a meeting will be held with the County, municipalities, restaurant associations and DENR to see what future recycling options may be available.

Mayor Cahoon – Upcoming Town information sessions and events

Mayor Cahoon pointed out the following upcoming sessions/events:

- Multi-use path construction meeting – Thursday, March 5<sup>th</sup> from 5:30 to 7 pm – Board Room
- Flood Map & Flood Map Prevention Ordinance – Monday, March 9<sup>th</sup> from 5:30 to 6:30 pm – Board Rm
- Town Safety Week – March 9<sup>th</sup> to 13<sup>th</sup>
- Green Drinks and Stormwater Updates – Wednesday, March 11<sup>th</sup> at 7:30 pm at Waveriders Restaurant
- Sunshine Week – March 15-21
- St. Patrick's Parade – Sunday, March 15<sup>th</sup>
- CIP Workshop – Wednesday, March 25<sup>th</sup> at 9 am – Board Room
- Community Clean Up starting at Dowdy Park – Saturday, March 28<sup>th</sup> at 8 am

**BOARD OF COMMISSIONERS AGENDA**

Comr. Brinkley – Thank you to Donny King and Ellen Heatwole

Comr. Brinkley thanked Donny King of Better Beaches OBX and Ellen Heatwole for speaking concerning the organization and in support of additional beach sand fencing.

Comr. Brinkley – Recycling

Comr. Brinkley confirmed with Attorney Leidy that the Town does not have the option to sue Bay Disposal re: incinerating recycling materials rather than true recycling per the contract. Attorney Leidy said that suing does not apply to that particular provision of the contract – and would also be counter-productive since the Town is still utilizing the company.

**MAYOR’S AGENDA**

Mayor Cahoon – Workforce Housing

A meeting is being scheduled with local mayors for Thursday, March 12<sup>th</sup> to discuss J1 workers and housing issues. A location has not yet been finalized. A speaker is coming from Wisconsin where a program was developed to solve their seasonal housing problem. Possibly a model can be utilized for this area.

Town Clerk Carolyn Morris is to send details of the meeting to Board members when received.

Mayor Cahoon - Future Town Vision (from Jan 2020 Board Retreat)

Mayor Cahoon presented his vision for the future of the Town. His memo read in part as follows:

“At the Board’s January 2020 Retreat there was a robust discussion about our shared vision for Nags Head. It was a forward-looking exercise with more consensus than many towns might hope for, and was the kind of exercise towns too seldom undertake. I was personally excited by what the Board generated and felt inspired to put down specific actions (as specific as I could make them) to move in the indicated direction. Too often such visionary aspirations remain non-specific and not actionable, and boards never return to them. I didn’t want that to happen.

‘However, *this is only my own self-generated list*. The specific items do not have Board consensus, and I don’t mean to indicate that they do. I hope instead that you will find more specific actions to add, so that we have a big “shopping list” for future discussions. And, as Commissioner Cahoon suggested at the February Board Meeting, this list should remain open so that new ideas can be a topic at the end of every meeting.

‘This list also has no priority. Priorities can only be set by the Board and might be set at a future time, if and when we take action on some items.

‘And finally, this list does not include the “measurements” that would indicate positive movement or success. Those would also be determined at a future time in collaboration with staff.

‘With those caveats the attached list is offered for your consideration.’’

His list was presented and read in part as follows:

Provide Superior Service-whatever we do, we do really well!

*Implement a budget process that addresses levels of service and capital improvement, so Board understands what result will look like*

*Board members challenge themselves to raise levels of service and capital improvement when appropriate  
Measure public/customer satisfaction and identify improvements  
Implement identified customer service improvements, quickly when low-no cost  
Benchmark acceptable levels of service so we know what exceeding them looks like (even if it's a clean garbage truck!)*

*Motivate staff to do the "best" within the time and resources available, rather than simply accomplish the task/install the improvement*

Be creative when dealing with natural hardships like sea level rise.

*Revisit risks listed in the VCAPS report.  
Prioritize a set of those risks for further study and recommendations.  
Engage with student groups like the current NCSU Sustainability Studio to visualize responses  
Invest in a buyout/relocation fund for the distant future  
Continue to implement drainage projects and seek grant funding for more*

Enhance our status as a visitor destination and outdoor recreation economy

*Improve remaining unimproved beach and sound accesses  
Improve sound accesses for a broader range of sailing/kiting uses  
Identify and mitigate potential pollution sources to prevent beach closures  
Stay ahead of septic health, clean groundwater, alternative approaches  
Maintain control of beach activities that distract from the experience  
Survey small recreation product manufacturers and support their needs  
Spotlight interesting, unusual or historic outdoor recreation businesses  
Board shaping exhibition/festival  
Awards program for innovative businesses  
Recognition for historic recreation businesses/pioneers  
Maintain and enforce barriers to disruptive "party houses"*

Enhance traffic and pedestrian safety and encourage walkability with pathways, greenways and a US 158 Greenway

*Identify US 158 business leaders who will see the benefits and advocate for a greenway  
Meet with our NCDOT representative and our legislative representatives to press for the greenway option  
Petition NCDOT, at every opportunity, to consider the greenway option  
Develop images and messages to develop public support for the greenway option  
Continue to identify locations and build multiuse paths  
Use MUP construction to connect assets in the Whalebone area*

Maintain our wide non-commercial beaches

*Expand funding to guarantee capacity for the next project  
Meet with legislators to press for groin or reef options to slow erosion  
Monitor and act quickly on commercial encroachments*

Become More Diverse

Encourage, and when possible develop, diversity of housing, lifestyles, social characteristics, and people  
*Identify sites for multifamily housing, set parameters, and conduct non-binding design competitions (to illustrate creative options at low-no cost)*

*Survey or undertake other mechanism to understand housing needs in detail  
Create a small summer multi-cultural festival for visiting workers  
Educate business owners on commercial site housing options in UDO  
Consider an ADU ordinance for the commercial zone only  
Maintain barriers to larger houses*

Maintain and further develop solid infrastructure including roads, stormwater, health care, the internet, and cultural features/settings/events

*Identify champions/monitors for key assets like parks, pathways, etc.  
Install signage with contact info for reporting problems/maintenance needs  
Create/maintain/monitor work plans for maintaining assets  
Conduct regular meetings with hospital leadership to discuss plans and needs  
Convene a meeting of remote/tech workers to discuss their tech/internet needs  
Maintain farmer's market and summer concert schedule  
Maintain partnership with DCAC for events like Artrageous  
Expand Artrageous, Roll 'n' Stroll, or another event to include street art  
Complete and install a number of art masts*

Become home to a creative year-round workforce

(Relates to diversity and outdoor economy goals)

*Challenge the Art and Culture Committee to further define creative workforce  
Develop a list of target workers and businesses appropriate to Nags Head's  
scale and capacity  
Identify channels to promote the town to those businesses and workers  
Identify barriers to creative work and identify measures to eliminate them  
(Read "Cities and the Creative Class")  
Complete other goals outlined above which will make the town very attractive to  
workers who have the option to live here and work remotely*

**Nags Head Wow Factors**

Be the leader.

Coastal town model that other towns model themselves after.

*Publicize the locations where we have better amenities, more beautiful spaces,  
or the times when we have innovated in policy or action.  
Host events on coastal and small town issues, like recycling/reduction*

Be innovative.

Creative thinking.

*Cross-disciplinary teams brainstorm solutions to problems (quick strike)  
Identify and emulate forward-leaning communities from around the world  
Quickly implement low cost ideas*

Be competitive among municipal workforces.

*Maintain pay and benefits near the top of the range  
Offer superior training opportunities  
Maintain high-quality management, perceived as fair and supportive*

Cool food and art scene.

*Challenge the Art and Culture Committee to define this  
Modify ordinances to allow more food option experimentation.*

*Create an annual restaurant awards program, or an award for the Seafood  
Festival (most creative dish)*

Mayor Cahoon encouraged Board members to bring forward their ideas to add to the list.

Closed Session

**MOTION:** Comr. Fuller made a motion to enter Closed Session, in accordance with GS 143-318.11(a)(6) to discuss the Town Manager's review and to discuss and preserve attorney/client privilege pursuant to GS 143-318.11(a)(3). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:40 a.m.

Open Session

The Board re-entered Open Session at 1:08 p.m. Attorney Leidy stated that during Closed Session the Board did confer with the Town Attorney re: attorney/client privilege item and did discuss the Town Manager's review and did take action which cannot be disclosed for confidentiality reasons.

**ADJOURNMENT**

Mayor Cahoon recessed the Board meeting to Wednesday, March 11<sup>th</sup> at 9 am in the Board Room. The time was 1:10 p.m.

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

Date Approved: \_\_\_\_\_

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



**DRAFT 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\\_YiqmiLnuR-CUDH5LI0svCq](https://zoom.us/webinar/register/WN_YiqmiLnuR-CUDH5LI0svCq)*

*'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 others for their work 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. There being no one present, nor were any comments forwarded, of anyone who wished to speak, 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
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 that concerning revenue vs expenditure – 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 agreement.

## **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 others exhibiting 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 even 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 this 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. Kevin 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 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 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

**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.

**ADJOURNMENT**

**MOTION:** Comr. Fuller made a motion to adjourn. The motion was seconded by Comr. Renée Cahoon which passed unanimously. The time was 1:10 p.m.

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

Date Approved: \_\_\_\_\_

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



## Agenda Item Summary Sheet

Item No: **D-3**  
Meeting Date: **May 6, 2020**

**Item Title:** Request for Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021, proposed CIP requests for FY 20/21 through FY 24/25, and updated Consolidated Fee Schedule

### Item Summary:

Request that a Public Hearing be scheduled for the June 3<sup>rd</sup> Board of Commissioners meeting to consider citizen comment on the following:

- Town Manager's proposed operating budget for fiscal year July 1, 2020 – June 30, 2021,
- Proposed Capital Improvement Program (CIP) requests for FY 20/21 through FY 24/25, and
- Updated Consolidated Fee Schedule

Number of Attachments: 0

---

### Specific Action Requested:

Schedule Public Hearing for the June 3, 2020 regular Board meeting.

Submitted By: Administration

Date: April 28, 2020

---

### Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller

Date: April 28, 2020

---

### Town Attorney Comment:

N/A

Signature: John Leidy

Date: April 28, 2020

---

### Town Manager Comment and/or Recommendation:

N/A

Signature: Cliff Ogburn

Date: April 28, 2020



# Agenda Item Summary Sheet

Item No: **D-4**  
Meeting Date: **May 6, 2020**

**Item Title:** Request for Public Hearing to consider a text amendment to the Unified Development Ordinance to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District

**Item Summary:**

Kim Cowen and Megan Dixon have submitted a text amendment request to the Unified Development Ordinance which, if adopted, would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District. The applicants would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up.

**Staff Recommendation/Planning Board Recommendation**

Planning staff finds that the proposal is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community. Staff would recommend that the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

*Tutoring Facility/Learning Center means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test preparation, or the teaching music and visual arts.*

Staff recommends adoption of the proposed amendment as presented. At their April 21, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as presented.

Number of Attachments: 1

---

**Specific Action Requested:**

Schedule the Public Hearing.

Submitted By: Planning and Development

Date: April 23, 2020

---

**Finance Officer Comment:**

N/A

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

N/A

Signature: Cliff Ogburn

Date: April 28, 2020



(DRAFT)  
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
 OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO PROPOSED NEW USE  
 “TUTORING FACILITY/LEARNING CENTER”**

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the “Town”) may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

**WHEREAS**, a text amendment application has been submitted requesting consideration be given to permitting “tutoring facility/learning center” within the C-2, General Commercial Zoning District’ and

**WHEREAS**, the Town of Nags Head 2017 Comprehensive Plan includes policies supporting land uses that serve the needs of both year-round and seasonal residents in support of the town’s overall vision for the community and to support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

**ARTICLE II. Construction.**

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein but are instead replaced by an ellipsis (“...”) shall remain as they currently exist within the Town Code.

**ARTICLE III. Amendment of the Unified Development Ordinance.**

PART I. That **Section 6.6 Table of Uses and Activities** be amended as follows:

Use Category/Class	Use Type	Residential Districts			Commercial Districts				
		R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4
Service	<u>Tutoring Facility/Learning Center</u>						<u>P</u>		

PART II. That **Section 10.16 Required Parking by Use** be amended as follows:

Use Category/Class	Use Type	Required Parking
<u>Service</u>	<u>Tutoring Facilities/Learning Center</u>	<u>One parking space for each 300 square feet of gross floor area.</u>

PART III. That Appendix A Definitions, be amended as follows:

Section A.4 – Definitions

**Tutoring Facility/Learning Center** means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test-preparation, or the teaching of music and visual arts.

PART IV. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the \_\_\_ day of \_\_\_ 2020.

\_\_\_\_\_  
Benjamin Cahoon, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Date adopted: \_\_\_\_\_

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS



# Agenda Item Summary Sheet

Item No: **E-1**  
Meeting Date: **May 6, 2020**

**Item Title:** Public Hearing to consider proposed a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

## Item Summary:

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, with Staff's recommendations incorporated and highlighted.

## 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, 2019 meeting, voted 6-0 to recommend amendments to the 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.

Number of Attachments: 3

---

## Specific Action Requested:

Conduct Public Hearing / Adoption of text amendment.

Submitted By: Planning and Development

Date: April 27, 2020

---

## Finance Officer Comment:

Signature: Amy Miller

Date: April 28, 2020

---

## Town Attorney Comment:

I will participate in the discussion at the Board meeting as necessary.

Signature: John Leidy

Date: April 28, 2020

---

## Town Manager Comment and/or Recommendation:

I will participate in the discussion at the Board meeting as necessary.

Signature: Cliff Ogburn

Date: April 28, 2020



**Town of Nags Head**  
Post Office Box 99  
Nags Head, North Carolina 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

**NOTICE OF PUBLIC HEARINGS  
TOWN OF NAGS HEAD BOARD OF COMMISSIONERS**

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, May 6, 2020** beginning at 9:00 am in the Board Room of the Municipal Complex, 5401 S. Croatan Highway, Nags Head, NC to consider and take action upon the following requests:

Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors

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

A copy of the application requests are available for public inspection at the Office of the Town Clerk, Town Municipal Complex, 5401 S. Croatan Hwy, Nags Head, NC 27959, telephone (252) 441-5508 during normal business hours.

As a result of these hearings substantial changes may be made in the proposals as advertised to reflect objections, debate and discussion at the hearings. Any person desiring to be heard on the proposals as stated above should appear at the time and place specified above.

This the 23<sup>rd</sup> day of April 2020.

Carolyn F. Morris  
Town Clerk



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

---

To: Board of Commissioners

From: Michael Zehner, Director of Planning & Development  
Kelly Wyatt, Deputy Director of Planning & Development

Date: April 27, 2020

Subject: Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities (E-1)

---

#### OVERVIEW

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). Initially, as discussed with the Planning Board on January 21, 2020, the 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. Mrs. Creef had explained to the Board 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. Mrs. Creef indicated that there would be a preference to allow two outdoor stands (where the regulations only allow for one) and confirmed for the Board that the plan was to locate the kiosk in the terrace area.

Based upon the discussion and feedback provided by the Planning Board, the applicant modified the original proposal (consistent with the version before the Board) and returned to the Planning Board meeting on February 18, 2020. The Planning Board recommended approval, with changes recommend by Staff, detailed below.

#### BACKGROUND

The current version of the allowances and standards for *Outdoor Stands, Accessory to Shopping Center & Group Development* are the result of numerous changes over the course of the last ten (10) years; actions of note are as follows:

- The allowance of outdoor fresh produce stands as an accessory use to shopping centers was first established in mid-2009;
- In late-2009, an amendment was adopted to allow hotdog vending stands as an accessory use to shopping centers;
- In early-2010, an amendment was adopted to allow coffee vending stands as an accessory use to shopping centers;

*Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities (E-1)*

---

- In mid-2010, recognizing that one of each of the aforementioned stands could be permitted at any given shopping center, an amendment was adopted to limit the number of accessory outdoor stands at any shopping center site to one (1); additionally, the various stand uses were consolidated under a single use (Outdoor Stands);
- In late-2010, the Ordinance was amended to allow Italian ice and fudge sales;
- In early-2013 ice cream was added as an allowed sale item; additionally, in 2013, a request to expand the allowable number of stands from one (1) to (2) was denied; and
- The provisions were last amended in 2014 when the allowed locations for outdoor stands were expanded to allow as accessory to Group Development (aka Office/Retail Group Development).

## **POLICY CONSIDERATIONS**

There are no direct policies concerning outdoor stands. However, certainly economic development objectives and policies encouraging and supporting small businesses and the viability of existing commercial properties are applicable, and need to be balanced with objectives and policies focused on maintaining the Town's character.

Generally, Staff believes that the request to allow the sale of tickets and reservations is consistent with applicable policies; however, Staff would suggest that the standards be clarified to require that the sale and advertisement of items be confined to stands. With respect to the number of allowed stands on any particular site, Staff would support 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.

## **PLANNING BOARD RECOMMENDATION**

The Planning Board, at their February 18, 2019 meeting, voted 6-0 to recommend amendments to the 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.

## **STAFF RECOMMENDATION**

Staff recommends that the amendments 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 would recommend that the current definition of Outdoor Stand, as follows, be amended consistent with the amendment of Section 7.76.1.:

*Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities (E-1)*

---

*Outdoor stand means an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice, and fudge occurs from a cart or structure.*

Staff's recommendations have been incorporated into the attached adoption ordinance and markup of Section 7.76, highlighted to differentiate from the applicant's proposal.

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*

*Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities (E-1)*

---

*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.*

**Attachments:**

1. Zoning Amendment Application;
2. Proposed Ordinance; and
3. Markup of Section 7.76, Outdoor Stands, Accessory to Shopping Centers & Group Development

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO THE  
REGULATION OF OUTDOOR STANDS, ACCESSORY TO SHOPPING  
CENTERS & GROUP DEVELOPMENT**

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the “Town”) may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

**WHEREAS**, an owner of the property within the Town of nags Head proposed the amendment of the Unified **Development** Ordinance to alter regulations for outdoor stands, accessory to shopping centers and group development; and

**WHEREAS**, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town’s adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public’s health, safety, morals and general welfare for the Town to amend the Town’s Unified Development Ordinance as stated below.

**ARTICLE II. Construction.**

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipsis (“...”) shall remain as they currently exist within the Town Code.

**ARTICLE III. Amendment of the Unified Development Ordinance.**

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Section 7.76.1 and, 7.76.2, 7.76.3, and 7.76.4** be amended as follows:

7.76.1 The principle sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice, ~~and~~ fudge, and reservations or ticket sales.

7.76.2 ~~Only one~~ Two outdoor stands shall be allowed per site, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. The stands shall not be required to be a permanent structure and may, with the exception of stands for reservations or ticket sales, be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice, and fudge, and reservations or ticket sales stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce and reservations or ticket sales stands shall be temporary and may be operated for a period of time not to exceed 180 days annually; the ~~The~~ dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

PART II. That the definition of **Outdoor Stand**, as contained in Section A.4, **Definitions, of Appendix A, Definitions, of the UDO**, be amended as follows:

**Outdoor stand** means an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice, and fudge, or reservations or ticket sales occurs from a cart or structure.

#### **ARTICLE IV. Severability.**

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

#### **ARTICLE V. Effective Date.**

This ordinance amendment shall be in full force and effect on the adopted effective date of the Unified Development Ordinance.

\_\_\_\_\_  
Benjamin Cahoon, Mayor  
Town of Nags Head

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

APPROVED AS TO FORM:  
Town Attorney \_\_\_\_\_  
Date adopted: \_\_\_\_\_  
Motion to adopt by Commissioner \_\_\_\_\_  
Motion seconded by Commissioner \_\_\_\_\_  
Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS

## **SECTION 7.76 OUTDOOR STANDS, ACCESSORY TO SHOPPING CENTERS & GROUP DEVELOPMENT.**

Outdoor stands, accessory to shopping centers and group development, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

**7.76.1.** The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice, ~~and~~ fudge ~~and reservations or ticket sales~~. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.

**7.76.2.** ~~Only one~~ Two outdoor stands shall be allowed per site, ~~with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge~~. The stands shall not be required to be a permanent structure and may, ~~with the exception of stands for reservations or ticket sales~~, be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

**7.76.3.** The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice, ~~and~~ fudge, ~~and reservations or ticket sales~~ stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

**7.76.4.** Produce ~~and reservations or ticket sales~~ stands shall be temporary and may be operated for a period of time not to exceed 180 days annually; ~~the~~ ~~The~~ dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

**7.76.5.** All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

**7.76.6.** When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

**7.76.7.** When the regulations contained in the subsection are in conflict with the general regulations of Town Code Section 12 Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.



## Agenda Item Summary Sheet

Item No: **E-2**  
Meeting Date: **May 6, 2020**

**Item Title:** Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors

**Item Summary:**

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.

**Planning Board/Staff Recommendation**

Staff recommends that the amendments be adopted as outlined in the attached adoption ordinance, and the Planning Board agreed at their February 18<sup>th</sup>, 2020 meeting.

Number of Attachments: 3

---

**Specific Action Requested:**

Consider adoption of amendments to the UDO.

Submitted By: Planning and Development

Date: April 27, 2020

---

**Finance Officer Comment:**

Signature: Amy Miller

Date: April 27, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 27, 2020

---

**Town Manager Comment and/or Recommendation:**

I will participate in the discussion at the Board meeting as necessary.

Signature: Cliff Ogburn

Date: April 27, 2020



**Town of Nags Head**  
Post Office Box 99  
Nags Head, North Carolina 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

**NOTICE OF PUBLIC HEARINGS  
TOWN OF NAGS HEAD BOARD OF COMMISSIONERS**

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, May 6, 2020** beginning at 9:00 am in the Board Room of the Municipal Complex, 5401 S. Croatan Highway, Nags Head, NC to consider and take action upon the following requests:

Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors

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

A copy of the application requests are available for public inspection at the Office of the Town Clerk, Town Municipal Complex, 5401 S. Croatan Hwy, Nags Head, NC 27959, telephone (252) 441-5508 during normal business hours.

As a result of these hearings substantial changes may be made in the proposals as advertised to reflect objections, debate and discussion at the hearings. Any person desiring to be heard on the proposals as stated above should appear at the time and place specified above.

This the 23<sup>rd</sup> day of April 2020.

Carolyn F. Morris  
Town Clerk



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

---

To: Board of Commissioners

From: Holly B. White, Principal Planner  
Michael Zehner, Director of Planning & Development  
Kelly Wyatt, Deputy Director of Planning & Development

Date: April 27, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance to correct identified typographical errors

---

#### OVERVIEW

Since the adoption of the Unified Development Ordinance (UDO) on August 7, 2019, staff has located minor typographical errors throughout the document. This amendment will address minor numbering, punctuation, grammar, and contextual issues. Additional similar amendments will be necessary to address any other outstanding issues in the future.

#### PLANNING BOARD RECOMMENDATION

The Planning Board recommended unanimous approval of this text amendment at their February 18, 2020 meeting.

#### STAFF RECOMMENDATION

Staff recommends that the amendments be adopted as proposed.

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.*

**Attachments:**

1. An Ordinance Amending the Code of Ordinances of the Town of Nags Head, North Carolina Pertaining to Correct Identified Typographical Errors

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA  
TO CORRECT IDENTIFIED ERRORS**

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

**WHEREAS**, following adoption of the Unified Development Ordinance, Planning Staff has identified several unintended errors within the text of the Ordinance, necessitating amendment to correct; and

**WHEREAS**, the Town of Nags Head 2017 Comprehensive Plan includes goals and policies aimed at maintaining a well-run and efficient government that provides high quality and cost-effective services through good governance in order to advance the Town's vision; and

**WHEREAS**, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Towns Unified Development Ordinance as stated below.

**ARTICLE II. Construction.**

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

**ARTICLE III. Amendment of the Unified Development Ordinance.**

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Article 2, Administrative, Legislative, & Quasi-Judicial Authority, Section 2.4 Planning Board**, be amended as follows:

***2.4.4. Powers and Duties.***

***2.4.4.1.*** It shall be the duty of the Planning Board to prepare plans and to coordinate the plans of the Town and those of others to bring about a coordinated and harmonious development of the area. The Planning Board is hereby designated as the planning agency for the preparation of a zoning plan

for the Town under the authority of NCGS 160A-387. In addition, the Planning Board is empowered to:

*2.4.4.1.1.* Acquire and maintain in current form such basic information and materials as are necessary to understand past trends, present conditions and forces at work to cause changes in these conditions.

*2.4.4.1.2.* Prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area. The Comprehensive Plan shall be the Planning Board's recommendations to the Board of Commissioners for the development of the Town including, among other things, the general location, character and extent of streets, bridges, parkways, playgrounds, parks and other public ways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities or terminals; and the most desirable pattern of land use within the area.

~~*2.4.4.1.4.*~~ ~~*2.4.4.1.3.*~~ Prepare and recommend ordinances promoting orderly development of the Town as recommended by the Comprehensive Plan including the ordinances contained within the UDO. The Planning Board may initiate proposals for amendment of the UDO based upon its studies and Comprehensive Plan. In addition, the Planning Board shall review and make recommendations to the Board of Commissioners concerning all proposed amendments to the UDO and zoning map.

~~*2.4.4.1.5.*~~ ~~*2.4.4.1.4.*~~ Determine whether specific proposed developments referred to it by governmental or private agencies in the area conform to the principles and requirements of the Comprehensive Plan for the area and to make recommendations concerning them.

~~*2.4.4.1.6.*~~ ~~*2.4.4.1.5.*~~ Keep the Board of Commissioners and the public informed and advised as to these matters.

~~*2.4.4.1.7.*~~ ~~*2.4.4.1.6.*~~ Make any other recommendations which it sees fit for improving the development of the area.

~~*2.4.4.1.8.*~~ ~~*2.4.4.1.7.*~~ Perform any other duties which may lawfully be assigned to it.

PART II. That **Article 2 Administrative, Legislative, & Quasi-Judicial Authority, Section 2.6 Board of Commissioners** be amended as follows:

**SECTION 2.6 BOARD OF COMMISSIONERS.**

*2.6.1.* The Board of Commissioners has the authority to initiate, review, and decide applications for the following: UDO text amendments, zoning map amendments, and conditional use permits in accordance with Article 3, Legislative/Quasi-Judicial

Procedures, as well as major site plans, major subdivision preliminary plats, and subdivision waivers in accordance with Article 4, Development Review Process.

**2.6.2.** The Board of Commissioners, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 3.13, Procedures for Quasi-Judicial Hearings.

~~2.6.2.~~ **2.6.3.** In considering proposed changes in the text of this UDO or in the zoning map, the Board of Commissioners acts in its legislative capacity and must proceed in accordance with the requirements of Section 3.5, UDO Text Amendments/Zoning Map Amendments.

~~2.6.3.~~ **2.6.4.** Unless otherwise specifically provided in this Article, in acting upon conditional use permit requests or in considering amendments to this Ordinance or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the Town ~~€~~Code, the Town ~~€~~Charter, Rules of Procedure, or general law as applicable.

~~2.6.4.~~ **2.6.5.** The Board of Commissioners, in considering the approval of a site-specific development plan (as defined in Section 3.6, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 3.8, Conditional Use Permits for the issuance of a conditional use permit.

~~2.6.5.~~ **2.6.6.** A failure to vote by a Board member who is physically present in the Commissioners chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an abstention, not an affirmative vote.

PART III. That **Article 3 Legislative/Quasi-Judicial Procedures, Section 3.13 Procedures for Quasi-Judicial Hearings**, be amended as follows:

***3.13.3. Modification of Application at Hearing.***

~~3.13.2.1.~~ **3.13.3.1.** In response to questions or comments made in sworn testimony at the hearing, the applicant may agree to modify the application, including the plans and specifications submitted.

~~3.13.2.2.~~ **3.13.3.2.** Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the UDO Administrator.

PART IV. That **Article 4 Development Review Process, Part II. Development Review Process, Section 4.2 Purpose and Intent**, be amended as follows:

**PART II. DEVELOPMENT REVIEW PROCESS.**

**SECTION 4.2 PURPOSE AND INTENT.**

The formal development review process is designed for non-residential development (i.e., projects other than one- and two-family dwellings) applications that require review by the Planning Board and Board of Commissioners. The permitting process for one- and two-family dwellings is provided in Part III, Development Permitting Process Requirements.

PART V. That **Article 4 Development Review Process, Section 4.10 Permits Required**, be amended as follows:

**SECTION 4.10 PERMITS REQUIRED.**

**4.10.1.** No use of land shall be initiated or modified and no building or other structure shall be erected, moved, added to or structurally altered without having either a conditional use permit approved by the Board of Commissioners as provided for under Section 3.8, Conditional Use Permits, or the necessary permits identified in Section 4.11, Permit Types, approved and issued by the UDO Administrator.

**4.10.2.** Furthermore, no building permit shall be issued except in conformity with the provisions of this UDO, the state building code, and applicable federal, state and local regulations.

~~4.10.4.~~ **4.10.3.** A fee for conditional use permits, zoning permits and building permits is required, which shall be in accordance with a regularly adopted fee schedule of the Town.

PART VI. That **Article 4 Development Review Process, Section 4.13 Certificate of Compliance Required**, be amended as follows:

**SECTION 4.13 CERTIFICATE OF COMPLIANCE REQUIRED.**

**4.13.1.** No land shall be used or occupied, and no building hereafter structurally altered, erected, moved, be used or have its use changed, until a certificate of compliance shall have been issued by the UDO Administrator stating that the building and/or the proposed use thereof complies with the provisions of this UDO.

**4.13.2.** A certificate of compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this UDO.

**4.13.3.** A record of all certificates shall be kept on file in the office of the building inspector, and copies shall be furnished on request to any person wishing to review such records.

~~4.13.5.~~ **4.13.4.** In instances where a change of use or other development is proposed that triggers permits or approvals under this UDO, but no building permit is required, then only those UDO permits or approvals required to verify that the proposed use and requirements pertaining thereto comply with the provisions of this UDO.

~~4.13.6.~~ **4.13.5.** Prior to issuance of a certificate of compliance for any new construction project or for any non-residential project which involves an increase in lot coverage, the UDO Administrator shall inspect the entire site to determine if the development complies

with the Town approved site plan. The applicant shall also furnish the Town with a final, original, sealed and signed as-built survey of the entire site. In cases where the proposed building is within six inches of the height limit for the district in which it is located, the UDO Administrator may require a height certificate prepared by a licensed surveyor.

~~4.13.7.~~ **4.13.6.** Prior to issuance of a certificate of compliance for any remodel, addition, or accessory structure, the UDO Administrator shall inspect the entire site to determine if the development complies with the Town approved site plan. If the UDO Administrator finds that the site or a structure on the site has deviated from the approved site plan, or in cases where the project is close to exceeding lot coverage, height, or directly adjacent to a setback, the UDO Administrator may require a final, original, sealed and signed as-built survey and/or height certificate.

PART VII. That **Article 6 Zoning Districts, Section 6.2 Zoning District, Special Districts** be amended as follows:

**6.2.5.4. O&S Ocean and Sound Waters District.** The Ocean and Sound Waters District encompasses the ocean and sound waters and is established to provide for the proper use of these waters, including islands that adjoin the Town, to ensure the continued scenic, conservation and recreational value that these waters provide to the Town, its residents, visitors and the surrounding area. Regulations in this district shall not prohibit or regulate commercial fishing and navigation. The Ocean and Sound Waters District shall encompass and be applied to the area defined as the extraterritorial zoning area as referenced in Town Code **Article Section** 2-1 Zoning; boundary extension; establishment; application.

PART VIII. That **Article 6. Zoning Districts, Section 6.6, Table of Uses and Activities**, be amended as follows:

Use Category/Class	Use Type	Residential Districts			Commercial Districts				
		R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4
Residential	Dwelling, Large Residential	PS	PS	PS	PS		PS		
Residential	Dwelling, Multi-Family				CS	CS	CS		

PART IX. That **Article 7. Supplemental Regulations, Section 7.21 Massage and Bodywork Therapy**, be amended as follows:

**SECTION 7.21 MASSAGE AND BODYWORK THERAPY.**

Massage therapy centers, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

**7.21.1. General Requirements.**

These requirements apply to massage therapists and massage and bodywork therapy business operators. No person permitted under this article shall allow or permit any

person to massage or treat any person unless the person giving such massage or treatment has complied with all requirements of this article.

***7.21.1.1. Permits required.***

***7.21.1.1.1.*** All massage and bodywork therapists and owner/operators of massage and bodywork therapy establishments shall possess and provide proof of a North Carolina license to practice massage and bodywork therapy in accordance with NCGS Chapter 90, Article 36 Massage and Bodywork Therapy Practice.

***7.21.1.1.2.*** A zoning permit is required, in accordance with Article 4, Development Review Process of this UDO, for both the practice of massage and bodywork therapy and owner/operators of massage and bodywork therapy establishments.

~~***7.21.1.2.3.***~~ ***7.21.1.1.3.*** An annual Town of Nags Head Business Registration shall be completed by massage and bodywork therapists and/or owner/operators of massage and bodywork therapy establishments. At the time of registration, any fees associated with the registration shall be paid.

***7.21.1.2.*** The following information shall be submitted and considered as part of the application for a permit from the Town:

***7.21.1.2.1.*** The name of the business and location of the business.

***7.21.1.2.2.*** List of North Carolina certified massage therapists and contact information for massage therapists working in massage therapy and bodywork establishments.

***7.21.1.2.3.*** A certificate of insurance indicating that the applicant has professional liability insurance for the practice of massage therapy/bodywork.

***7.21.1.2.4.*** A description of the services to be provided and any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

***7.21.1.2.5.*** If an applicant is to work under the supervision of a licensed physician, applicant must show scope of services from the licensed physician.

***7.21.1.2.6.*** Verification of criminal history through investigative report by the Nags Head Police Department. Submission of the following information is necessary to complete this investigative report:

***7.21.1.2.6.1.*** A complete statement of all convictions of any person involved in the operation of the business for any felony, or prostitution or any violation of any law relative to prostitution;

**7.21.1.2.6.2.** A complete statement of any revocation, by any governmental unit, of any license to operate a massage business or to engage in the business or profession of massage by the applicant or any persons associated with or employed by the operation of the massage therapy business.

**7.21.1.2.6.3.** A complete statement of any conviction for violation of any statute, law, ordinance or regulation of any government concerning the operation of a massage business or the business or profession of massage by the applicant or anyone employed with the business.

**7.21.1.2.7** The Town reserves the right to request submission of any additional information deemed necessary to process the permit application.

**7.21.1.3.** The applicant or any person having a legal or beneficial ownership interest in the applicant shall not, for the three-year period preceding the application, have a previously issued license revoked for engaging in the business or profession of massage.

**7.21.1.4.** The applicant or any person having any legal or beneficial ownership interest in the applicant, shall not in the last ten (10) years have been convicted of any crime involving sexual misconduct including but not limited to, NCGS 14-177 – 14-202.1 and NCGS 14-203 – 14-208, any federal statutes relating to prostitution, or of any violation of any law or ordinance of any governmental unit related to the business or profession of massage.

**7.21.1.5.** It shall be unlawful for any person, corporation, partnership, or association to employ any person under the age of eighteen (18) years in the operation of a massage business.

**7.21.1.6.** Hours of operation:

**7.21.1.6.1.** No person shall massage or treat any person, or engage in the business or profession of massage, before 8:00 a.m. or after 12:00 midnight, prevailing time.

**7.21.1.6.2.** No person shall admit customers or prospective customers, or remain open for business, or allow, permit or condone any massage or treatment of any person before 8:00 a.m. or after 12:00 midnight, prevailing time.

**7.21.1.6.3.** No person in charge of managing a massage business shall allow, permit or condone any massage or treatment of any person before 8:00 a.m. or after 12:00 midnight, prevailing time.

**7.21.1.7.** Posting of license:

**7.21.1.7.1.** Every massage therapist shall post a copy of their North Carolina license to operate in their work area or on their person.

**7.21.1.7.2.** Every person, corporation, partnership, or association licensed under this article hereof shall display their business registration and their North Carolina license to operate in a prominent place or on their person.

**7.21.1.8.** A permit issued pursuant to this article is void if the licensee moves or ceases operating a massage business.

***7.21.2. Massage of Private Parts for Hire.***

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. The term "massage," as used in this section, means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device. The term "private parts" means the penis, scrotum, mons veneris, vulva, or vaginal area. The provisions of this section shall not apply to licensed medical practitioners, osteopaths or chiropractors, or persons operating at their direction, in connection with the practice of medicine, chiropractic or osteopathy.

***7.21.3. Revocation of Permit.***

**7.21.3.1.** Violation of any part of this article shall be grounds for revocation of the permit.

**7.21.3.2.** A permit issued pursuant to this section shall be revoked by the UDO Administrator or designee upon the determination that:

**7.21.3.2.1.** The permit holder violates any building or fire prevention ordinances or any provision of this UDO.

**7.21.3.2.2.** The permit holder, or the legal or beneficial owner of any interest in the permit holder is convicted of any crime involving sexual misconduct including, but not limited to, NCGS 14-177 – 14-202.4, and NCGS 14-203 – 14-208 in the last ten years.

**7.21.3.2.3.** Any employee of the permit holder is convicted of any felony in connection with his employment, or is convicted of any crime involving sexual misconduct including, but not limited to, NCGS 14-177 – 14.202.4 and NCGS 14-203 – 14-208 or of this article.

PART X. That **Article 7. Supplemental Regulations, Section 7.30 Restaurant, Neighborhood**, be amended as follows:

**SECTION 7.30 RESTAURANT, NEIGHBORHOOD.**

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

**7.30.1.** To be classified as a neighborhood restaurant, the indoor customer service area shall be less than 1,000 square feet.

**7.30.2.** An on-site outdoor customer service area in an amount up to 50% of the indoor customer service area is also permitted.

**7.30.3.** A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, drive-through restaurant, or takeout restaurant building.

**7.30.4.** Uses qualifying as a restaurant shall meet the following criteria:

~~7.30.2.1.~~ **7.30.4.1.** A food preparation area that is at least twenty (20) percent of the gross building square footage of the principal building. The square footage of food preparation area located in an on-site accessory restaurant use building or a second on-site drive-in, drive-through, or takeout restaurant may be applied when calculating this minimum 20% requirement. But when calculated together (principal and accessory or second principal buildings), in no event shall the food preparation area of the principal building be permitted to be less than ten (10) percent of the principal building gross square footage; and~~7~~

~~7.30.2.2.~~ **7.30.4.2.** At least seventy-five (75) percent of all customer seats shall be designated for full-service, full-menu dining; and~~7~~

~~7.30.2.3.~~ **7.30.4.3.** No more than fifteen (15) percent of the total building square footage shall be devoted to accessory entertainment uses including but not limited~~4~~ to dance floor, lounges, bars, stages, live performance, and disc jockey areas. Accessory entertainment uses referenced in this section shall be permitted in a restaurant establishment provided these uses are clearly subordinated in area, extent, hours of operation, and purpose to areas designated for food and/or beverage preparation, service, and consumption.

PART XI. That **Article 7. Supplemental Regulations, Section 7.33 Commercial with Accessory Residential (Attached or Detached)**, be amended as follows:

**SECTION 7.33 COMMERCIAL WITH ACCESSORY RESIDENTIAL (ATTACHED OR DETACHED).**

Accessory residential units are single-family attached or detached units that may be allowed on the same property and in conjunction with a commercial use. These are distinctly different than accessory dwelling units, which are accessory uses designed to be subordinate to and located on the same property as a single-family dwelling. Commercial with Accessory Residential, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

**7.33.1.** Commercial uses may have up to two (2) accessory residential units that are attached or detached.

**7.33.2.** Accessory residential uses must be located above or to the rear of the primary commercial use and must meet the setbacks for the principal structure within the zoning district.

**7.33.3.** Individual accessory residential units may not exceed 1,500 square feet in area.

~~**7.33.4.** Parking shall be provided for the accessory residential units using the same parking standard applicable to single-family dwellings.~~

PART XII. That **Article 7. Supplemental Regulations, Section 7.39 Fire Stations/Public Works Facilities**, be amended as follows:

**SECTION 7.39 FIRE STATIONS/PUBLIC WORKS FACILITIES.**

Fire stations and public works facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

***7.39.1. Fire Stations.***

Fire stations are permitted in accordance with Section 6.6, Table of Use and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

***7.39.1.1.*** No open storage is allowed.

***7.39.2. 7.39.1.2.*** Lighting shall be prohibited except for minimum lighting that may be required for security purposes.

PART XIII. That **Article 7. Supplemental Regulations, Section 7.50 Fishing Piers**, be amended as follows:

**SECTION 7.50 FISHING PIERS.**

Fishing Piers are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

***7.50.1.*** Fishing piers, which may include accessory restaurant or retail uses, are permitted in the R-2 and CR districts in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

***7.50.1.1.*** Parking lot lighting shall be prohibited except for minimum lighting which may be required for security purposes.

***7.50.1.2.*** The maximum total height of the pier house structure shall be thirty-five (35) feet.

***7.50.1.3.*** Lot coverage shall not exceed fifty (50) percent. Coverage may be increased to a maximum of sixty (60) percent if open-space paving blocks are used in place of surfaces such as concrete or asphalt. The use and installation of open-face paving blocks shall be in accordance with the requirements of Section 8.6.6.6., Special Requirements for the Use of Permeable Pavement.

***7.50.1.4.*** Restaurants associated with a fishing pier shall not exceed 1,500 square feet of combined indoor and outdoor customer service area.

***7.50.1.5.*** In the CR district only, if the pier house contains multiple accessory or principal uses, including but not limited to, retail sales, arcade, restaurant, wind turbines, educational and recreational programming, and indoor public assembly uses, with a parking requirement greater than one parking space per 200 square feet of gross floor area, the overall parking requirement may be reduced by

fifteen (15) percent. In utilizing this provision, at no time shall the total number of parking spaces provided be less than 100.

~~7.50.1.5.~~ 7.50.1.6. In the CR district only, the location and installation of wastewater treatment facilities and required repair areas to serve the principal use may be located off-site provided that all off-site properties are undeveloped and are zoned for commercial use. Off-site wastewater treatment facilities shall be exempt from the requirements of Section 7.47, Wastewater Treatment Plants (Accessory to Pier). Above ground structures of the treatment facility shall be deemed principal use structures and shall comply with the dimensional height and yard requirements of the zoning district in which they are located. When off-site wastewater treatment facilities are utilized in conjunction with a fishing pier, restaurants are not permitted as a principal or accessory use to the fishing pier.

~~7.50.1.6.~~ 7.50.1.7. In the CR district only, up to fifty (50) percent of the required parking for the site may be located at an off-site location. Off-site parking must be located in the C-2 zoning district.

PART XIV. That **Article 7. Supplemental Regulations, Section 7.55 Municipal Parks**, be amended as follows:

**SECTION 7.55 MUNICIPAL PARKS.**

Municipal parks are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following limitations and conditions:

***7.55.1. Municipal Parks in the R-2 Zoning District.***

Municipal parks which may include, but not be limited to, tennis courts, multi-purpose recreation fields, concession areas, and picnic areas, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the other requirements of this UDO and provided the following conditions are met:

~~7.55.1.~~ 7.55.1.1. All multi-purpose recreation fields or tennis courts shall be located no closer than one hundred (100) feet from the property line of any adjacent residential property within the R-2 district.

~~7.55.2.~~ 7.55.1.2. All buildings or parking lots shall be located no closer than fifty (50) feet from the property line of any adjacent residential property within the R-2 district.

~~7.55.3.~~ 7.55.1.3. All multi-purpose recreation fields, tennis courts, parking lots, or buildings shall be located no closer than thirty (30) feet from the adjacent residential property line of any property within the SED-80 district.

~~7.55.4.~~ 7.55.1.4. A 50-foot wide buffer shall separate all multi-purpose recreation fields and tennis courts from the property line of any property within the R-2 district. This buffer shall be bermed or planted to a minimum height of five (5) feet and that will reach a height of ten (10) feet within five (5) years. There shall be a minimum of six (6) rows of plants in the buffer placed on 10-foot centers. Eighty (80) percent of all plants must be locally adaptive live evergreen species, or the equivalent of these standards that incorporate existing vegetation and topography or other landscape architecture designs that

demonstrate compliance with these standards. Ornamental grass/herbaceous plants shall not be required to be included in this buffer.

~~7.55.5.~~ 7.55.1.5. All buildings and parking areas shall be buffered from the property line of any property within the R-2 district utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation.

~~7.55.7.~~ 7.55.1.6. Light fixtures for multi-purpose recreation fields shall be turned off no later than 9:00 pm.

PART XV. That **Article 7. Supplemental Regulations, Section 7.58 Designated Public Events Site**, be amended as follows:

**SECTION 7.58 DESIGNATED PUBLIC EVENTS SITE.**

Designated public event sites are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

*7.58.1.* A special events permit is required for events held at a designated public events site for events that expect more than 100 attendees. Applications, including a site and management plan for events, must be made to the Town Manager's office no less than fourteen (14) days prior to the initiation of any event or temporary use to take place on the site in order for the Town to:

*7.58.1.1.* Evaluate requests for Town assistance and costs to be charged as associated with the event;

*7.58.1.2.* Determine and schedule what types of site inspections may be needed;

*7.58.1.3.* Evaluate parking, site access and traffic controls;

*7.58.1.4.* Evaluate crowd controls and flow, and site requirements for bathroom, water and other facilities that may be required to protect the health and welfare of the participants;

*7.58.1.5.* Confirm that NC Alcohol Law Enforcement (ALE) and Dare County Health Department requirements have been met;

*7.58.1.6.* To assign and charge any fees associated with use of Town personnel;

*7.58.1.7.* Schedule repeating events; ~~and.~~

*7.58.2.* Events site and management plan shall include:

~~7.58.8.1.~~ 7.58.2.1. Contact information and cell phone for the person in charge of the event.

~~7.58.8.2.~~ 7.58.2.2. A brief description of the event with an estimated number of expected participants. Ticketed events should indicate the maximum number of tickets that will be sold.

~~7.58.8.3. 7.58.2.3.~~ A site plan map showing:

~~7.58.8.3.1. 7.58.2.3.1.~~ The location of all temporary structures, including tents, stages, concessions, bathroom facilities, or rides.

~~7.58.8.3.2. 7.58.2.3.2.~~ A traffic and parking plan indicating site ingress/egress, traffic flow direction, designated parking areas, and the number of parking spaces. Ticketed events must have one space for every three tickets sold. If off-site parking is anticipated, plan must indicate where off-site parking will be located and document approval from those property owners.

~~7.58.8.3.3. 7.58.2.3.3.~~ The amount, type, and location of temporary signage, subject to the provision of Article 10, Part III, Sign Regulations of this UDO, and the following:

~~7.58.8.3.3.1. 7.58.2.3.3.1.~~ Directional signage less than twelve (12) square feet may be located at strategic locations to direct pedestrians and motorists.

~~7.58.8.3.3.2. 7.58.2.3.3.2.~~ Temporary advertisement, sponsorship, or commercial signage shall be directed internally to the event itself and shall not be located adjacent to or addressing adjacent properties, the US 158 right-of-way or the beach or sound.

~~7.58.8.3.3.3. 7.58.2.3.3.3.~~ Temporary signs shall be displayed only during the actual time period of the event and shall be promptly removed at the close of such event.

~~7.58.8.3.4. 7.58.2.3.4.~~ Notes or attachments related to any additional documentation pertinent to the planned event, including but not limited to:

~~7.58.8.3.4.1. 7.58.2.3.4.1.~~ Approvals required from other agencies (ALE, NCDHHS).

~~7.58.8.3.4.2. 7.58.2.3.4.2.~~ Off-site parking arrangements.

~~7.58.8.3.4.3. 7.58.2.3.4.3.~~ Proof of insurance related to the event.

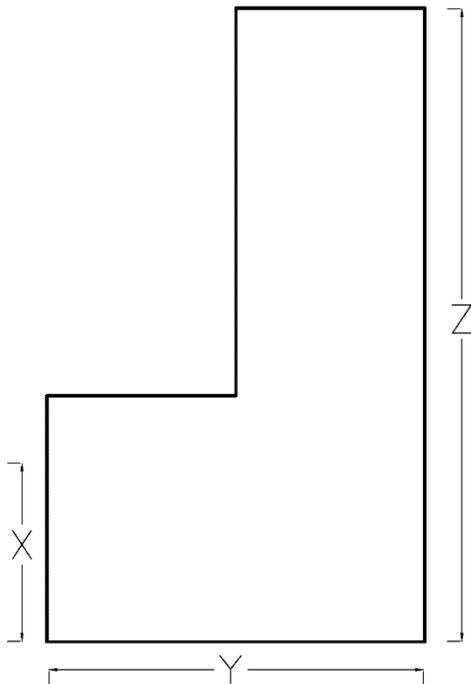
**7.58.3.** Failure to comply with inspection and code requirements can result in fines and/or suspension of the use of the site in accordance with Section 1.10, Violation of UDO Regulations, of this UDO and other applicable local and state regulations.

PART XVI. That **Article 8. District Development Standards, Section 8.6 Standards/Application of Dimensional Requirements**, be amended as follows:

**8.6.2. Length and Width Requirements for Principal Buildings.**

The following provision apply both to residential and commercial buildings, except that building erected in the C-3 commercial services district shall be exempt from these minimum dimensional requirements.

**8.6.2.1.** The length of a principal building shall not exceed three times the width of the building. The length shall be considered the longest dimension of the structure to include porches and open decks. The width shall be considered to be the widest consistent dimension through at least forty percent (40%) of the length of the building, which may be interrupted; for example, if a building has a width of twenty-two (22) feet for 20% of its length, reduces to a width of 18' for 60% of its length, and then widens to a width of 20' for 20% of its length, the building shall be determined to have a width of 20' and shall have a length of no more than 60'.



*Dimensions—Principal Buildings*  
(To use Y as the width, X must equal at least 40 percent of the length (Z) of the building.)

~~8.6.2.3.~~ **8.6.2.2.** The minimum width of the enclosed habitable space of a principal building shall be eighteen (18) feet measured at the first-floor level.

~~8.6.2.4.~~ **8.6.2.3.** A building shall be at least eighteen (18) feet wide along at least forty (40) percent of its length.

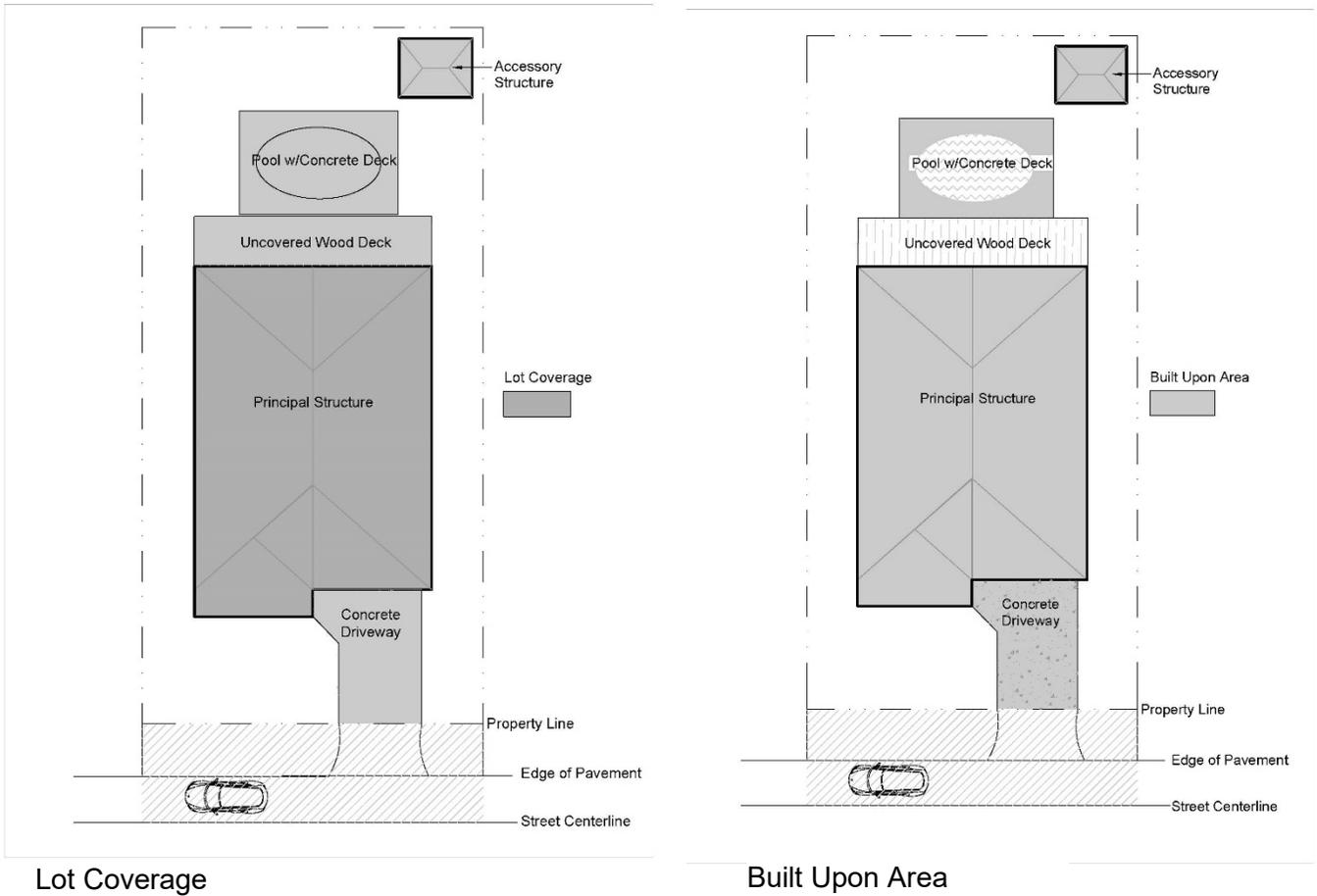
~~8.6.2.5.~~ **8.6.2.4.** Outside dimensions shall be used in determining length and width. This is defined as the exterior façade covering on the outside of the building (see graphic above).

**8.6.3.6. Exclusions from Yard Requirements.**

**8.6.3.6.1.** The inner edge of the front, rear, or side yard shall be measured from the building foundation and may exclude the outermost three feet of eaves, gutters, uncovered handicapped ramps, or uncovered steps. This exclusion may also apply to cargo lifts for single-family or duplex dwellings only, and built-in railing benches constructed

in accordance with Appendix B, "Town of Nags Head Residential Design Guidelines".

PART XVII. That **Article 8. District Development Standards, Section 8.6 Standards/Application of Dimensional Requirements, 8.6.6. Lot Coverage, 8.6.6.1 Purpose and Intent**, be amended by deleting existing example images and inserting the following therefor:



PART XVIII. That **Article 9., SPD-C Zoning Ordinance, Section 9.23 Institutional District**, be amended as follows:

**9.23.5.3. Building Setback Requirements.**

**9.23.5.3.1.** A minimum of forty (40) feet from the US 158 right-of-way.

**9.23.5.3.2.** A minimum of twenty (20) feet from the Seachase Drive right-of-way.

**9.23.5.3.3.** A minimum of fifty (50) feet from residential uses.

~~9.23.5.2.4.~~ **9.23.5.3.4. Building-to-Building Separation.** A minimum of twenty-five (25) feet.

~~9.23.5.2.5.~~ **9.23.5.3.5. Building Height Limitation.** Thirty-five (35) feet; however, for every foot above thirty-five (35) feet, there shall be an additional setback of two (2) feet from Seachase Drive, US 158, and any residential district. The maximum building height shall be forty-five (45) feet.

~~9.23.5.2.6.~~ **9.23.5.3.6. Parking Required.** Refer to Section 10.16, Required Parking by Use of this UDO.

PART XIX. That **Article 9., SPD-C Zoning Ordinance, Section 9.26 Attached Single Family District**, be amended as follows:

**9.26.5. Single-Family Four (SF#4) District Standards.**

Single-family four district standards in the attached single-family district are as follows:

**9.26.5.1. Maximum Density.** Twelve (12) dwellings per acre.

**9.26.5.2. Minimum Building Front Yard and Side Yard Setback Requirements.**

Fronting On:	Front Yard	Side Yard
Public right-of-way	15 feet	Minimum separation between buildings 10 feet

**9.26.5.3. Minimum Rear Yard.** Thirty (30) feet to existing residential outside the Village at Nags Head, plus a 25-foot natural or landscaped buffer. Only a minimum 15-foot rear yard is required when adjacent to interior open space area.

~~9.26.5.3.~~ **9.26.5.4. Minimum Lot Size.** 2,400 square feet.

**9.26.6. Single-Family Five (SF#5) District Standards.**

Single-family five district standards in the attached single-family district are as follows:

**9.26.6.1. Maximum Density.** Three (3) dwellings per acre.

**9.26.6.2. Minimum Building Front Yard and Side Yard Setback Requirements.**

Fronting On:	Front Yard	Side Yard
Public right-of-way	15 feet	Minimum separation between buildings 10 feet

**9.26.6.3. Minimum Rear Yard.** Thirty (30) feet to existing residential outside the Village at Nags Head, plus a 25-foot natural or landscaped buffer. Only a minimum 15-foot rear yard is required when adjacent to interior open space area.

~~9.26.6.3.~~ 9.26.6.4. *Minimum Lot Size.* 2,400 square feet.

PART XX. That **Article 9., SPD-C Zoning Ordinance, Section 9.27 Multifamily District**, be amended as follows:

*9.27.6. Multifamily Two (MR#2) District Standards.*

Multifamily two (MF #2) district standards in the multifamily district are as follows:

~~9.27.5.1.~~ 9.27.6.1. *Maximum Density.* Eighteen (18) units per acre.

~~9.27.5.2.~~ 9.27.6.2. *Coverage.*

Maximum Building	Maximum Parking	Minimum Landscaped	Minimum Common Area
50 percent (low-rise)	N/A	20 percent	N/A

~~9.27.5.3.~~ 9.27.6.3. *Minimum Building Front Yard and Side Yard Setback Requirements.*

Fronting On:	Front Yard	Side Yard
Public right-of-way	10 feet	20 feet

Side yard setbacks for developments taller than two stories between South Virginia Dare Trail and the Atlantic Ocean shall follow the "visual window" concept as prescribed in subsection 9.24.11.

~~9.27.5.4.~~ 9.27.6.4. *Rear Yard.* Twenty (20) feet. The rear yard may be reduced to fifteen (15) feet if adjacent to dedicated open space.

~~9.27.5.5.~~ 9.27.6.5. *Building Cluster Separation.* There shall be a minimum ten (10) feet building separation for each twelve (12) feet of building height or portion thereof.

~~9.27.5.6.~~ 9.27.6.6. *Maximum Height.* Forty-five (45) feet.

PART XXI. That **Article 10. Performance Standards, Section 10.24 Signs Permitted in Commercial Districts and the Commercial/Residential District**, shall be amended as follows:

*10.24.2.5.* Window signs shall be permitted to be placed only inside a commercial building and shall not exceed twenty-five (25) percent of the glass area of the pane upon which the sign is displayed. Window signs of exposed neon, argon, krypton or similar gas tube lighting shall be permissible, provided that such signs shall not exceed twenty-five (25) percent of glass pane area, and shall not exceed singly, or in combination 0.15-square-foot per lineal foot of store frontage, not to exceed twenty (20) square feet of sign area for any one store.

PART XXII. That **Article 10., Performance Standards, Small Wireless Facilities**, be amended as follows:

**SECTION 10.103 SMALL WIRELESS FACILITIES.**

**10.103.1. Standards.**

Small wireless facilities and utility poles installed to support small wireless facilities shall comply with the following requirements:

**10.103.1.1.** Small wireless facilities shall be a permitted use in all rights-of-way and on properties containing uses other than single-family dwellings. Small wireless facilities shall be a conditional use on properties developed as single-family dwellings.

**10.103.1.2. Height of New Small Wireless Facilities.** New small wireless facilities in the ROW may not extend (i) more than ten feet (10') above an existing utility pole in place as of the effective date of this UDO; or (ii) for small wireless facilities on a new utility pole, **more than ten feet (10')** above the height permitted for a new utility pole under this UDO. A new small wireless facility on private property may not exceed the applicable height limit for the district in which it is located.

**ARTICLE IV. Severability.**

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

**ARTICLE V. Effective Date.**

This ordinance amendment shall be in full force and effect on the adopted effective date of the Unified Development Ordinance.

\_\_\_\_\_  
Benjamin Cahoon, Mayor  
Town of Nags Head

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Date adopted: \_\_\_\_\_

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS



## Agenda Item Summary Sheet

Item No: **E-3**  
Meeting Date: **May 6, 2020**

**Item Title:** 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

**Item Summary:**

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).

Number of Attachments: 3

---

**Specific Action Requested:**

Consideration of adoption of text amendments.

Submitted By: Principal Planner Holly White

Date: April 27, 2020

---

**Finance Officer Comment:**

No budgetary impact to the Town of Nags Head.

Signature: Amy Miller

Date: April 27, 2020

---

**Town Attorney Comment:**

I will participate in the discussion at the Board meeting as necessary.

Signature: John Leidy

Date: April 27, 2020

---

**Town Manager Comment and/or Recommendation:**

I will participate in the discussion at the Board meeting as necessary.

Signature: Cliff Ogburn

Date: April 27, 2020

# Flood Map & Flood Damage Prevention Ordinance

Planning Board

April 1, 2020

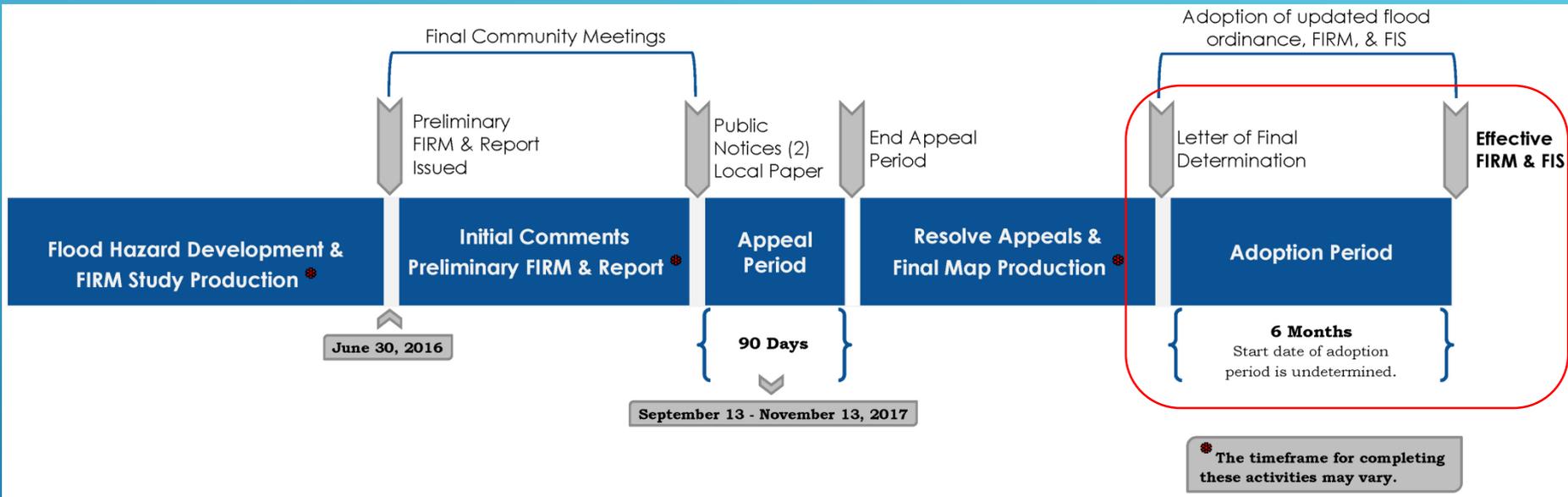


# FLOOD MAP REVISIONS



- ▶ New preliminary flood maps released for Dare County – June 30, 2016
- ▶ Last update September 20, 2006
- ▶ NC Floodplain Mapping-Digital FIRMs  
<http://fris.nc.gov/fris/>
- ▶ Must adopt the maps, study, and ordinance by June 19, 2020

# TIMELINE



# MAJOR CHANGES TO PRELIMINARY FIRMS

- ▶ Fewer VE zone properties
- ▶ Fewer AE zone properties, particularly west of NC 12
- ▶ Removal of causeway properties from VE zone
- ▶ Increase in X zone properties town wide
- ▶ Base flood elevations reduced in AE zone; most new BFE's are 4 or 5, formerly 8-10.
- ▶ Base flood elevations modified in VE zone; range from 10' – 12'; formerly 11' through entire town
- ▶ Addition of AO zones west of primary frontal dune

# FLOOD DAMAGE PREVENTION ORDINANCE

The standards for AE and VE Flood Zones largely remain the same.

- ▶ State Model Ordinance updates
- ▶ Local LES language

Draft ordinance available:  
[www.nagsheadnc.gov/floodmaps](http://www.nagsheadnc.gov/floodmaps)

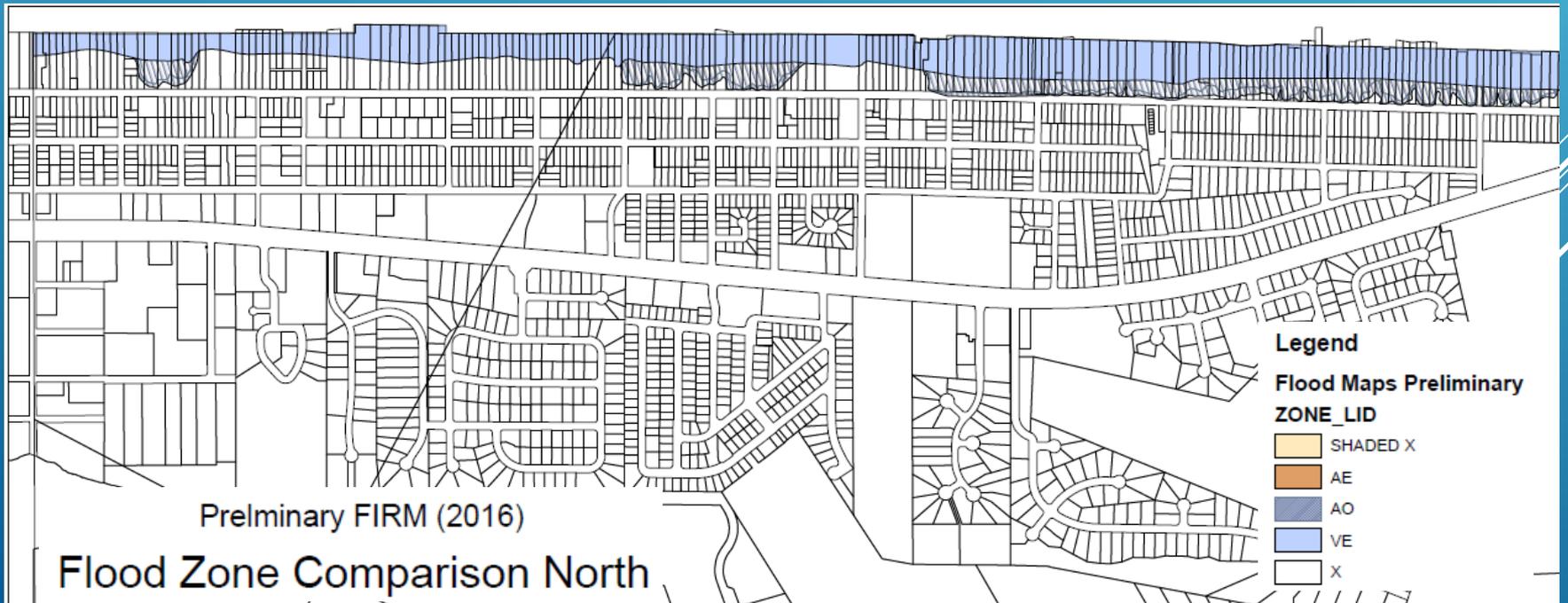
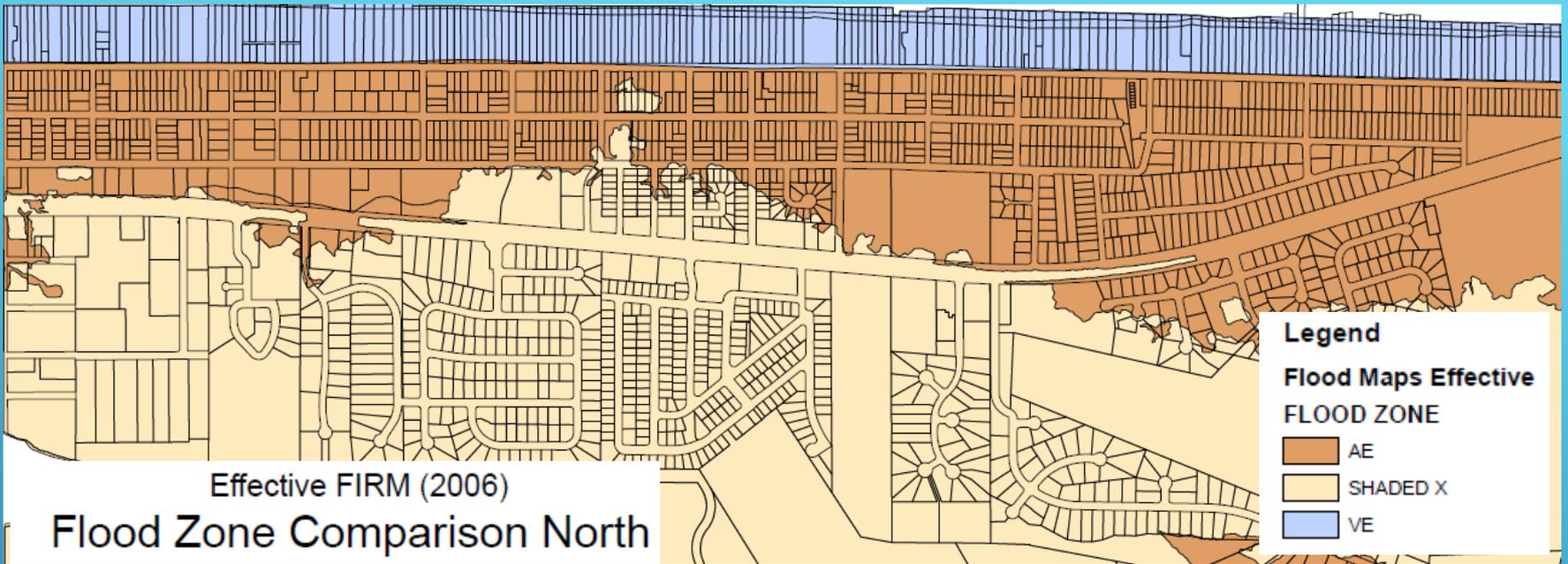
# STATE REVIEW & COMMENT

- ▶ 11.41.1. Statutory Authorization-update with new 160D references
- ▶ 11.43.5.5.3.- strike template language of “Insert Cost of Structure)
- ▶ 11.43.7.7. Add word “be”.

*Any applicant to whom a variance is granted shall be given written notice specifying the difference between the RFPE and the elevation to which the structure is to **be** built*

# STATE REVIEW & COMMENT

- ▶ 11.44.3.2.- Add the following:  
“Floodproofing shall not be utilized on any structures in VE zones to satisfy the regulatory flood protection elevation requirements.”
- ▶ Modify the date utilized in the definition of “Existing manufactured home park” to reflect Insert the date of the community’s initial floodplain regulations- *February 3, 1975*.
- ▶ Amend the definition of “Pre-Firm” to reflect the initial FIRM date of *November 10, 1972*.



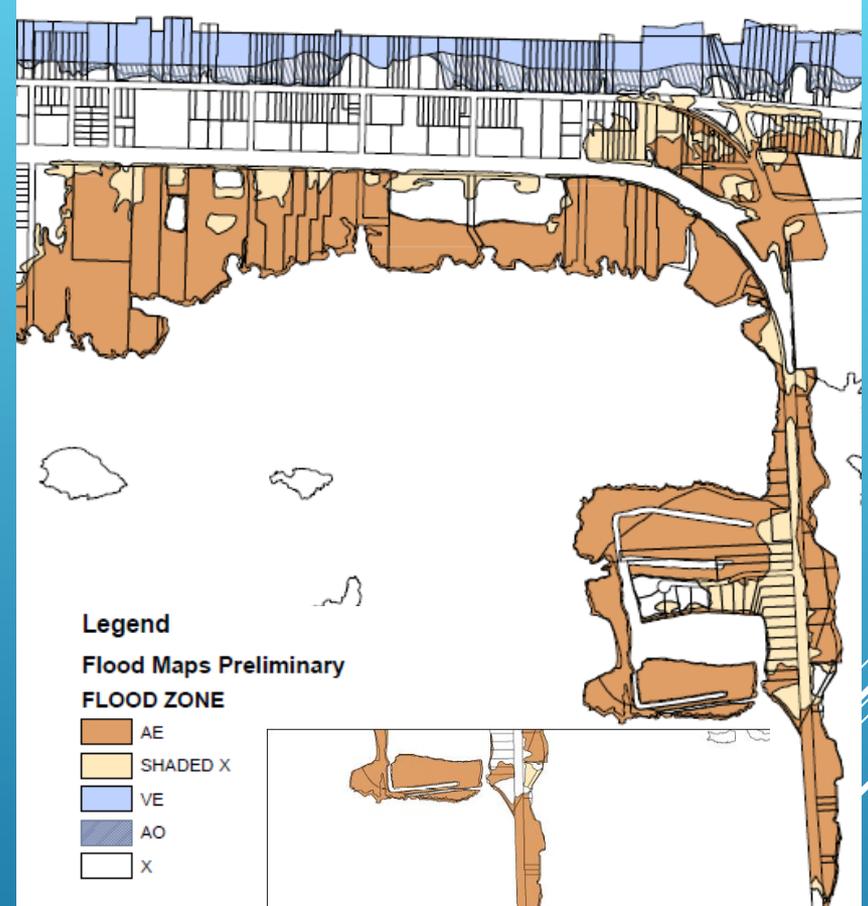
# Flood Zone Comparison South

Effective FIRM (2006)



- Legend**  
**Flood Maps Effective  
FLOOD ZONE**
- AE
  - SHADED X
  - VE

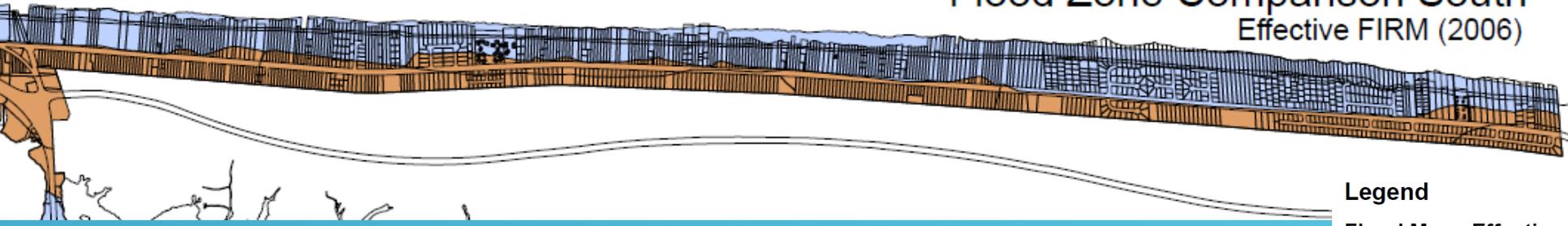
# Preliminary FIRM (2016)



- Legend**  
**Flood Maps Preliminary  
FLOOD ZONE**
- AE
  - SHADED X
  - VE
  - AO
  - X

# Flood Zone Comparison South

Effective FIRM (2006)

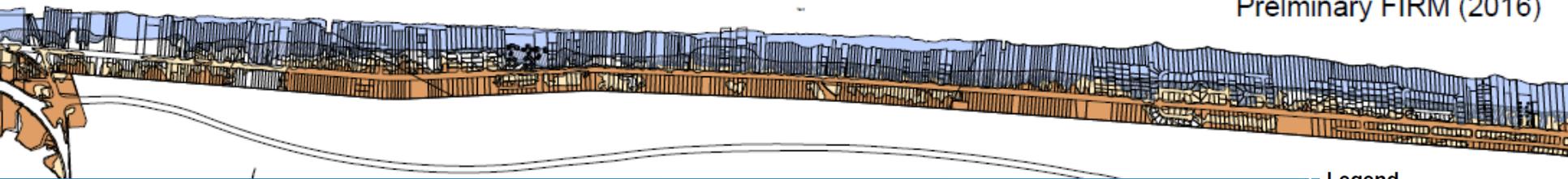


## Legend

### Flood Maps Effective FLOOD ZONE

- AE
- SHADED X
- VE

# Preliminary FIRM (2016)



## Legend

### Flood Maps Preliminary FLOOD ZONE

- AE
- SHADED X
- VE
- AO
- X



# CREATION OF LOCAL ELEVATION STANDARD (LES)

- ▶ Locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in Shaded X and X, AE, AO, or VE flood zones as depicted on the FIRMS for Nags Head.

# BENEFITS OF LES

- ▶ The town is proactively regulating based on known historical risk.
- ▶ The model flood damage prevention ordinance, the terminology, and standards are consistent between the town and the rest of the county.
- ▶ Allows property owners to experience a decrease in flood insurance premiums, but allows the town to regulate using a local elevation standard based on known flooding risk.
- ▶ Avoid future loss and risk to property owners for new construction and additions.
- ▶ The LES protects against future costly insurance rate increases for non-conforming construction. The new maps should positively affect insurance rates for many property owners which may cause owners to cancel flood insurance coverage. However, if flood maps are updated in the future to reflect expanded flood zones or higher BFE's, these properties may become non-conforming and face costly insurance rate increases.

# LOCAL ELEVATION STANDARD

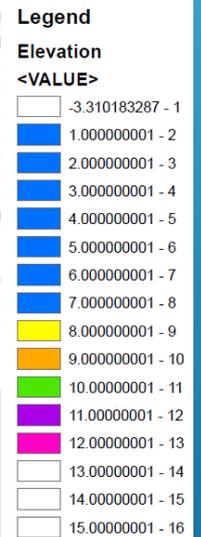
- East of 12/1243:  
12' and VE construction requirements
- For non-oceanfront areas (west of NC 12 or SR 1243 and the Causeway):  
10' feet would be required for all new construction

The Town will adopt the FIRM for flood insurance purposes.

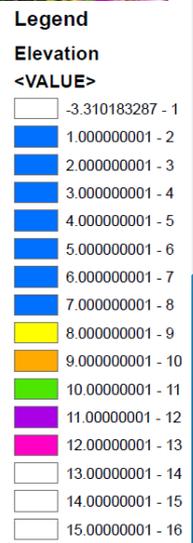
# HOW THE LES AFFECTS PROPERTY

- ▶ East of 12/1243: Treat as V Zone with V zone requirements; no enclosures
- ▶ West of 12/1243: Treat as AE; Limit enclosures 300 sq. ft. or less
- ▶ Existing structures: Areas cannot be converted for temperature controlled space unless meets RFPE
- ▶ Section 11.44.2.7.9., Standards in Shaded X and X:
  - ▶ Substantial improvement/damage definitions do not apply
  - ▶ Lateral additions- structures located west of NC 12 and SR 1243 (where the reference level of existing conditioned, temperature controlled space is located below the RFPE)- may be increased by 25% at the same level, without having to be elevated to or above the RFPE
  - ▶ Remodeling/renovations existing habitable area- allowed as long as footprint does not increase.

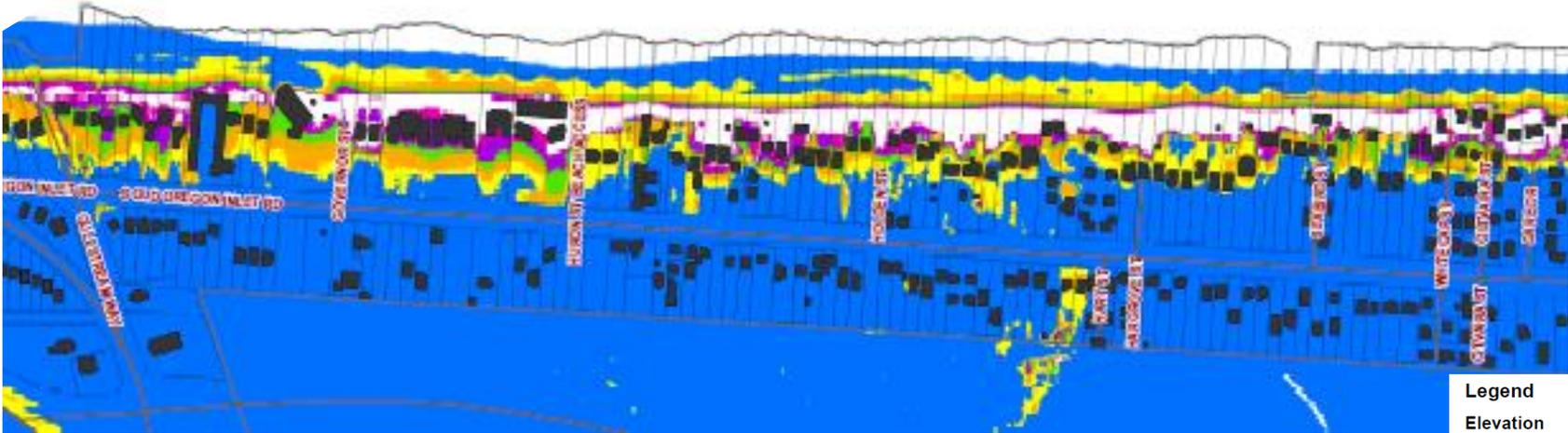
# Northern Nags Head- Ground Elevations



# Central Nags Head- Ground Elevations



# South Nags Head- Ground Elevations



**Legend**

**Elevation**  
<VALUE>

White	-3.310183287 - 1
Light Blue	1.000000001 - 2
Blue	2.000000001 - 3
Dark Blue	3.000000001 - 4
Very Dark Blue	4.000000001 - 5
Dark Blue	5.000000001 - 6
Blue	6.000000001 - 7
Dark Blue	7.000000001 - 8
Yellow	8.000000001 - 9
Orange	9.000000001 - 10
Green	10.000000001 - 11
Magenta	11.000000001 - 12
Pink	12.000000001 - 13
White	13.000000001 - 14
White	14.000000001 - 15
White	15.000000001 - 16

# NAGS HEAD ANALYSIS

1,004/19% structures (Existing FEMA non-compliance)

1,178/22% structures (Proposed LES non-compliance)

---

**174 structures** (non-compliance)



3%

1,178 non-compliant structures

78%

Non-compliant structures will be within an X flood zone with an LES of 10'.

**Why is this significant?**

*Properties could build on grade without an LES.*

*All of these properties have ground elevations below 11'.*

**House built- 1972**

**Lot area- 11,325 sq. ft.**

**Ground Elevations- 6.5-6.7**

**First Floor- 9.7**

**Building/Decks- 1,363 sq. ft.**

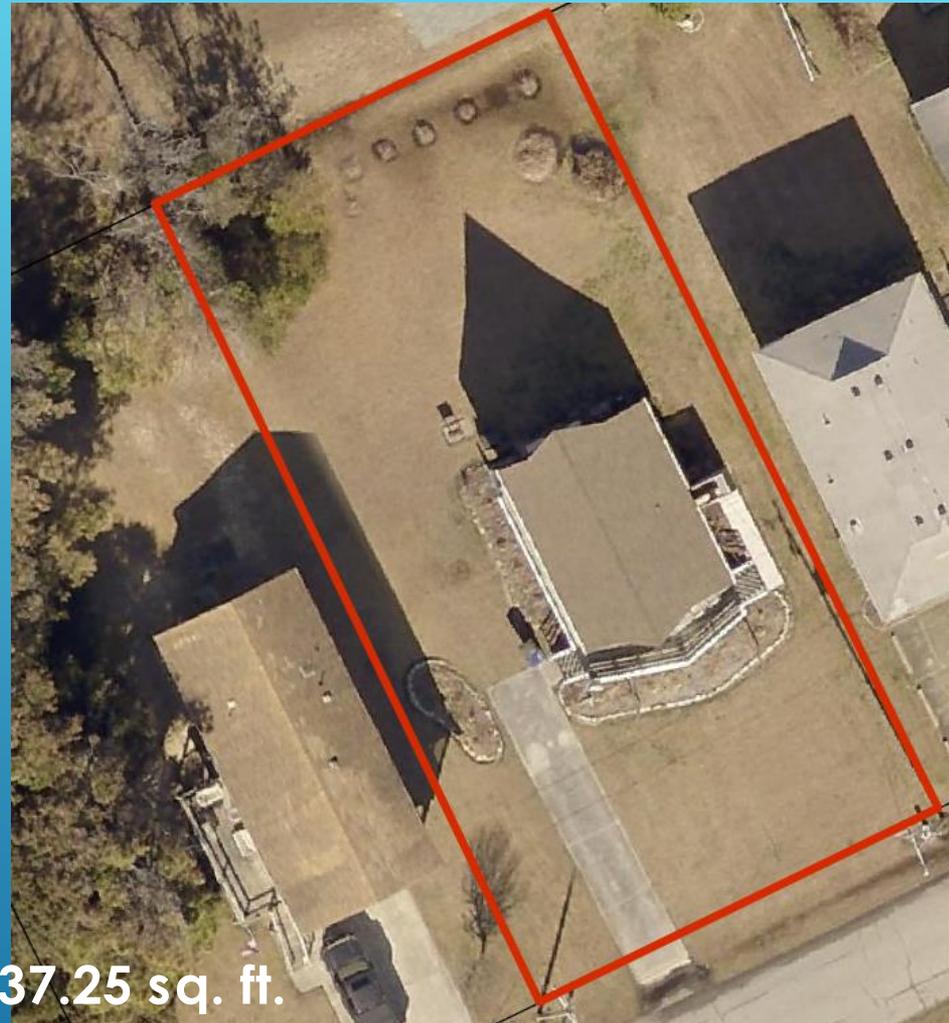
**Concrete parking/drives- 559 sq. ft.**

**Total lot existing coverage-**

**1,921 sq. ft. (16.9%)**

**Allowable lot coverage (33%)- 3,737.25 sq. ft.**

**Available coverage- 1,816.25 sq. ft. (16.1%)**



**House built- 1972**

**Lot area- 11,325 sq. ft.**

**Ground Elevations- 6.5-6.7**

**First Floor- 9.7**

**First floor area- 768 sq. ft.**

**25% lateral addition- 192 sq. ft.**

**Available coverage- 1,816.25 sq. ft.  
(16.1%)**

**Minus lateral addition- 192 sq. ft.**

---

**Remaining coverage- 1,624.25 sq. ft.**





# NEXT STEPS

# STAFF CONTACTS

- Planning Director- Michael Zehner (252.449.6044) or [michael.zehner@nagsheadnc.gov](mailto:michael.zehner@nagsheadnc.gov)
- Deputy Planning Director Kelly Wyatt (252.449.6042) or [kelly.wyatt@nagsheadnc.gov](mailto:kelly.wyatt@nagsheadnc.gov)
- Principal Planner Holly White (252.449.6041) or [holly.white@nagsheadnc.gov](mailto:holly.white@nagsheadnc.gov)
- Chief Building Inspector/Floodplain Administrator Cory Tate (252.449.6043) or [cory.tate@nagsheadnc.gov](mailto:cory.tate@nagsheadnc.gov)
- Senior Building Inspector Steve Szymanski (252.449.2005) or [steve.szymanski@nagsheadnc.gov](mailto:steve.szymanski@nagsheadnc.gov)

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO FLOOD DAMAGE  
PREVENTION**

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, The flood prone areas of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

**WHEREAS**, The Town of Nags Head desires to protect human life, safety and health; minimize expenditure of public money for costly flood control projects; minimize the need for rescue and relief efforts associated with flooding; minimize prolonged business losses and interruptions; minimize damage to public facilities and utilities; minimize damage to private and public property due to flooding; maintain the natural and beneficial functions of floodplains; and mitigate flood risks in Nags Head by implementing local elevation standards for all Special Flood Hazards Areas and Shaded X and X flood zones.

**WHEREAS**, The Town of Nags Head 2017 Comprehensive Plan includes goals and policies that support the Town's continued participation in the National Flood Insurance Program (NFIP) and ensure the Town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster; and

**WHEREAS**, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Towns Unified Development Ordinance as stated below.

**ARTICLE II. Amendment of the Unified Development Ordinance.**

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Article 11, Environmental Regulations, Part III. Flood Damage Prevention** shall be deleted in its entirety and replaced with the following:

**PART III. FLOOD DAMAGE PREVENTION**

**SECTION 11.41 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.**

**11.41.1. Statutory Authorization.**

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners does ordain as follows in this Article 11, Part III.

**11.41.2. Findings of Fact.**

**11.41.2.1.** The flood prone areas of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

**11.41.2.2.** These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

**11.41.3. Statement of Purpose.**

It is the purpose of this Article 11, Part III to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

**11.41.3.1.** Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

**11.41.3.2.** Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

**11.41.3.3.** Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

**11.41.3.4.** Control filling, grading, dredging and other development which may increase erosion or flood damage; and

**11.41.3.5.** Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards to other lands.

**11.41.4. Objectives.**

The objectives of this article are to:

**11.41.4.1.** Protect human life, safety and health;

**11.41.4.2.** Minimize expenditure of public money for costly flood control projects;

**11.41.4.3.** Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

**11.41.4.4.** Minimize prolonged business losses and interruptions;

**11.41.4.5.** Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone, cable and sewer lines, streets and bridges, located in flood prone areas;

**11.41.4.6.** Minimize damage to private and public property due to flooding;

**11.41.4.7.** Make flood insurance available to the community through the National Flood Insurance Program (NFIP);

**11.41.4.8.** Maintain the natural and beneficial functions of floodplains;

**11.41.4.9.** Help maintain a stable tax base by providing for the sound use and development of flood-prone areas; and

**11.41.4.10.** To ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area (SFHA) or other areas prone to flooding.

**11.41.4.11.** Mitigate flood risks in Nags Head by implementing local elevation standards for all Special Flood Hazards Areas and Shaded X and X flood zones.

## **SECTION 11.42 GENERAL PROVISIONS.**

### ***11.42.1. Lands to Which this Article 11, Part III Applies.***

This Article 11, Part III shall apply to all areas within the jurisdiction of the Town, including Extra-Territorial Jurisdictions (ETJs) as allowed by law.

### ***11.42.2. Basis for Establishing the Special Flood Hazard Areas.***

The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) dated June 19, 2020 for Town of Nags Head, Dare County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of Nags Head are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

### ***11.42.3. Establishment of a Local Elevation Standard (LES)***

*The Local Elevation Standard means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding. Therefore, an elevation standard and other floodplain development standards are needed to meet the objectives of this Section as identified in 11.41.4.*

**11.42.3.1. In Nags Head the RFPE is as defined as:**

**11.42.3.1.1. Coastal High Hazard Areas (CHHA)-** Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, the RFPE is 12 feet NAVD 1988.

**11.42.3.1.2. Properties west of NC 12 and SR 1243-** The RFPE for properties located west of NC 12 and SR 1243 and in flood zones Shaded X, X, or AE, is 10 feet NAVD 1988. This includes properties abutting US 64, also known as the Causeway.

**11.42.4. Establishment of Floodplain Development Permit.**

A floodplain development permit shall be required in conformance with the provisions of this Part prior to the commencement of any development activities within the AE, AO, VE, Shaded X or X zone.

**11.42.5. Compliance.**

No structure or land shall hereafter be located, extended, converted, altered or developed in any way without full compliance with the terms of this Part and other applicable regulations.

**11.42.6. Abrogation and Greater Restrictions.**

This Part is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Part and another provision conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**11.42.7. Interpretation.**

In the interpretation and application of this Part, all provisions shall be considered as minimum requirements; liberally construed in favor of the Board of Commissioners; and deemed neither to limit nor repeal any other powers granted under state statutes.

**11.42.8. Warning and Disclaimer of Liability.**

The degree of flood protection required by this Part is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; actual flood heights may be increased by manmade or natural causes. This Part does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood

damages. This Part shall not create liability on the part of the Town or by an officer or employee thereof for any flood damages that result from reliance on this Part or any administrative decision lawfully made thereunder.

**11.42.9. Penalties for Violations.**

Violation of the provisions of this Part or failure to comply with of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it necessary to prevent or remedy any violation. Other lawful actions may include, but shall not be limited to, those provisions in Section 1.10, Violation of UDO Regulations.

**SECTION 11.43 ADMINISTRATION.**

**11.43.1. Designation of Floodplain Administrator.**

The Chief Building Inspector or his designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this Part. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community’s overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

**11.43.2. Duties and Responsibilities of the Floodplain Administrator.**

Duties of the floodplain administrator shall include, but not be limited to:

**11.43.2.1.** Review all floodplain development applications and issue permits for all proposed development Shaded X, X, AE, AO, and VE flood zones to assure that all requirements of this Part have been satisfied.

**11.43.2.2.** Review all proposed development to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

**11.43.2.3.** Notifying adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alterations or relocation of a watercourse and submitting evidence of such notification to FEMA.

**11.43.2.4.** Assuring that maintenance is provided within the altered or relocated portion of such watercourse so that the flood-carrying capacity is maintained.

**11.43.2.5.** Obtaining the actual elevation (in relation to NAVD 1988) of the reference level (including the basement) and all attendant utilities of all new or substantially improved structures in accordance with subsection 11.43.5.1 of this section.

**11.43.2.6.** Obtaining the actual elevation (in relation to NAVD 1988) to which all new or substantially improved structures and utilities have been floodproofed in accordance with subsection 11.43.5.1 of this section.

**11.43.2.7.** Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with subsection 11.43.5.1 of this section.

**11.43.2.8.** When floodproofing is utilized for a particular structure, the floodplain administrator shall obtain certifications from a registered professional engineer or architect in accordance with subsection 11.43.5.2 of this section and subsection 11.44.2.2.

**11.43.2.9.** Where interpretation is needed as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) or Shaded X or X flood zones, the floodplain administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Part.

**11.43.2.10.** When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. However, if the property is to be removed from the V Zone it must not be located seaward of the landward toe of the primary frontal dune. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.

**11.43.2.11.** Making on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this article and terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town at any reasonable hour for the purposes of inspection or other enforcement action.

**11.43.2.12.** Issue stop work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Part, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons(s) for the stoppage, and the conditions(s) under

which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

**11.43.2.13.** Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of any applicable state or local law may be revoked.

**11.43.2.14.** Permanently maintain all records pertaining to the administration of this Part and making these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

**11.43.2.15.** Providing the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

**11.43.2.16.** Make periodic inspections throughout the jurisdiction of the Town. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

**11.43.2.17.** Follow through with corrective procedures of subsection 11.43.6.

**11.43.2.18.** Review, provide input, and make recommendations for variance requests.

**11.43.2.19.** Maintain a current map repository to include, but not limited to, historical and effective FIS report, historical and effective FIRM and other official flood maps and studies adopted in accordance with subsection 11.42.2 of this Part, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

**11.43.2.20.** Coordinate revisions to FIS reports and FIRMS, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

**11.43.3. Floodplain Development Application Requirements.**

Application for a floodplain development permit shall be made to the floodplain administrator on forms prior to any development activities. The following items shall

be presented to the floodplain administrator to apply for a floodplain development permit:

**11.43.3.1.** Two copies of a plot plan drawn to scale, along with an electronic version, which shall include, but shall not be limited to, the following specific details of the proposed floodplain development; at the discretion of the floodplain administrator, such plot plans shall be certified by a North Carolina registered land surveyor or professional engineer:

**11.43.3.1.1.** The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, location of fill materials, storage areas, drainage facilities, and other development;

**11.43.3.1.2.** The boundary of any special flood hazard area or any Shaded X or X Zone as delineated on the FIRM or other flood map as determined in subsection 11.42.2 or a statement that the entire lot is within the special flood hazard area;

**11.43.3.1.3.** Flood zone(s), including any Shaded X or X zone, designation of the proposed development area as determined on the FIRM or other flood map as determined in subsection 11.42.2;

**11.43.3.1.4.** The base flood elevation (BFE) and/or the Regulatory Flood Protection Elevation (RFPE) where provided as set forth in subsection 11.42.2;

**11.43.3.1.5.** The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

**11.43.3.1.6.** The boundary and designation date of the CBRS area or OPA, if applicable.

**11.43.3.2.** Proposed elevation, and method thereof, of all development including but not limited to:

**11.43.3.2.1.** The elevation in relation to NAVD 1988 of the proposed reference level (including the basement) of all new and substantial improvements; and

**11.43.3.2.2.** Elevation in relation to NAVD 1988 to which any non-residential structure in zone AE, AO, Shaded X, or X Zone will be floodproofed; and

**11.43.3.2.3.** Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

**11.43.3.3.** If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance

plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

**11.43.3.4.** A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this Part are met. These details include but are not limited to:

**11.43.3.4.1.** The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation, open foundation on columns/posts/piers/piles/shear walls).

**11.43.3.4.2.** Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with subsection 11.44.2.4 when solid foundation perimeter walls are used in zones AE or Shaded X or X Zone.

**11.43.3.4.3.** The following, in coastal high hazard areas, in accordance with subsection 11.44.2.4.4 and subsection 11.44.3:

**11.43.3.4.3.1.** V-Zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs (breakaway wall designs are only for accessory structures). In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to certify that the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

**11.43.3.4.3.2.** Plans for open wood lattice or insect screening, if applicable.

**11.43.3.4.3.3.** Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must demonstrate through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation or otherwise cause adverse impacts by wave ramping and deflection onto the subject structure or adjacent properties.

**11.43.3.5.** Usage details of any enclosed areas below the regulatory flood protection elevation.

**11.43.3.6.** Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

**11.43.3.7.** Certification that all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered

species, erosion and sedimentation control, Coastal Area Management Act (CAMA), riparian buffers, mining, etc.) have been received.

**11.43.3.8.** Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure subsections 11.44.2.3 and 11.44.2.5 of this Part are met.

**11.43.3.9.** A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects on properties located both upstream and downstream; and a map (if not shown on the plot plan) showing the location of the proposed watercourse alteration and relocation.

**11.43.3.10.** In Shaded X and X zones, a survey prepared by a licensed North Carolina surveyor may be used to demonstrate the natural grades of the parcel relative to the RFPE.

**11.43.4. Floodplain Development Permit Requirements.**

The Floodplain Development Permit shall include, but not be limited to:

**11.43.4.1.** A complete description of all the development to be permitted under the floodplain development permit. (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).

**11.43.4.2.** The flood zone determination for the proposed development per available data specified in subsection 11.42.2.

**11.43.4.3.** The regulatory flood protection elevation required for the reference level and all attendant utilities.

**11.43.4.4.** The regulatory flood protection elevation required for the protection of all public utilities.

**11.43.4.5.** All certification submittal requirements with timelines.

**11.43.4.6.** The flood openings requirements, if in zones AE, Shaded X, or X Zone.

**11.43.4.7.** Limitations of use of the enclosures below the lowest floor, not to exceed 300 square feet in area, (i.e. parking, building access and limited storage only).

**11.43.4.8.** A statement, if in zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

**11.43.4.9.** A statement, if in zone VE, that there shall be no fill used for structural support.

**11.43.4.10** A statement, that all materials below BFE/RFPE must be flood resistant materials.

**11.43.5. Floodplain Development Certification Requirements.**

**11.43.5.1. Elevation Certificates for AE, AO, VE, Shaded X, and X Zones.**

**11.43.5.1.1.** An elevation certificate (FEMA Form 086-0-33) may be required prior to the actual start of any new construction if determined necessary by the floodplain administrator. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of elevation of the reference level, in relation to NAVD 1988. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

**11.43.5.1.2.** An elevation certificate (FEMA 086-0-33) is required after the reference level is established. Within 21 calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the 21 calendar-day-period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make the required corrections shall be cause to issue a stop-work order for the project.

**11.43.5.1.3.** A final Finished Construction elevation certificate (FEMA 086-0-33) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance to a certificate of compliance/occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the

extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" × 3". Digital photographs are acceptable.

**11.43.5.1.4.** For Shaded X and X flood zones east of NC 12 and SR 1243, the submission of the under construction elevation certificate may be waived if a survey of the parcel was used to certify the natural grade of the parcel was to or above 12 feet at the time of permit application. For Shaded X and X flood zones west of NC 12 and SR 1243, the submission of the under construction elevation certificate may be waived if a survey of the parcel was used to certify the natural grade of the parcel was to or above 10 feet at the time of permit application. In all cases, a finished construction elevation certificate is required at the completion of the project.

**11.43.5.2. Floodproofing Certificate.** If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA 086-0-33), with supporting data, an operational plan, and an inspection and maintenance plan is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

**11.43.5.3.** A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in

accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

**11.43.5.4.** If a watercourse is to be altered or relocated, a description of the extent of the watercourse alteration or relocation, a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall be submitted by the permit applicant prior to issuance of a floodplain development permit.

**11.43.5.5. Certification Exemptions.** The following structures, if located within zones AE, AO, and Shaded X or X, are exempt from the elevation/floodproofing certification requirements specified in subsections 11.43.5.1.1 and 11.43.5.1.2 above:

**11.43.5.5.1.** Recreational vehicles meeting requirements of subsection 11.44.2.3;

**11.43.5.5.2.** Temporary structures meeting requirements of subsection 11.44.2.5; and

**11.43.5.5.3.** Accessory structures less than 150 square feet meeting or \$5,000 or less and meeting requirements of requirements of subsection 11.44.2.6.

**11.43.5.6.** A V-Zone certification with accompanying design plans and specifications is required prior to issuance of a floodplain development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the floodplain administrator said certification to ensure the design standards of this Part are met. A registered professional engineer or architect shall develop or review the structural design, plans and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Part. This certification is not a substitute for an elevation certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to shall certify that the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

**11.43.5.7.** Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

**11.43.5.7.1.** Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

**11.43.5.7.2.** Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

**11.43.5.7.3** Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

**11.43.5.7.4.** Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

#### ***11.43.6. Corrective Procedures.***

**11.43.6.1.** Violations to be corrected. When the floodplain administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

**11.43.6.2.** Actions in event of failure to take corrective action. If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail, to his last known address or by personal service that:

**11.43.6.2.1.** The building or property is in violation of the flood damage prevention regulations;

**11.43.6.2.2.** A hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) working days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

**11.43.6.2.3.** Following the hearing, the floodplain administrator may issue such order to alter, vacate or demolish the building; or to remove fill as appears appropriate.

**11.43.6.3.** Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the

building or development is in violation of this Part, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within such period not less than sixty (60) days, nor more than one hundred and eighty (180) calendar days, as the floodplain administrator may prescribe; provided, however, that where the floodplain administrator finds that there is imminent danger to life or other property, he or she may issue an order that corrective action be taken in such lesser period as may be feasible.

**11.43.6.4. Appeal.** Any owner who has received an order to take corrective action may appeal the order to the board of adjustment by giving notice of appeal in writing to the floodplain administrator and the Town Clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

**11.43.6.5. Failure to comply with order.** If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the board of adjustment following an appeal, the owner shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

**11.43.7. Variance Procedures.**

Variance procedures shall be applied in AE, AO, VE, and Shaded X and X flood zones in accordance with Section 3.10, Variances of this UDO and the following additional provisions:

**11.43.7.1.** The Board of Adjustment, as established by the Town, shall hear and decide requests for variances from the requirements of this Part.

**11.43.7.2.** Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to superior court, as provided in NCGS Chapter 7A.

**11.43.7.3.** Variances may be issued for:

**11.43.7.3.1.** The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

**11.43.7.3.2.** Functionally dependent facilities if determined to meet the definition as stated in Appendix A, provided provisions of subsections 11.43.7.10.2 and 11.43.7.10.3 have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

**11.43.7.3.3.** Any other type of development provided it meets the requirements stated in this section.

**11.43.7.4.** In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Part and the:

**11.43.7.4.1.** Danger that materials may be swept onto other lands to the injury of others;

**11.43.7.4.2.** Danger to life and property due to flooding or erosion damage;

**11.43.7.4.3.** Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

**11.43.7.4.4.** Importance of the services provided by the proposed facility to the community;

**11.43.7.4.5.** Necessity to the facility of a waterfront location as defined under Appendix A as a functionally dependent facility, where applicable;

**11.43.7.4.6.** Availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

**11.43.7.4.7.** Compatibility of the proposed use with existing and anticipated development;

**11.43.7.4.8.** Relationship of the proposed use to the Town's Comprehensive Plan and floodplain management program for that area;

**11.43.7.4.9.** Safety of access to the property in times of flood for ordinary and emergency vehicles;

**11.43.7.4.10.** Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

**11.43.7.4.11.** Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

**11.43.7.5.** A written report addressing each of the above factors shall be submitted with the application for a variance.

**11.43.7.6.** Upon consideration of the factors listed in subsection 11.43.7.4 of this Part and the purposes of this Part, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Part.

**11.43.7.7.** Any applicant to whom a variance is granted shall be given written notice specifying the difference between the RFPE and the elevation to which the structure is to be built and that such construction below the RFPE increases risks to life and property, and that the issuance of a variance to construct a structure below the RFPE will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their insurance.

**11.43.7.8.** The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

**11.43.7.9. *Conditions for variances.***

**11.43.7.9.1.** Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

**11.43.7.9.2.** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

**11.43.7.9.3.** Variances shall only be issued prior to development permit approval.

**11.43.7.9.4.** Variances shall only be issued upon:

**11.43.7.9.4.1.** A showing of good and sufficient cause;

**11.43.7.9.4.2.** A determination that failure to grant the variance would result in exceptional hardship; and

**11.43.7.9.4.3.** A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances

**11.43.7.10.** A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:

**11.43.7.10.1.** The use serves a critical need in the community;

**11.43.7.10.2.** No feasible locations exist for the use outside the SFHA;

**11.43.7.10.3.** The reference level of any structure is elevated or floodproofed to at least the RFPE;

**11.43.7.10.4.** The use complies with all other applicable federal, state and local laws; and

**11.43.7.10.5.** The Town has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

#### **SECTION 11.44 PROVISIONS FOR FLOOD HAZARD REDUCTION.**

##### **11.44.1. General Standards.**

The following provisions are required in Shaded X, X, AE, AO, and VE flood zones:

**11.44.1.1.** All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure.

**11.44.1.2.** All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.

**11.44.1.3.** All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

**11.44.1.4.** All new electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be located at or above the RFPE or designed and/or installed so as to prevent water from entering or accumulating within the components during occurrence of base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility, cable boxes, appliances (washers, dryers, refrigerators, freezers, freezers, etc.), hot water heaters, and electric outlets/switches.

**11.44.1.4.1.** Replacements that are part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

**11.44.1.4.2.** Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the

standards for new construction consistent with the code and requirements for the original structure.

**11.44.1.5.** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

**11.44.1.6.** New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

**11.44.1.7.** On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

**11.44.1.8.** Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

**11.44.1.9.** New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance as specified in subsection 11.43.7.10. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in an SFHA only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to subsection 11.43.5 of this Part.

**11.44.1.10.** All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

**11.44.1.11.** All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

**11.44.1.12.** All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

**11.44.1.13.** All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. 1334.

**11.44.1.14.** When a structure is partially located in a Special Flood Hazard Area or Shaded X or X flood zone, the entire structure shall meet the requirements for new construction and substantial improvements.

**11.44.1.15.** When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest RFPE shall apply.

**11.44.2. Specific Standards.**

In Shaded X, X, AE, AO, and VE flood zones as set forth in subsection 11.42.2 and 11.42.3, the following provisions, in addition to subsection 11.44.1 of this section are required:

**11.44.2.1. Residential Construction.** New construction or substantial improvement of any residential structure shall have the reference level, including the basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A.

**11.44.2.2. Non-Residential Construction.** New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A. Structures located in AE, AO, Shaded X, and X zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance Section 11.44.3. and 11.44.5. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 11.43.5, along with the operational and the inspection and maintenance plan.

**11.44.2.3. Recreational Vehicles.** Recreational vehicles placed on sites shall either:

**11.44.2.3.1.** Be on-site for fewer than 180 days; or

**11.44.2.3.2.** Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities, and has no permanently attached additions); or

**11.44.2.3.3.** Meet all the requirements for new construction, including anchoring and elevation requirements of subsection 11.42.3 and subsections 11.44.1 of this section.

**11.44.2.4. Elevated Buildings.** Fully enclosed areas of new construction and substantially improved structures, which are below the regulatory flood protection elevation in AE, AO, Shaded X, or X Zones:

**11.44.2.4.1.** Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

**11.44.2.4.2.** Shall not be temperature-controlled or conditioned Non-temperature controlled dehumidifiers may be used in enclosed areas and shall not result in the enclosed area being determined to be conditioned space;

**11.44.2.4.3.** Shall be constructed entirely of flood-resistant materials, up to the regulatory flood protection elevation;

**11.44.2.4.4.** Shall not, in areas governed by the local elevation standard, exceed 300 "square feet in area" below the reference level with the exception of crawl space construction, and shall also include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. For the purposes of this requirement, enclosures shall be measured to the outside of the wall framing (to calculate floor area) excluding the thickness of sheathing, siding, or trim applied to the outside of the framing. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

**11.44.2.4.4.1.** A minimum of two flood openings on different sides of each enclosed area subject to flooding;

**11.44.2.4.4.2.** The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding or a minimum of one engineered square inch for each square foot of enclosed area for an engineered opening;

**11.44.2.4.4.3.** If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

**11.44.2.4.4.4.** The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

**11.44.2.4.4.5.** Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

**11.44.2.4.4.6.** Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

**11.44.2.4.5.** Shall allow, in coastal high hazard areas (zones VE), open wood latticework or insect screening, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building.

**11.44.2.4.6.** Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space; The Town of Nags Head will have the right to inspect the enclosed area .This agreement shall be recorded with the Dare County Register of Deeds and shall transfer with the property in perpetuity.

**11.44.2.4.7.** Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.

**11.44.2.5. Temporary Non-Residential Structures.** Prior to the issuance of a floodplain development permit, for a temporary structure, all applicants must submit to the floodplain administrator a plan for the removal of such structures in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

**11.44.2.5.1.** A specified time period for which the temporary use will be permitted. The time specified should not exceed three months, renewable up to one year;

**11.44.2.5.2.** The name, address and phone number of the individual responsible for the removal of the temporary structure;

**11.44.2.5.3.** The time frame prior to the event at which a structure will be removed (i.e.: minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

**11.44.2.5.4.** A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and

**11.44.2.5.5.** Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

**11.44.2.6. Accessory Structure.** Accessory structures (sheds, detached garages, etc.), shall meet the following criteria:

**11.44.2.6.1.** Accessory structures with floor area located below the regulatory flood protection elevation shall not be used for human habitation, (including working, sleeping, living, cooking or restroom areas).

**11.44.2.6.2.** Accessory structures shall not be temperature controlled.

**11.44.2.6.3.** Any portion of an accessory structure located below the regulatory flood protection elevation shall not exceed 300 "square feet in area."

**11.44.2.6.4.** Accessory structures shall be designed to have low flood damage potential.

**11.44.2.6.5.** Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

**11.44.2.6.6.** Accessory structures shall be firmly anchored in accordance with subsection 11.44.1.1 of this section.

**11.44.2.6.7.** All service facilities such as electrical and heating equipment shall be installed in accordance with subsection 11.44.1.4 of this section.

**11.44.2.6.8.** Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with subsection 11.44.2.4.3 of this section.

**11.44.2.6.9.** An accessory structure with a footprint less than 150 square feet or that is a minimal investment of \$5,000 or less and that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 11.43.5.

**11.44.2.6.10.** Other secondary structures located on the same parcel, in

addition to a principal use structure, which feature conditioned, temperature-controlled areas elevated above the regulatory flood protection elevation shall be constructed consistent with Section 11.44.1. General Standards and 11.44.2. Specific Standards. The certification requirements of 11.43.5.1. Elevation Certificates shall apply.

**11.44.2.6.11.** Accessory structures, regardless of the size or cost, shall not be placed below elevated buildings in Coastal High Hazard Areas (CHHA).

**11.44.2.7. Additions/Improvements/Conversions.**

**11.44.2.7.1.** Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

**11.44.2.7.1.1.** Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.

**11.44.2.7.1.2.** A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

**11.44.2.7.2.** Additions to pre-FIRM or post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

**11.44.2.7.3.** Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

**11.44.2.7.3.1.** Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

**11.44.2.7.3.2.** A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

**11.44.2.7.4.** Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s)

shall be considered a separate building and only the addition must comply with the standards for new construction.

**11.44.2.7.5.** Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a 365 day period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the 365 day period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

**11.44.2.7.6.** Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

**11.44.2.7.7.** Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

**11.44.2.7.8.** Areas in existing structures shall not be converted for use as conditioned, temperature controlled space unless the reference level is located to or above the RFPE.

**11.44.2.7.9. *Additional Standards in Shaded X and X Flood Zones***

**11.44.2.7.9.1.** The substantial improvement/substantial damage definitions as established in Appendix A, Definitions, do not apply to Shaded X and X zones.

**11.44.2.7.9.2.** In structures located west of NC 12 and SR 1243 where the reference level of existing conditioned, temperature controlled space is located below the RFPE, such space may be increased by 25% at the same level, without having to be elevated to or above the RFPE.

**11.44.2.7.9.3.** Remodeling or renovations of existing habitable area in structures with the reference level located below the current applicable RFPE that do not increase the footprint of the structure may be authorized at the existing reference level or higher.

**11.44.2.7.9.4.** Reconstruction of damaged portions of a structure may be authorized at the existing reference level or higher. However, if a structure is entirely demolished, for

whatever reason, the replacement structure shall be constructed to or above the RFPE.

**11.44.2.7.9.5.** Structures that are relocated on the same site or to another site shall be elevated to or above the applicable RFPE of the lot or to or above the RFPE of the new site.

**11.44.2.7.9.6.** Areas in existing structures shall not be converted for use as conditioned, temperature controlled space unless the reference level is located to or above the RFPE.

**11.44.2.8. Tanks.** When gas and liquid storage tanks are to be placed within the Shaded X, X, AE, AO, or VE flood zones, the following criteria shall be met:

**11.44.2.8.1. Underground tanks.** Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

**11.44.2.8.2. Above-ground tanks, elevated.** Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

**11.44.2.8.3. Above-ground tanks, not elevated.** Above-ground tanks that do not meet the elevation requirements of Section 11.44.2.2. of this ordinance shall not be permitted in V or VE Zones. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

**11.44.2.8.4. Tank inlets and vents.** Tank inlets, fill openings, outlets and vents shall be:

**11.44.2.8.4.1.** At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

**11.44.2.8.4.2.** Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects

of buoyancy, during conditions of the design flood.

**11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.**

Coastal high hazard areas are special flood hazard areas established in subsection 11.42.2 and designated as zones VE.—Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, in addition to meeting all requirements of Part III Flood Damage Prevention, the following provisions shall apply:

**11.44.3.1** All new construction and substantial improvements shall:

**11.44.3.1.1.** Be located landward of the reach of mean high tide;

**11.44.3.1.2.** Be located landward of the first line of stable natural vegetation; and

**11.44.3.1.3.** Comply with all applicable Coastal Area Management Act (CAMA) setback requirements.

**11.44.3.2.** All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in VE zones to satisfy the regulatory flood protection elevation requirements.”

**11.44.3.3.** All new construction and substantial improvements, including properties with elevations above the regulatory flood protection elevation, shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with open wood latticework or insect screening so as not to impede the flow of floodwaters, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building in accordance with subsection 11.43.3. The following design specifications shall be met:

**11.44.3.3.1.** Design plans shall be submitted in accordance with subsection 11.43.3.

**11.44.3.3.2.** Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or insect screening.

**11.44.3.4.** All new construction and substantial improvements shall be securely anchored to an open "pile or column foundation" to allow floodwaters and waves to pass beneath the structure. "All pilings and columns and the structures attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effect of wind and water loads acting simultaneously on all building components."

**11.44.3.4.1.** Water loading values used shall be those associated with the base flood.

**11.44.3.4.2.** Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.

**11.44.3.5.** All new construction, initiated after the adoption of this UDO, located east of NC 12 and SR 1243 shall limit the total enclosed habitable living space of individual structures to 5,000 square feet. Enclosed habitable living space for large residential dwellings shall also include any enclosed habitable space that may be present in any accessory structure or accessory dwelling that is located on the same lot as the principal structure.

**11.44.3.6.** For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:

**11.44.3.6.1.** Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and

**11.44.3.6.2.** Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard); and

**11.44.3.6.3.** Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and

**11.44.3.6.4.** Pad thickness shall not exceed 4 inches; or

**11.44.3.6.5.** Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

**11.44.3.7.** For swimming pools and spas, the following is required:

**11.44.3.7.1.** Be designed to withstand all flood-related loads and load combinations.

**11.44.3.7.2.** Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or

**11.44.3.7.3.** Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or

**11.44.3.7.4.** Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.

**11.44.3.7.5.** Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.

**11.44.3.7.6.** Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

**11.44.3.8.** All elevators, vertical platform lifts, chair lifts, etc., the following is required:

**11.44.3.8.1.** Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.

**11.44.3.8.2.** Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.

**11.44.3.8.3.** The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.

**11.44.3.8.4.** Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.

**11.44.3.8.5.** Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.

**11.44.3.8.6.** If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.

**11.44.3.9.** Accessory structures, regardless of size or cost, shall not be permitted below elevated structures.

**11.44.3.10.** A registered professional engineer, professional land surveyor, or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in subsection 11.43.2, subsections 11.44.3.1 and 11.44.3.2, subsection 11.44.3.4 and subsection 11.44.3.6 of this Part on the current version of the North Carolina "National Flood Insurance Program V-Zone Certification" form or equivalent local version. In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to certify the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

**11.44.3.11. *Fill/Grading***

**11.44.3.11.1.** The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent elevated buildings and structures. Excavated material moved or relocated onsite is considered fill.

**11.44.3.11.2.** The fill material must be similar and consistent with the natural soils in the area.

**11.44.3.11.3.** Minor grading and the placement of minor quantities of nonstructural fill, outside the areas referenced in 11.44.3.11.1., may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.

**11.44.3.11.4.** Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent elevated buildings and structures.

**11.44.3.12.** There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.

**11.44.3.13.** Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of subsection 11.44.2.3 of this section and the temporary structure provisions of subsection 11.44.2.5 of this section.

**11.44.3.14.** A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the Regulatory Flood Protection Elevation and any supporting members that extend below the Regulatory Flood Protection Elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under Section 11.43.5.6.

**11.44.3.15.** A deck or patio that is located below the Regulatory Flood Protection Elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

**11.44.3.16.** In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

**11.44.3.16.1.** Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

**11.44.3.16.2.** Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.

**11.44.3.16.3.** Docks, piers, and similar structures.

**11.44.3.17.** No more than four (4) electrical outlets and no more than four (4) electrical switches may be permitted below RFPE unless required by building code.

**11.44.5. Standards for Areas Of Shallow Flooding (Zone AO).** Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas

designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections 11.44.1. and 11.44.2., all new construction and substantial improvements shall meet the requirements of Section 11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.

**SECTION 11.45 REMEDIES.**

Any violation of this Article 11, Part III shall be subject to the remedies as stated in Section 1.10, Violation of UDO Regulations of this UDO.

**SECTION 11.46 LEGAL STATUS PROVISIONS.**

***11.46.1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance.***

This Article 11, Part III in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted February 3, 1975 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this Article 11, Part III shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Nags Head enacted on February 3, 1975, as amended, which are not reenacted herein are repealed.

***11.46.2. Effect Upon Outstanding Floodplain Development Permits.***

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this Article 11, Part III; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Article 11, Part III.

***11.46.3. Severability.***

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**SECTION 11.47 EFFECTIVE DATE.**

This ordinance shall become effective June 19, 2020.

**SECTION 11.48 ADOPTION CERTIFICATION.**

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of Commissioners of the Town of Nags Head, North Carolina, on the Day (number or text) day of Month, 2020.

WITNESS my hand and the official seal of insert Name, Title, this the Day (number or text) day of Month, 2020.

\_\_\_\_\_  
(signature)

**SECTION 11.49 – 11.50 RESERVED.**

PART II. That **Appendix A. Definitions** be amended with the addition of the following new terms and definitions in appropriate alphabetical order:

***Breakaway wall*** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system (for the purposes of Article 11, Part III, Flood Damage Prevention).

***Enclosure/Enclosed Area*** means that portion of an elevated building below the lowest elevated floor that is either partially or fully shut in by rigid/solid walls and is located either partially or fully below the RFPE.

***Local Elevation Standard*** means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding.

***Map Repository*** means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

***Secondary Structure*** means a structure that features habitable conditioned space above the RFPE located on the same parcel as a primary use structure. A secondary structure is not an accessory structure as defined in this section. A secondary structure is subject to the same standards as a primary use structure.

***Shaded X Zone*** means areas of moderate flood hazard shown on the FIRM and are the areas between the limits of the base flood and the 0.2% annual chance for flood. Also commonly referred to as the 500-year flood.

**X Zone** means the areas of minimal flood hazard shown on the FIRM which are areas outside of the Special Flood Hazards Areas and higher than the elevation of the 0.2% annual flood chance. Also referred to as Unshaded X zone.

PART III. That **Appendix A. Definitions** be amended by deleting the existing definitions for the following terms and replacing with the definitions as provided:

**Building** means any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other purposes. For the purposes of Article 11, Part III, Flood Damage Prevention, see the definition for Structure.

**Coastal high hazard area** means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Article 11, Part III, Flood Damage Prevention, as Zone VE, or any property east of NC 12 and SR 1243.

**Development** means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil or any man-made change to improved or unimproved real estate including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, not including existing residential or commercial development already in place.

**Existing building and existing structure** means any building and/or structure for which the "start of construction" commenced before the community entered the NFIP, dated November 10, 1972.

**Fill** is the depositing of soil, rock or other earthen materials by artificial means, but not including poured slab, asphalt, porous pavement, Turfstone™, or other manmade materials or surfaces designed in association with construction. Excavated material moved or relocated onsite is considered fill.

**Flood Insurance Rate Map (FIRM)** means an official map of a community issued by the Federal Emergency Management Agency on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated (also see DFRIM).

**Floodway encroachment analysis** means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirement of the National Flood Insurance Program.

**Freeboard** means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge

or culvert openings, storm surge or precipitation exceeding the base flood and the hydrological effects of urbanization on the watershed. The base flood elevation plus the freeboard establishes the "regulatory flood protection elevation."

**Height** means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

- In Shaded X, X, or AE special flood hazard area west of NC 12 and SR 1243, as defined in 11.42.3.1.2, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.
- In coastal high hazard areas and VE zones east of NC 12 and SR 1243 as defined in 11.42.3.1.1., height shall be measured from regulatory flood protection elevation (lowest horizontal structural member). In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure (free-of-obstruction).

**Existing manufactured home park or manufactured home subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) was completed before February 3, 1975 (for the purposes of Article 11, Part III, Flood Damage Prevention).

**Post-FIRM** means construction or other development for which the start of construction occurred on or after December 31, 1974, the effective date of the initial Flood Insurance Rate Map.

**Pre-FIRM** means construction or other development for which the start of construction occurred before November 10, 1972, the effective date of the initial Flood Insurance Rate Map.

**Recreational vehicle (RV)** means a vehicle which is built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light-duty truck; designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use; and is fully licensed and ready for highway use.

**Reference level** is:

- (1) The reference level is the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower, with only

flood resistant materials located below the reference level west of NC 12 and SR 1243.

- (2) The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures in Coastal High Hazard Areas (CHHA) east of NC 12 and SR 1243.

**Regulatory flood protection elevation** means the Local Elevation Standard (LES). *The Local Elevation Standard is a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding.*

*Coastal High Hazard Areas (CHHA) - Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, the RFPE is 12 feet NAVD 1988.*

*Properties west of NC 12 and SR 1243 - The RFPE for properties located west of NC 12 and SR 1243 and in flood zones Shaded X, X, or AE, is 10 feet NAVD 1988. This includes properties abutting US 64, also known as the Causeway.*

**Substantial improvement** means any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any correction of existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to 11.43.7. Variance Procedures.

**Technical bulletin and technical fact sheet** mean a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members

of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations. It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

PART IV. That **Article 4. Development Review Process, Section 4.11 Permit Types** be deleted and replaced with the following:

***4.11.3. Floodplain Development Permit.***

Floodplain Development Permits are can be issued in combination with a zoning, land disturbance, and/or building permit or as a stand-alone permit for any development within the Special Flood Hazard Area (SFHA) Shaded X, X, AE, AO, and VE flood zones.

PART V. That **Section 4.12.2.1., For All Types of Development Activity**, be deleted and replaced with the following:

***4.12.2.1 For All Types of Development Activity.***

- Site plan/survey
  - Property information- address, ownership, lot number/map book/page reference
  - Existing and proposed development including but not limited to streets, topographic and natural features, and drainage
- Coastal Area Management Act (CAMA) Permit.
- Wastewater approval from Dare County Health Department or NC Department of Environmental Quality.
- Erosion control approval is issued with general development for projects disturbing more than 5,000 square feet (see Article 11, Part II).
- Flood (if in a Special Flood Hazard Area, Shaded X, or X Zone, see Article 11, Part III).
- Stormwater management (for projects which propose filling greater than one foot or for all new commercial construction, see Article 11, Part I).

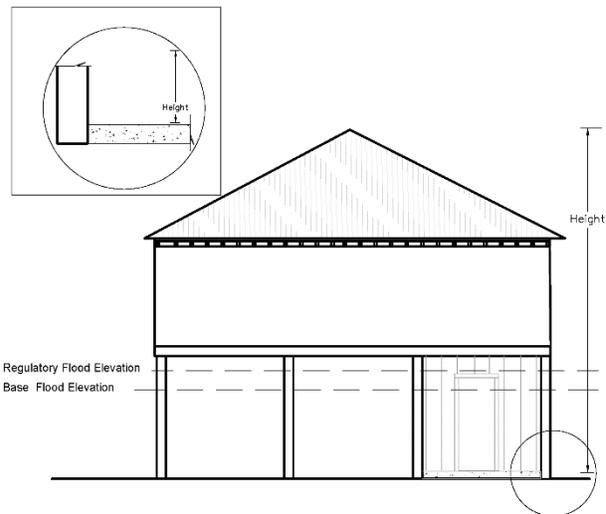
- Architecture (for residential structures greater than 3,500 square feet, see UDO Section 7.4., Dwelling, Large Residential).
- Utility connections (see Town Code Chapter 44).
- Any other State or Federal Permits

PART VI. That **Section 8.6.4. Building Height and the subsections thereof** be deleted and replaced with the following:

**8.6.4. Building Height.**

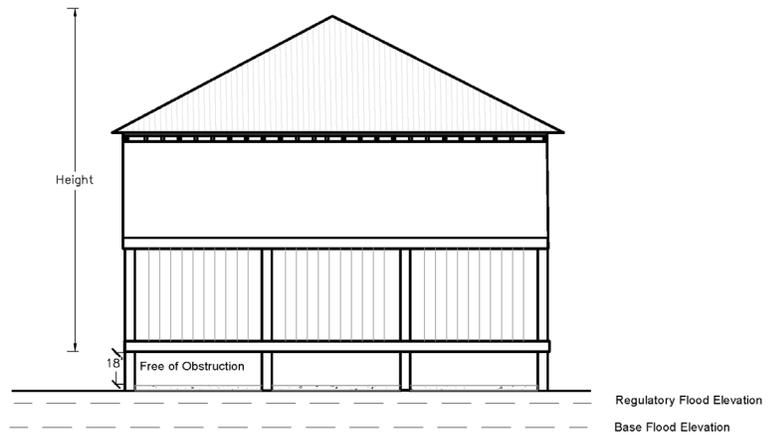
**8.6.4.1. Measurement of height.** Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

**8.6.4.1.1.** In Shaded X, X, or AE special flood hazard area west of NC 12 and SR 1243, as defined in 11.42.3.1.2., height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.



**8.6.4.1.1. West of NC 12 and SR 1243: Flood Zone- Height**

**8.6.4.1.2.** In coastal high hazard areas and VE zones east of NC 12 and SR 1243 in as defined in 11.42.3.1.1., height shall be measured from regulatory flood protection elevation (lowest horizontal structural member). In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure (free-of-obstruction).



**8.6.4.1.2. East of NC 12 and SR 1243: Flood Zone- Height**

PART VII. That **Section 11.5.3. Standard for Depth or Elevation of Fill and the subsections thereof** be deleted and replaced with the following:

**11.5.3. Standard for Depth or Elevation of Fill.**

Any residential or duplex development or redevelopment which utilizes fill shall be limited to the following standards:

**11.5.3.1. Properties East of NC 12 and SR 1243.**

**11.5.3.1.1.** Fill shall be subject to the provisions of Section 11.44.3.11.

**11.5.3.1.2.** Areas of fill exceeding the height of existing grade shall not exceed ten (10) percent of the lot area (see Article 8, District Development Standards), excluding the footprint of the active drainfield and septic system as approved by the Dare County Health Department in accordance with the septic permit. Lot area is defined as that portion of the lot landward of the first line of stable vegetation as defined by CAMA.

**11.5.3.1.3.** No bulkheads are allowed.

**11.5.3.2. Properties West of NC 12 and SR 1243.**

**11.5.3.2.1.** In areas where the most recent Flood Insurance Rate Map (FIRM) provides a base flood elevation for a subject property, fill shall not be permitted to exceed the base flood elevation except in cases where it is placed directly beneath a slab that is designed to meet the base flood

elevation depicted on the FIRM. In these instances, fill may exceed the base flood elevation by up to twelve inches (12”) to support a turn-down or thickened edge slab or beneath a slab that is supported by a ring-wall style foundation. Fill placed above the base flood elevation shall not extend beyond the outside edge of the slab.

**11.5.3.2.1.** In areas where the most recent Flood Insurance Rate Map (FIRM) provides no base flood elevation, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet (2’) above pre-development surface elevation, whichever is greater.

**ARTICLE III. Severability.**

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

**ARTICLE IV. Effective Date.**

This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

\_\_\_\_\_  
Benjamin Cahoon, Mayor  
Town of Nags Head

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

APPROVED AS TO FORM:  
Town Attorney \_\_\_\_\_  
Date adopted: \_\_\_\_\_  
Motion to adopt by Commissioner \_\_\_\_\_  
Motion seconded by Commissioner \_\_\_\_\_  
Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS



# Agenda Item Summary Sheet

Item No: **F-1**  
Meeting Date: **May 6, 2020**

**Item Title:** Update from Planning Director

**Item Summary:**

Attached please find a monthly update from Planning Director Michael Zehner.

Number of Attachments: 1

---

**Specific Action Requested:**

Provided for Board information and update.

Submitted By: Planning and Development

Date: April 28, 2020

---

**Finance Officer Comment:**

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

The report provided by the Planning and Development Director is intended to update the Board and public on items that you have prioritized, such as building permit review and turnaround time. Staff's intent is to provide you with the attached report as well as an opportunity for Board members to ask any questions or for clarifications on any of the items in the report. A verbal presentation is not planned to accompany the attached report. Ordinarily, unless there is a specific item to be heard under this agenda item, nothing takes place.

Signature: Cliff Ogburn

A handwritten signature in black ink, appearing to read "Cliff Ogburn", is written over the printed name.

Date: April 28, 2020



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

---

To: Board of Commissioners  
Planning Board

From: Michael Zehner, Director of Planning & Development

Date: April 29, 2020

Subject: Planning and Development Director's Report

---

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 May 6, 2020.

#### Monthly Activity Report

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

- Wednesday, March 4, 2020 - Board of Commissioners Meeting
- Friday, March 6, 2020 - NC State Sustainability Studio Midsemester Review
- Monday, March 9, 2020 - Flood Map/Ordinance Community Information Meeting
- Tuesday, March 10, 2020 - Flood Map/Ordinance Meeting with Outer Banks Home Builders Association representatives
- Wednesday, March 11, 2020 - Outer Banks 2020 (J-1) Community & Employer Forum
- Wednesday, March 11, 2020 - Arts & Culture Committee Meeting
- Thursday, March 12, 2020 - Mayors J-1 Housing Discussion with Dan Bullock
- Tuesday, March 17, 2020 - Planning Board Meeting Cancelled
- Wednesday, March 18, 2020 - CRS Pre-Planning Meeting
- Monday, March 30, 2020 - NCDOT Great Trails State Plan - Division 1 Stakeholder Meeting

#### Impact of Coronavirus on Permitting

As previously reported, a total of 67 building permits (non-trade) were applied for in both March 2020 and in March 2019. With regard to permits applied for since March 16 through April 23, 66 permits were applied for in 2019 and 72 were applied for in 2020; in the most recent two weeks, there were 23 permits applied for in 2020 and 9 permits applied for in 2019.

Our previous reporting on permit numbers did not include trade permits. For comparison purposes, a total of 202 trade permits were issued in March and April 2019; at present, from March 1 through April 23, a total of 110 trade permits have been applied for.

With the opening of the County to non-resident property owners, Staff does have an expectation that the number of permit-eligible projects will increase as owners begin to prepare properties for the season. We will continue to monitor and report any impacts to permitting.

### **Online Permitting**

As previously reported, as of April 15, 2020, online permitting has been activated for the following additional permit types:

- Sign permits
- Commercial and residential repair permits
- Residential demolition permits
- Residential remodel permits (without additional heated square footage)

Staff is working to activate online permitting for all other permits by the week of May 4, 2020.

### **Building Code Effectiveness Grading**

The Town recently received the attached Building Code Enforcement Evaluation Report from the Insurance Services Office (ISO). The Building Code Effectiveness Grading Schedule ("BCEGS") evaluates the building codes adopted in a community and the community's enforcement of these codes. BCEGS particularly emphasize building-code requirements designed to mitigate losses from natural hazards. The Town received a classification of 3 for 1- and 2-family residential property and 3 for commercial and industrial property; the classification range is 1-10, with class 1 representing "exemplary commitment."

As noted by Cory Tate, the Town's Chief Building Official, "the Town of Nags Head scored slightly higher than the other jurisdictions on the Outer Banks mainly due to the amount of experience and levels of certification of our inspections staff. All jurisdictions received nearly the same amount of credit for the edition of codes enforced, having an all hazards approach in our collective hazard mitigation plans (including similar flood damage prevention ordinances), and similar requirements for staff members to obtain continuing education credit as mandated by the state. Where Nags Head exhibited a slight edge over other jurisdictions on the Outer Banks comes from a higher level of experience and professional certifications. Both full-time inspectors have level 3 certifications from the NC Code Officials Qualification Board in building, electrical, plumbing, and mechanical trades. Both full-time inspectors are Certified Floodplain Managers. Additionally, Steve Szymanski has level 2 certification in fire prevention, and I have level 3 certification in fire prevention. We also received additional credit for the fact that I have a bachelor's degree and a building contractor's license from the NC Licensing Board for General Contractors, and that Steve and I both have an electrical contractor's license from the NC Board of Examiners of Electrical Contractors. We also scored higher because the Town of Nags Head inspectors have more years of experience as building inspectors, compared to most full-time inspection staff members employed by other jurisdictions on the Outer Banks."

## **Outer Banks Beachcomber Museum**

The Town's Arts & Culture Committee recently agreed to request that the Board of Commissioners discuss the status and future of Mattie Midgette's store and house at 4008 South Virginia Dare Trail, more popularly known as the Outer Banks Beachcomber Museum (<http://www.osob.net/>). As the Board may be aware, the current owners, Dorothy Hope and Chaz Winkler, have expressed an intent in selling the property, and at least last year, there was an active listing for the property on the Preservation North Carolina website. A recent article in the Outer Banks Voice (<https://www.outerbanksvoice.com/2020/04/09/out-of-the-woods/>) documented the historic value of the property.

In short, the Arts & Culture Committee believes that the property and Museum are both an important and unique historic resource, as well as a collection, and are concerned that the store, house, and/or collection could be lost, no longer serving as an important contributor to the character of the Town of Nags Head and the Nags Head Beach Cottage Row Historic District. The Committee would strongly encourage the Board of Commissioners to discuss the property, including any options or interest for the acquisition and preservation of the property and collection, either directly or indirectly involving the Town. If the Board has an interest, Staff could further explore partnerships or grants that may support the preservation of the property.

## **Planning Board - Pending Applications and Discussions**

The April 21, 2020 meeting of the Planning Board was held virtually on the Zoom platform, as was the April 1, 2020 meeting of the Planning Board. The agenda for the April 21 meeting included consideration of a revised plan for the preliminary subdivision plat for Coastal Villas (a new street is now proposed to access the subdivision from US 158/S. Croatan Highway and provide connection to the paper street known as Fourth Street), and consideration of a text amendment to add the use "Learning Center" as a permitted use in the C-2 zoning district; the Planning Board recommended approval of both items, with the Board noting that they did have a preference for the earlier iteration of the preliminary plat without access from US 158. The agenda also included further consideration of options and recommendations pertaining to legacy establishments/structures, residential stormwater regulations, and the *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, but those items were continued to the Board's May meeting due to technical difficulties with the Zoom platform.

The Planning Board's next meeting is scheduled for May 19, 2020. At present, the agenda is expected to include previously discussed and considered items noted above, as well as continued discussion regarding the regulation of events within residential dwelling units and the regulation of large occupancy homes.

## **Additional Updates**

- 2020 Census - The 2020 Census is open and collecting responses. As of April 13, 2020, the self-response rate for the Town of Nags Head was 13%, compared to a 22% response rate for Dare County and 45.4% response rate for the State.

As of April 28, 2020, the self-response rate for the Town was 14.5%, compared to a 24.8% response rate for Dare County and a 49.4% response rate for the State.

Staff has been in communication with Census officials who have offered guidance and suggestions for increasing the Town's response rate. Additionally, Census officials have noted that the number/percentage of vacant vacation/rental homes in Town would skew the response rate, as the rate is not adjusted at this time to account for those homes. As an example, if the Town's actual occupancy rate is 30%, and the reported response rate is 15%, then the actual response rate for occupied homes would be 50%.

- Town Workforce Housing Study & Plan - Phase 1 Report presented to the Board of Commissioners for the February 5, 2020 meeting. Further action on this project is on hold pending direction from the Board of Commissioners; however, it is important to note that funds associated with this project have been liquidated due to budgetary constraints associated with the Covid-19 Pandemic.
- Septic Health - Staff intends to prepare and present a draft project scope for the update of the Decentralized Wastewater Plan to the Commissioners, likely later in May or in June.
- Hazard Mitigation Plan - As of April 28, 2020, the final Plan has received approval from the State. Minor changes were necessary (and updated draft is available here: <http://www.obx-hmp.com/draftDocuments.html>), and the Plan will be sent to FEMA for review soon. Final consideration and adoption by the County and towns anticipated in June/July 2020.
- Grants -
  - A request is pending under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan.
  - 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.
  - An LOI has been submitted for a National Fish and Wildlife Foundation – National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan. Additionally, a preapplication has been submitted for the 2020 North Carolina Attorney General Environmental Enhancement Grant for the same project, to cover or supplement costs.
  - Staff intends to submit a CAMA Access Grant preapplication for improvements to the Huron Street Beach Access.
  - Staff is reviewing additional grant opportunities for prioritized projects, including an AARP Community Challenge Grant.

- UDO - Staff continues to develop Reference Manual materials. Publishing on the Municode platform has been completed. Staff is assessing the budget for printing hardcopies of UDO; however, this would likely wait to include incorporation of the updated Flood Prevention Ordinance.
- Permitting - Staff had previously contacted representatives of the Outer Banks Home Builders Association to coordinate a schedule for a workshop/forum for the building community. However, given current circumstances, this effort will be placed on hold.

Staff has begun an email distribution to contractors registered with the Town to provide updates on changes to permitting and inspection procedures associated with the Coronavirus Pandemic and response. Staff intends to send a further update before the end of the week to publicize the new online permitting options.

### **Upcoming Meetings and Other Dates**

- Tuesday, April 28 - P&D Staff Meeting
- Thursday, April 29 - Septic Tipping Points Discussion
- Monday, May 4 - NC State Sustainability Studio Project Presentations
- Wednesday, May 6 - Board of Commissioners Meeting
- Wednesday, May 13 - Arts & Culture Committee Meeting
- Tuesday, May 19 - Planning Board Meeting

**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT  
MONTHLY REPORT  
MARCH 2020**

DATE SUBMITTED: April 7, 2020

	Mar-20	Mar-19	Feb-20	2019-2020 FISCAL YTD	2018-2019 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
<b>BUILDING PERMITS ISSUED - RESIDENTIAL</b>						
New Single Family	2	1	1	7	14	(7)
New Single Family, 3000 sf or >	0	0	1	5	7	(2)
Duplex - New	0	0	0	0	0	0
Sub Total - New Residential	2	1	2	12	21	(9)
Miscellaneous (Total)	64	67	56	333	338	(5)
<i>Accessory Structure</i>	9	7	4	36	41	(5)
<i>Addition</i>	3	3	2	15	16	(1)
<i>Demolition</i>	0	2	0	2	5	(3)
<i>Move</i>	0	0	0	0	0	0
<i>Remodel</i>	7	14	15	70	72	(2)
<i>Repair</i>	45	41	35	210	204	6
<b>Total Residential</b>	<b>66</b>	<b>68</b>	<b>58</b>	<b>345</b>	<b>359</b>	<b>(14)</b>
<b>BUILDING PERMITS ISSUED - COMMERCIAL</b>						
Multi-Family - New	0	0	0	0	0	0
Motel/Hotel - New	0	0	0	0	0	0
Business/Govt/Other - New	1	2	1	2	4	(2)
Subtotal - New Commercial	1	2	1	2	4	(2)
Miscellaneous (Total)	9	12	12	68	85	(17)
<i>Accessory Structure</i>	3	4	3	17	19	(2)
<i>Addition</i>	0	1	0	0	1	(1)
<i>Demolition</i>	1	0	0	4	4	0
<i>Move</i>	0	0	0	0	0	0
<i>Remodel</i>	3	2	3	21	25	(4)
<i>Repair</i>	2	5	6	26	36	(10)
<b>Total Commercial</b>	<b>10</b>	<b>14</b>	<b>13</b>	<b>70</b>	<b>89</b>	<b>(19)</b>
<b>Grand Total</b>	<b>76</b>	<b>82</b>	<b>71</b>	<b>415</b>	<b>448</b>	<b>(33)</b>
<b>SUB-CONTRACTOR PERMITS</b>						
Electrical	40	18	43	340	299	41
Gas	3	0	2	17	16	1
Mechanical	30	24	34	251	250	1
Plumbing	9	5	10	66	64	2
Sprinkler	0	1	0	1	3	(2)
<b>VALUE</b>						
New Single Family	\$572,000	\$230,000	\$400,000	\$1,864,797	\$3,008,000	(\$1,143,203)
New Single Family, 3000 sf or >	\$0	\$0	\$750,000	\$3,832,561	\$4,450,460	(\$617,899)
Duplex - New	\$0	\$0	\$0	\$0	\$0	\$0
Misc (Total Residential)	\$1,242,053	\$1,262,425	\$1,045,721	\$7,742,589	\$7,670,208	\$72,381
<b>Sub Total Residential</b>	<b>\$1,814,053</b>	<b>\$1,492,425</b>	<b>\$2,195,721</b>	<b>\$13,439,947</b>	<b>\$15,128,668</b>	<b>(\$1,688,721)</b>
Multi-Family - New	\$0	\$0	\$0	\$0	\$0	\$0
Motel/Hotel - New	\$0	\$0	\$0	\$0	\$0	\$0
Business/Govt/Other - New	\$650,000	\$1,800,000	\$380,000	\$1,030,000	\$3,646,975	(\$2,616,975)
Misc (Total Commercial)	\$497,155	\$314,951	\$1,008,538	\$3,011,897	\$3,593,190	(\$581,293)
<b>Sub Total Commercial</b>	<b>\$1,147,155</b>	<b>\$2,114,951</b>	<b>\$1,388,538</b>	<b>\$4,041,897</b>	<b>\$7,240,165</b>	<b>(\$3,198,268)</b>
<b>Grand Total</b>	<b>\$2,961,208</b>	<b>\$3,607,376</b>	<b>\$3,584,259</b>	<b>\$17,481,844</b>	<b>\$22,368,833</b>	<b>(\$4,886,989)</b>

**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT  
MONTHLY REPORT  
MARCH 2020**

DATE SUBMITTED: April 7, 2020

	Mar-20	Mar-19	Feb-20	2019-2020 FISCAL YTD	2018-2019 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
<b>ZONING</b>						
Zoning Permits	45	43	34	238	239	(1)
<b>CAMA</b>						
CAMA LPO Permits	0	6	6	27	43	(16)
CAMA LPO Exemptions	22	20	18	90	73	0
Sand Relocations	86	N/A	11	97	N/A	N/A
<b>CODE COMPLIANCE</b>						
CCO Inspections	124	78	59	717	725	(8)
Cases Investigated	9	19	22	286	432	(146)
Warnings	3	6	2	50	64	(14)
NOVs Issued	5	8	19	233	347	(114)
Civil Citations (#)	0	0	0	1	0	1
Civil Citations (\$)	\$0	\$0	\$0	\$0	\$0	\$0
<b>SEPTIC HEALTH</b>						
Tanks inspected	18	20	0	114	177	(63)
Tanks pumped	5	6	3	22	60	(38)
Water quality sites tested	0	0	0	112	138	(26)
Personnel Hours in Training/School	29	51	21	148	281	(133)




---

Michael D. Zehner, Director of Planning & Development

**COMMENTS:**

# **Building Code Enforcement Evaluation Report**

**Selections from the reviews of the**

**Nags Head**

**Building Code Enforcement Agency**

**In the County of Dare**

**In the State of North Carolina**

**7/9/2019 Evaluation**



# Table of Contents

Tab	Description
Section 1	Executive Summary
Section 2	Background Information
Section 3	Code Adoption
Section 4	Education, Training and Certification
Section 5	Staffing Levels
Section 6	BCEGS Point Analysis
Section 7	Natural Hazards
Appendix A	Natural Hazard General Information

## Section 1 Executive Summary

Not all communities have rigorous building codes, nor do all communities enforce their codes with equal commitment. Yet the effectiveness of local building codes can have a profound effect on how the structures in your community will fare in a hurricane, earthquake, or other natural disaster.

Studies conducted following recent natural disasters concluded that total losses might have been as much as 50% less if all structures in the area had met current building codes. Building-code enforcement can have a major influence on the economic well-being of a municipality and the safety of its citizens. Insurance Services Office (ISO) helps distinguish amongst communities with effective building-code adoption and enforcement through comprehensive program called the Building Code Effectiveness Grading Schedule (BCEGS®).

ISO is an independent statistical, rating, and advisory organization that serves the property/casualty insurance industry. ISO collects information on a community's building-code adoption and enforcement services, analyzes the data, and then assigns a Building Code Effectiveness Classification from 1 to 10. Class 1 represents exemplary commitment to building-code enforcement. The concept behind BCEGS is simple. Municipalities with well-enforced, up-to-date codes demonstrate better loss experience, and their citizens' insurance rates can reflect that. The prospect of minimizing catastrophe-related damage and ultimately lowering insurance costs gives communities an incentive to enforce their building codes rigorously.

The following management report was created specifically for Nags Head based on a BCEGS survey conducted on 7/9/2019. This report can help you evaluate your community's building-code enforcement services utilizing benchmarking data collected throughout the country. The report is designed to give your management team an expanded prospective for dealing with the important issues surrounding effective building code enforcement. This is accomplished through comparisons of your code enforcement to that of others in your area and state. The analysis goes further to allow you to compare your jurisdiction to others across the country with similar permit, plan review and inspection activity. ISO thanks you for your participation and we encourage you to take advantage of the information contained in this report to assist in making decisions regarding the level of code enforcement best suited for Nags Head.

The survey conducted has resulted in BCEGS class of 3 for 1 and 2 family dwellings and a class 3 for all other construction. More information regarding how this recent survey compares to previous surveys is provided below.

Table 1 details the points your department earned during the most recent survey as well as the points earned in the previous survey including a comparison of the two. This information may be used to track local trends or pin-point improvement target areas.

Table 1

Building Code Effectiveness Grading Point Comparison								
	Point Totals						Difference	
	Current Grading Yr:		Maximum Point Possible	Previous Grading Yr:				
	2019			2015				
	Com	Res	Com	Res	Com	Res		
Section I - Administration of Codes	39.46	38.86	54.00	43.06	42.55	-3.60	-3.69	
Section 105 - Adopted Codes	8.00	7.60	8.00	6.88	6.54	1.12	1.06	
Section 108 - Additional Code Adoptions	3.35	3.35	4.00	1.99	1.99	1.36	1.36	
Section 110 - Modification to Adopted Codes	4.00	3.80	4.00	3.44	3.27	0.56	0.53	
Section 112 Method of Adoption	0.00	0.00	1.00	0.00	0.00	0.00	0.00	
Section 115 - Training	8.37	8.37	13.00	11.34	11.34	-2.97	-2.97	
Section 120 - Certification	8.59	8.59	12.00	11.26	11.26	-2.67	-2.67	
Section 125 - Building Official's Qualification / Exp/ Education	2.50	2.50	4.00	2.50	2.50	0.00	0.00	
Section 130 - Selection Procedure for Building Official	0.25	0.25	0.50	0.25	0.25	0.00	0.00	
Section 135 - Design Professionals	0.00	0.00	2.00	0.00	0.00	0.00	0.00	
Section 140 - Zoning Provisions	0.00	0.00	1.00	1.00	1.00	-1.00	-1.00	
Section 145 - Contractor / Builder Licensing & Bonding	0.90	0.90	1.00	0.90	0.90	0.00	0.00	
Section 155 - Public Awareness Programs	2.50	2.50	2.50	2.50	2.50	0.00	0.00	
Section 160 - Participation in Code Development Activities	0.50	0.50	0.50	0.50	0.50	0.00	0.00	
Section 165 - Administrative Policies & Procedures	0.50	0.50	0.50	0.50	0.50	0.00	0.00	

**Building Code Effectiveness Grading Point Comparison (continued)**

	Point Totals						
	Current Grading Yr:		Maximum Point Possible	Previous Grading Yr:		Difference	
	2019			2015			
	Com	Res	Com	Res	Com	Res	
Section II - Plan Review	21.22	23.00	23.00	23.00	21.07	-1.78	1.93
Section 205 - Existing Staffing	8.22	9.00	9.00	9.00	7.07	-0.78	1.93
Section 210 - Experience of Personnel	1.50	1.50	1.50	1.50	1.50	0.00	0.00
Section 215 - Detail of Plan Review	10.50	11.50	11.50	11.50	11.50	-1.00	0.00
Section 220 - Performance Evaluation for Quality Assurance	1.00	1.00	1.00	1.00	1.00	0.00	0.00
Section III - Field Inspection	18.75	20.55	23.00	20.82	15.65	-2.07	4.90
Section 305 - Existing Staffing	7.20	9.00	9.00	8.82	3.65	-1.62	5.35
Section 310 - Experience of Personnel	2.55	2.55	3.00	3.00	3.00	-0.45	-0.45
Section 315 - Managing Inspection and Re-inspection activity	1.00	1.00	1.00	1.00	1.00	0.00	0.00
Section 320 - Inspection Checklist	0.00	0.00	2.00	0.00	0.00	0.00	0.00
Section 325 - Special Inspections	1.00	1.00	1.00	1.00	1.00	0.00	0.00
Section 330 - Inspections for Natural Hazard Mitigation	1.50	1.50	1.50	1.50	1.50	0.00	0.00
Section 335 - Final Inspections	2.50	2.50	2.50	2.50	2.50	0.00	0.00
Section 340 - Certificate of Occupancy	2.00	2.00	2.00	2.00	2.00	0.00	0.00
Section 345 - Performance Evaluations for Quality Assurance	1.00	1.00	1.00	1.00	1.00	0.00	0.00
Subtotal:	79.43	82.41	100.00	86.88	79.27	-7.45	3.14
The final score is determined by a relationship between Item 105 and the balances of the scoring.							
Final Score:	79.43	78.67	100.00	75.68	66.00	3.75	12.67

## Section 2 Background Information

### Introduction

ISO collects information from communities in the United States on their adoption and enforcement of building codes. ISO analyzes the data using its Building Code Effectiveness Grading Schedule (BCEGS) and then assigns a BCEGS Classification number to the community. The classification number-which ranges from 1 to 10-measures a jurisdiction's commitment to the adoption and enforcement of building codes affecting the construction of new buildings. Class 1 indicates the most favorable classification of commitment to the adoption and enforcement of building codes.

ISO's commitment to polling each building code enforcement agency on a regular basis is important to the program - periodic surveying helps determine if a community has made any significant changes since its last field evaluation. This ongoing effort is designed to re-evaluate each community at approximate 5-year intervals or sooner if changes indicate a potential revision to the classification number.

The purpose of this report is fourfold:

1. To summarize a community's scoring under the criterion contained in the BCEGS program.
2. To identify opportunities for communities desiring to improve their BCEGS classification number.
3. To assist a community in understanding how other jurisdictions with similar needs address building code adoption and enforcement.
4. To provide hazard mapping information important in planning and developing a sustainable community.

### Data Collection and Analysis

ISO has evaluated over 14,000 code enforcement departments across the United States. In each of these communities, three elements of building code adoption and enforcement are reviewed. These three elements are the administration of codes, plan review and field inspection.

#### Administration of Codes:

ISO evaluates the administrative support for code enforcement within the jurisdiction -- the adopted building codes and the modifications of those codes through ordinance, code enforcer qualifications, experience and education, zoning provisions, contractor/builder licensing requirements, public awareness programs, the building department's participation in code development activities, and the administrative policies and procedures. This section represents 54% of the analysis in the BCEGS program.

Plan review division:

Consideration is given to determine staffing levels, personnel experience, performance evaluation schedules, and the level of review of construction documents for compliance with the adopted building code of the jurisdiction being graded. This section represents 23% of the analysis.

Field inspection:

Consideration is given to determine staffing levels, personnel experience, performance evaluation schedules, and the level of the agency's review of building construction. This section also represents 23% of the analysis.

The information necessary to determine the BCEGS classification number was collected from the community building officials through a combination of on-site interviews and completed questionnaires.

**Section 3 Code Adoption**

Recognizing that building codes are continually being reviewed and updated to reflect emerging technology and best practices, the BCEGS program encourages communities to make every effort to adopt the latest edition of one of the building codes without amendments. The program is sensitive to the reality that building code adoption is not always a local issue, nor do the wheels of progress turn rapidly all the time. To receive maximum BCEGS credit for this very important section a community must adopt and implement the revised code within two years of the publication of the building code.

As detailed in Figure 3-1 below, eight points are the maximum available for the adoption of a building code. The final calculation to determine a jurisdiction's BCEGS classification employs the ratio of the points possible and the points earned in the building code adoption section as a factor for all other points earned in the system. Therefore, a jurisdiction enforcing the latest building code will have a ratio of 1 and no adjustment will be made to the points earned. A department enforcing a building code that was published six years prior to the survey date would have a ratio of 6.88/8 or .86 so the jurisdiction would receive credit for 86% of the points earned throughout the evaluation process.

Table 3-1 Criteria for Building Code Adoption Points

If the published date of the listed codes is within 5 years of the date of the grading: Building Code(s) addressing commercial and /or residential construction .....	8.00	points
If the published date of the listed codes is within 6 years of the date of the grading: Building Code(s) addressing commercial and /or residential construction .....	6.88	points
If the published date of the listed codes is within 10 years of the date of the grading: Building Code(s) addressing commercial and /or residential construction .....	2.21	points
If an earlier edition of the listed codes is adopted: Building Code(s) addressing commercial and /or residential construction .....	0.85	point

For departments surveyed in 2019 the BCEGS program uses the following as the latest edition of Building codes available.

Table 3-2 Latest Edition Available

	Publisher	Publication Year
Commercial Building Code		
Residential Building Code		

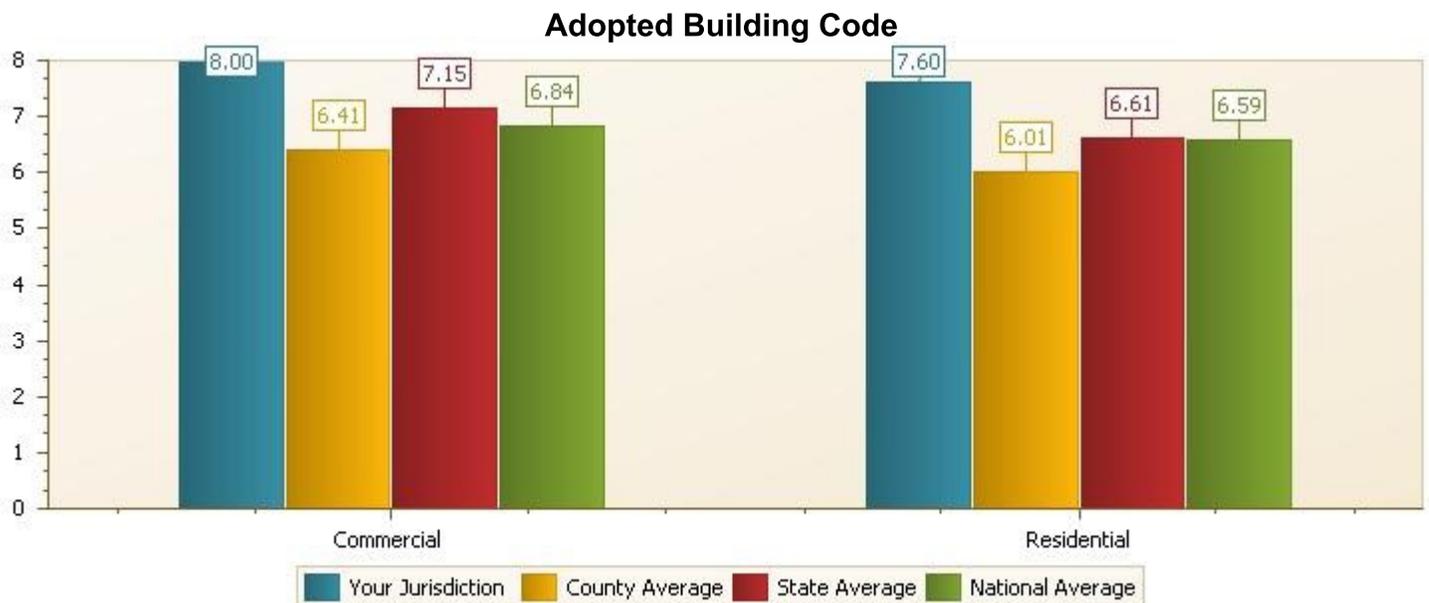
Table 3-3 Building Codes Enforced in Nags Head

	Publisher	Publication Year	Effective Year
Commercial Building Code	ICC	2015	2019
Residential Building Code	ICC	2015	2019

The following is the first of many “Benchmarking Information” sections located in this report. The purpose of the benchmarking information is to provide data ISO has collected in the course of its evaluations of code enforcement departments throughout the country. The data should not be considered a standard but rather information which allows you to compare operations in your jurisdiction to those conducted by other jurisdictions with similar conditions. Benchmarking information will be distinguished from other information in this report by a green Benchmarking Information bar above the table or figure.

**Benchmarking Information**

Chart 3-4 BCEGS points awarded comparison



Item 108. Additional Code Adoptions:

This section reviews the adoption and enforcement of electrical, mechanical, plumbing, energy, and wildland urban interface codes. Adopted codes are evaluated by year of publication including amendments and enforcement efforts. Table 3-5 details the criteria for earning points under this section.

Table 3-5 Criteria for sub-code adoption points

If the published date of the listed codes is within 5 years of the date of the grading:  
0.67 point for each of the five subcodes

If the published date of the listed codes is within 6 years of the date of the grading:  
0.33 point for each of the five subcodes

If the published date of the listed codes is within 10 years of the date of the grading:  
0.18 point for each of the five subcodes

If an earlier edition of the listed codes is adopted:  
0.004 point for each of the five subcodes

For departments surveyed in 2019 the BCEGS program uses the following as the latest edition of sub-codes available.

Table 3-6 Latest edition of Sub-Codes Available

Type of Code	Publisher	Publication Year
Commercial:		
Electrical Code	NFPA	
Plumbing Code	ICC / IAPMO	
Mechanical Code	ICC / IAPMO	
Fuel Gas Code	ICC / NFPA	
Energy Code	ICC / ASHRAE	
Wildland Urban Interface Code	ICC	
Residential:		
Electrical Code	NFPA	
Plumbing Code	ICC / IAPMO	
Mechanical Code	ICC / IAPMO	
Fuel Gas Code	ICC / NFPA	
Energy Code	ICC / ASHRAE	
Wildland Urban Interface Code	ICC	

- ASHRAE - American Society of Heating, Refrigeration and Air Conditioning Engineers
- ICC - International Code Council
- IAPMO - International Association of Plumbing and Mechanical Officials
- NFPA - National Fire Protection Association

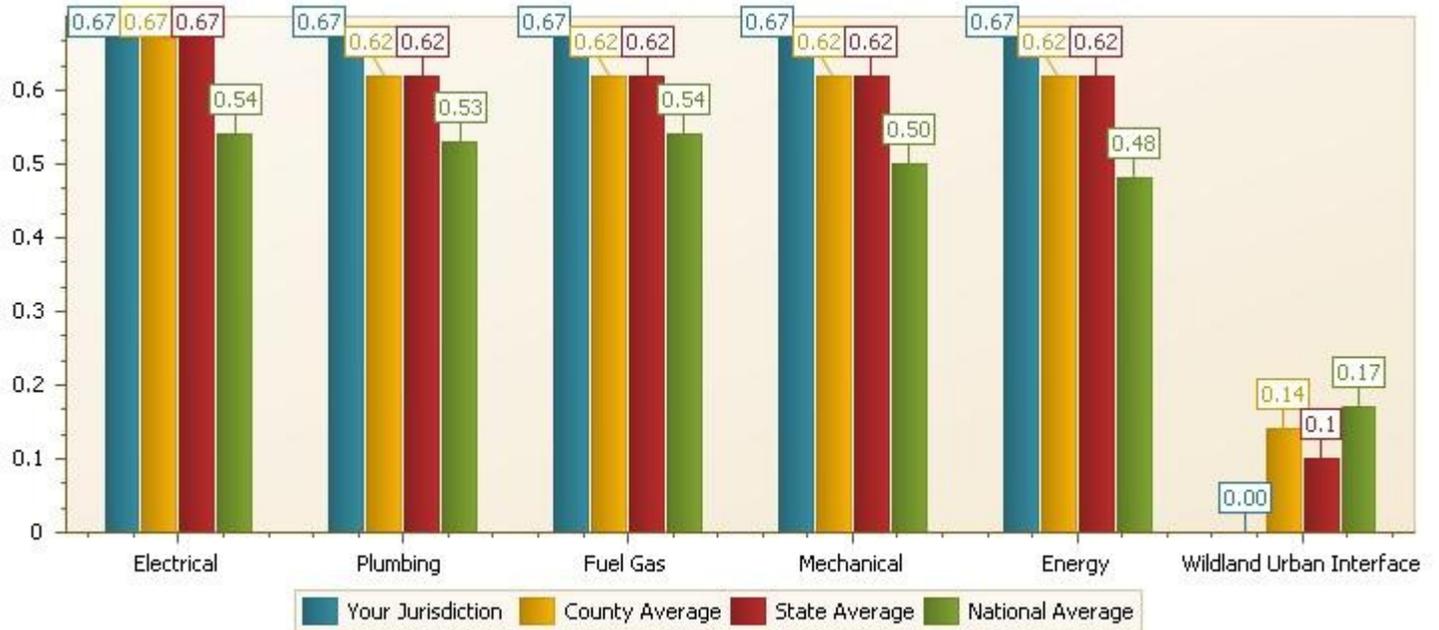
Table 3-7 Sub Codes Enforced in Nags Head

Type of code	Publisher	Publication Year	Effective Year
Commercial:			
Electrical Code	NFPA	2017	2018
Plumbing Code	ICC	2015	2019
Mechanical Code	ICC	2015	2019
Fuel Gas	ICC	2015	2019
Energy Code	ICC	2015	2019
Wildland Urban Interface Code			
Residential:			
Electrical Code	NFPA	2017	2018
Plumbing Code	ICC	2015	2019
Mechanical Code	ICC	2015	2019
Fuel Gas	ICC	2015	2019
Energy Code	ICC	2015	2019
Wildland Urban Interface Code			

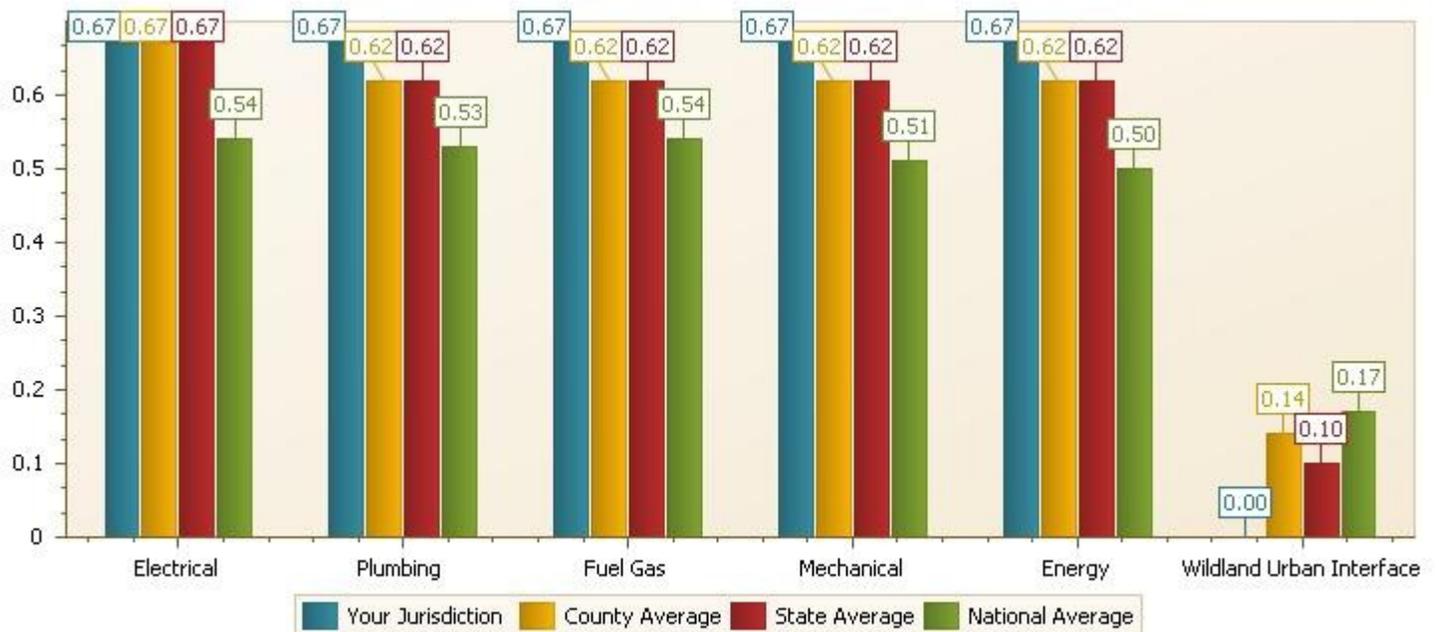
**Benchmarking Information**

Chart 3-8 additional code adoption

**Commercial**



**Residential**

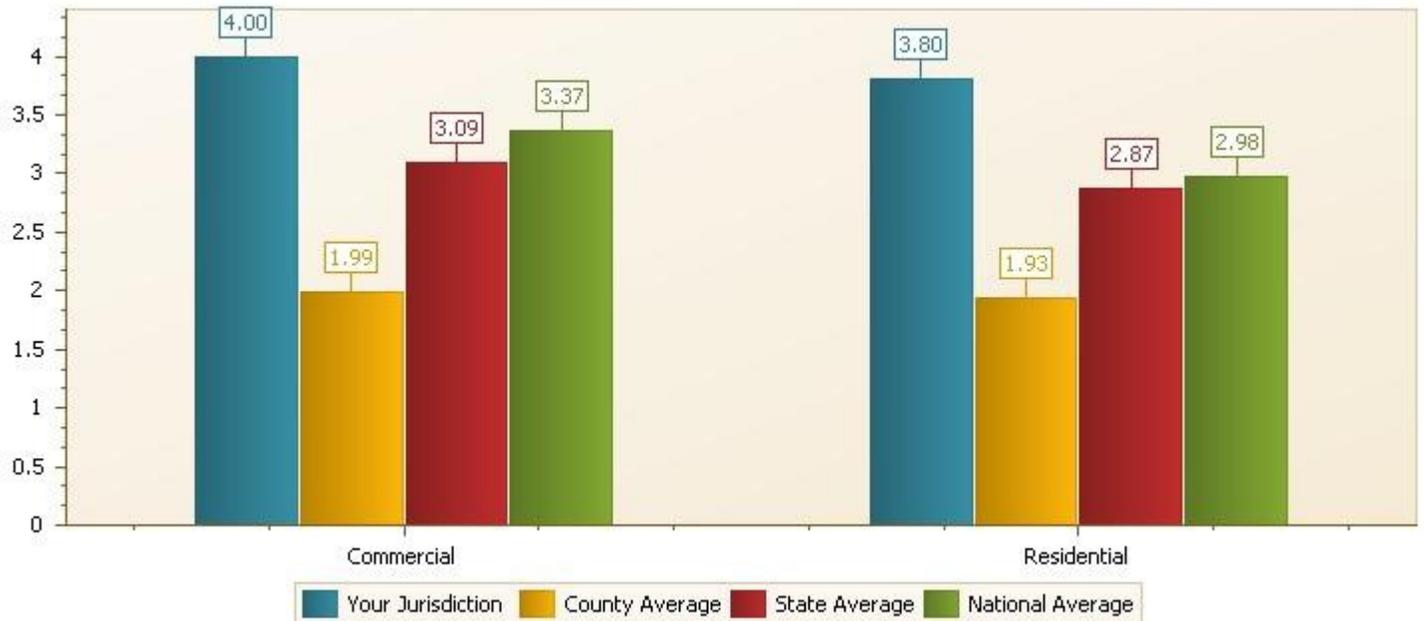


Item 110. Modification to adopted codes:

The BCEGS program encourages timely and unmodified adoption of the latest edition available of the building code. It is not uncommon for a jurisdiction to adopt a code and then modify it in some way. The most common modifications are administrative, which the BCEGS program is not overly concerned with. Some jurisdictions, however, modify the structural aspects of the code. Modifications are viewed as favorable when the intention is to strengthen the code. Due to the difficulty and expense of finitely determining the effect on a code of a specific action which weakens the code, no partial credit is available for this section. Note, however, that due to the formula:  $(\text{Points credited in section } 105 \times 0.125 \times 4.0)$  the points awarded for this item are reduced if the latest building code is not adopted and enforced. There is a direct correlation between the points earned for the adopted building code and the points available for this section. When modification serves to weaken the intent or effectiveness of the adopted building code relative to structural aspects or natural hazard mitigation features, no points will be awarded for this section.

**Benchmarking Information**

Chart 3-9 Comparison of Points Earned for Section 110

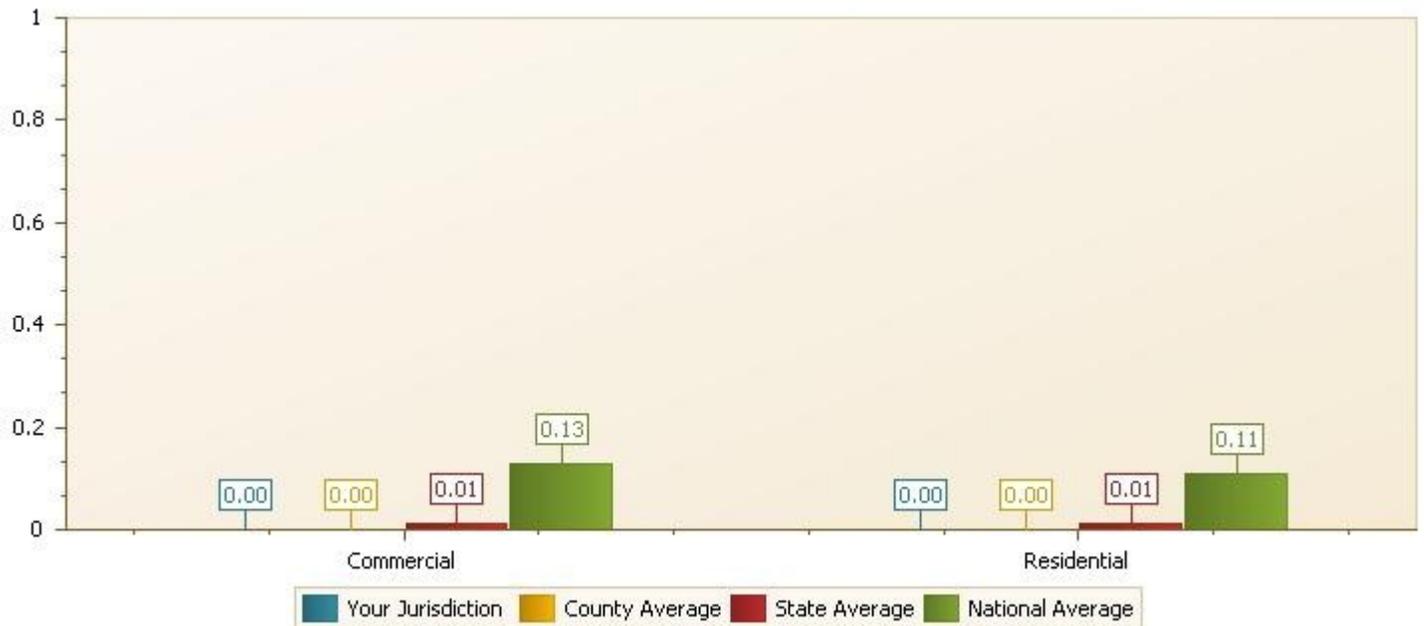


Item 112. Method of Adoption:

Updating the adopted codes to the latest code published by a nationally recognized building code development and publication organization within 12 months of the publication of the code is beneficial for the jurisdiction. It provides the latest and most modern technology for natural hazard mitigation. This section allows the opportunity to recognize the timely un-amended adoption of a nationally promulgated building code

**Benchmarking Information**

Chart 3-10 Points Earned for Timely (within one year of the publication date) Un-Amended Code Adoption



## Section 4 Education, Training, and Certification

The Building Code Effectiveness Grading Schedule reviews the tools available to a building code department to determine what level of protection the jurisdiction has decided to offer. In this section we review the qualifications of the code enforcement personnel. By maintaining highly qualified, well trained staff the building code enforcement department is better equipped to encourage the construction of code compliant buildings.

The BCEGS program does not mandate any level of training certification or experience but it does recognize the technical and evolving nature of construction code enforcement. Therefore, 39% of the available points in the analysis are dependent on education, training and experience. The evaluation is much diversified. For instance, credit can be earned for hours of training taken, dollars spent on training, incentives for outside training, and hiring requirements. After review of this information a building code department may determine that a higher caliber employee or more incentives to current employees could assist them in performing their duties more efficiently and professionally.

The number of personnel is an important factor when comparing and correlating education and training. To standardize these numbers this report converts all employees to full time. Therefore a department with two full time code enforcers the number of employees will be two. If a department has five full time code enforcers and seven part time code enforcers each working twenty hours per week the department will show as eight and one half employees.

Nags Head employs 1.00 code enforcement personnel. This staffing level is equal to one code enforcement personnel for each 2,757 citizen or one code enforcement personnel for each 0.00 permits issued. If the jurisdiction was divided equally, each code enforcer would be responsible for an area of 6.58 square miles.

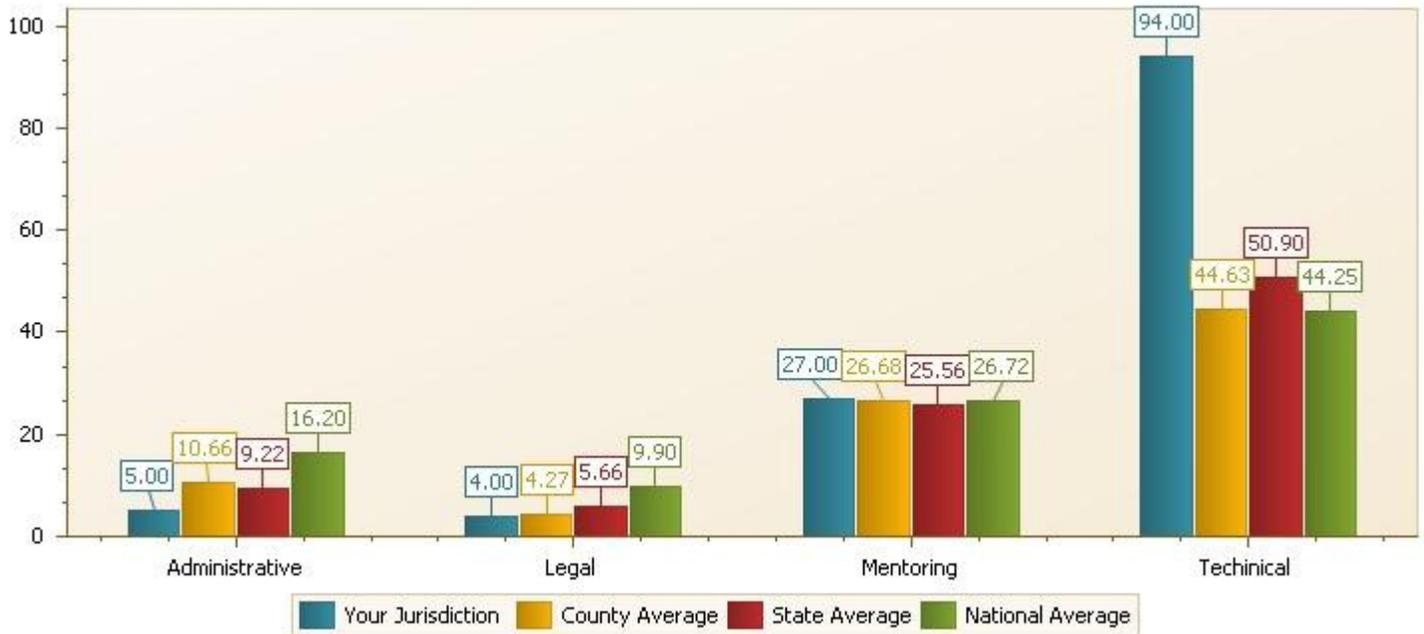
Table 4-1 displays the total and the average number of hours spent in training by code enforcement personnel in Nags Head. Training is broken down into four categories; a maximum of 1.25 points may be earned for the first 12 hours of training in administrative aspects of code enforcement, legal aspects of code enforcement, and being mentored in code enforcement. The first 60 hours of training in technical aspects of code enforcement may also earn maximum credit of 4.25 points. To receive the maximum available points in this area each employee must train a minimum of 96 hours per year and the subject must follow the details above.

Table 4-1 Training hours for Nags Head

	Total hours for department	Average hours of training
Administrative	5.00	5.00
Legal	4.00	4.00
Mentoring	27.00	27.00
Technical	94.00	94.00

**Benchmarking Information**

Chart 4-2 Comparison of average hours of training



Building code enforcement departments may choose to emphasize their commitment to training and education through incentives, such as funding certification, exam fees, and continuing education or providing incentives for outside training. The following table is broken down for residential and commercial construction and indicates the incentives provided by Nags Head.

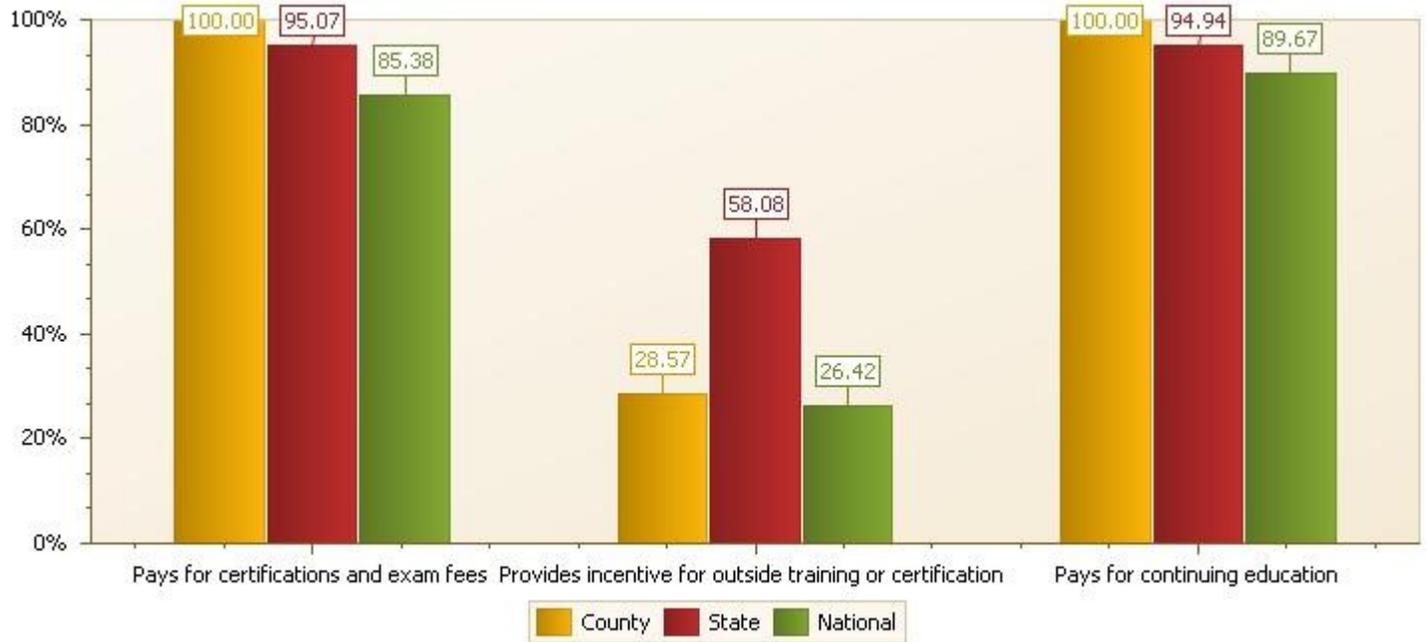
Table 4-3 BCEGS points earned by Nags Head for training incentives

	Commercial	Points Earned	Residential	Points Earned
Department pays for certifications and exam fee	Yes	0.50	Yes	0.50
Provides incentive for outside training or certification	Yes	0.50	Yes	0.50
Pays for continuing education	Yes	0.50	Yes	0.50

**Benchmarking Information**

Chart 4-4 Comparison of communities providing training incentive

**Commercial**

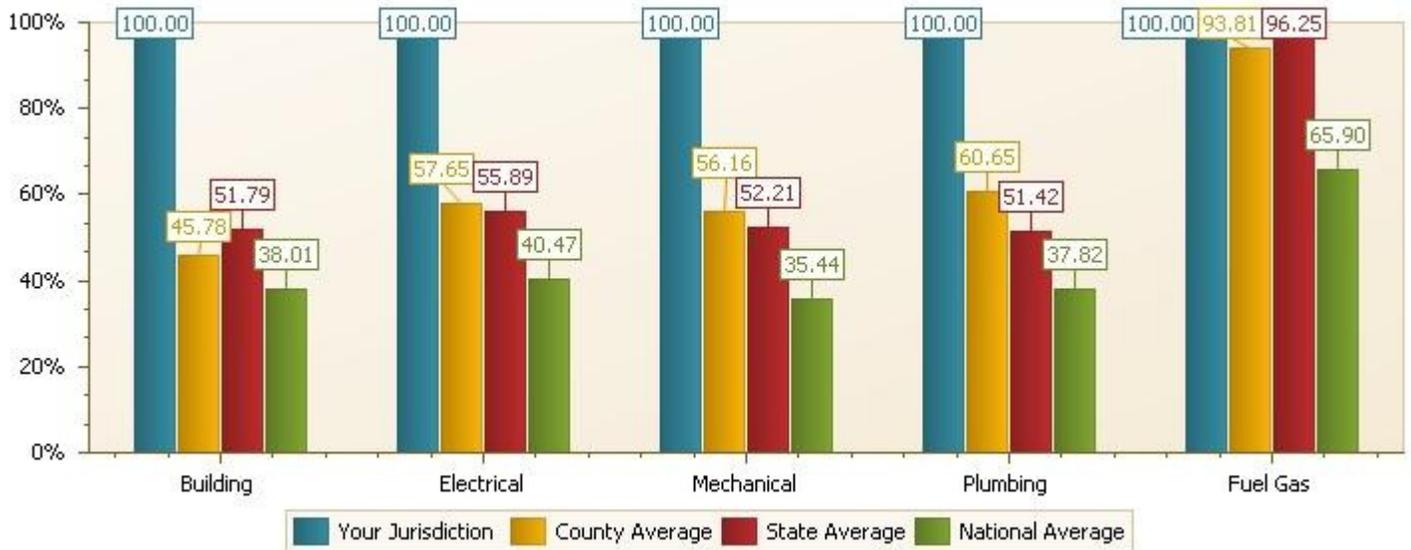


**Residential**

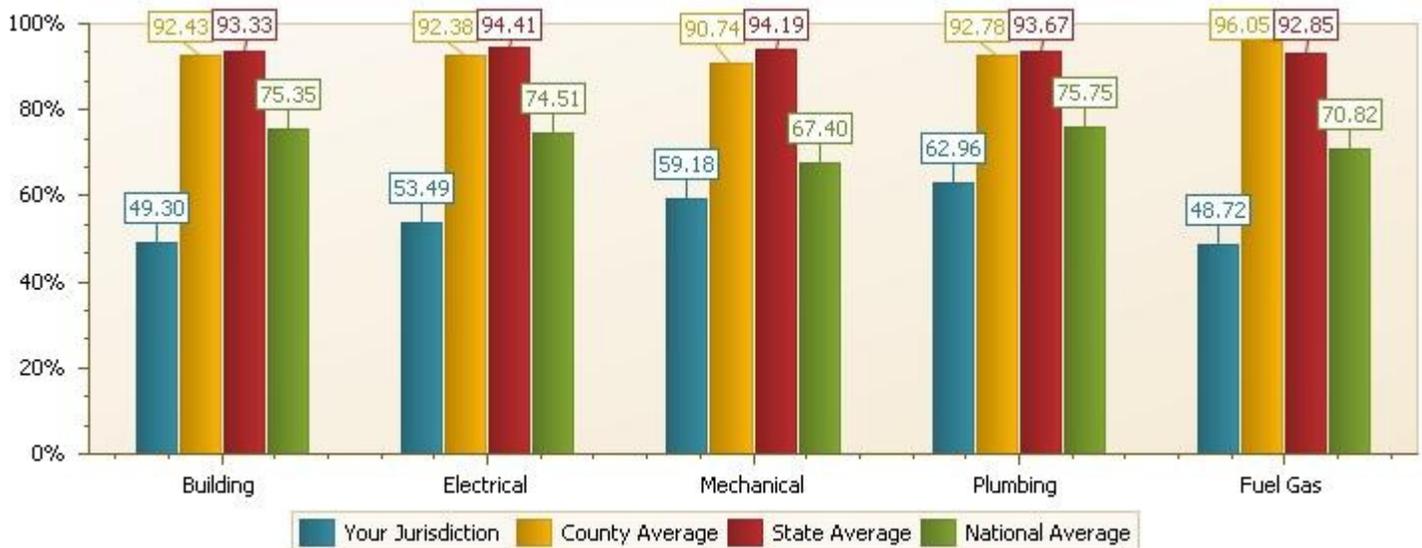


Hiring only certified code enforcement employees or allowing a short probationary period for new hires to earn their certification are valued practices which elevate the quality and consistency of the code enforcement process. The following two charts compare your jurisdiction's policies regarding certification with those of other departments within your county, state and across the country. The charts represent the percent of plan reviewers and inspectors that held appropriate certification for the duties they performed at the time of the latest BCEGS survey. Chart 4-5 represents commercial work and Chart 4-6 represents residential work.

**Chart 4-5 Comparison of Certified Personnel Performing Commercial Duties**

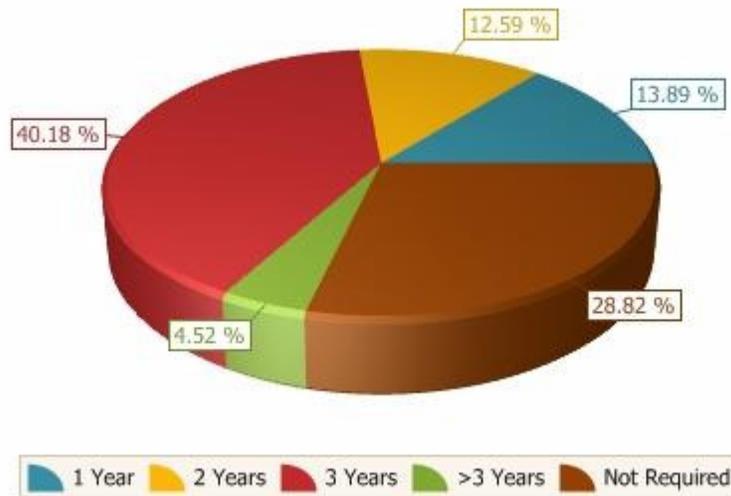


**Chart 4-6 Comparison of Certified Personnel Performing Residential Duties**

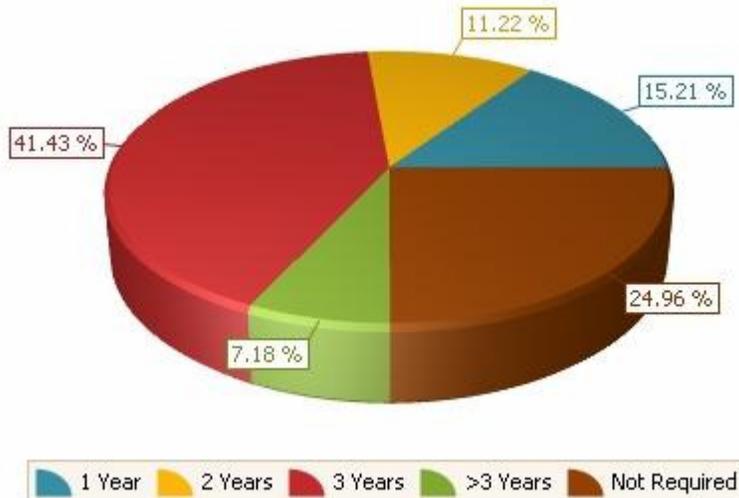


Requiring certification as a condition of employment is an important factor. However, the evolving nature of the building technology and the wide variety of situations encountered by plan reviewers and inspectors dictate the need for continuing education. The following two charts are based on the period of time allowed to complete the required amount of continuing education requirements for building inspectors in order for them to renew their license / certification. Information in these charts represents data gathered across the country.

**Chart 4-7 Building Certification Renewal Period Commercial**



**Chart 4-8 Building Certification Renewal Period Residential**



## Section 5 Staffing Levels

One of the most frequently asked questions from community administrators and building officials is: How many inspectors and plan reviewers do we need to supply the desired level of service to our community? This section will provide valuable information to assist in this vital decision. The BCEGS schedule uses the following benchmarks to calculate the staffing levels:

- 10 inspections per day per full time inspector
- 1 commercial plan review per day per full time plan reviewer
- 2 residential plan review per day per full time plan reviewer

These are average numbers of the entire department over the course of a year. Some inspectors because of the type of work they are assigned will exceed these benchmarks while others will not be able to reach them, the same is true of plan reviewers. The fact is that these benchmarks have proved to be realistic over the course of surveying 14,000 code enforcement departments.

However, we realize that your community may have varying circumstances and may want to base staffing decision on other information. In the following set of charts we have scoured our database to find communities that are of similar size, and population to your community to provide data that may be helpful in your decision process. The next key element of staffing decision is the workload; again we queried our records to find communities with similar number of permits issued, inspections and plan reviews completed. This data can be useful in further defining your staffing levels. Realizing that some jurisdictions cover vast area while others are metropolitan we did some calculations and arrived at a unique category of permits per square mile. You may find that this category affords benchmarking opportunities that take into account workload and travel time for your inspecting staff.

Table 5-1

Your community falls into the following ranges

Population	2,001-5,000
Square Miles	3.1-7.0
Permits Issued	<=200
Number of inspections conducted	2,201-5,700
Building Plan reviews conducted	50-150
Permits per Square Mile	<=10

**Benchmarking Information**

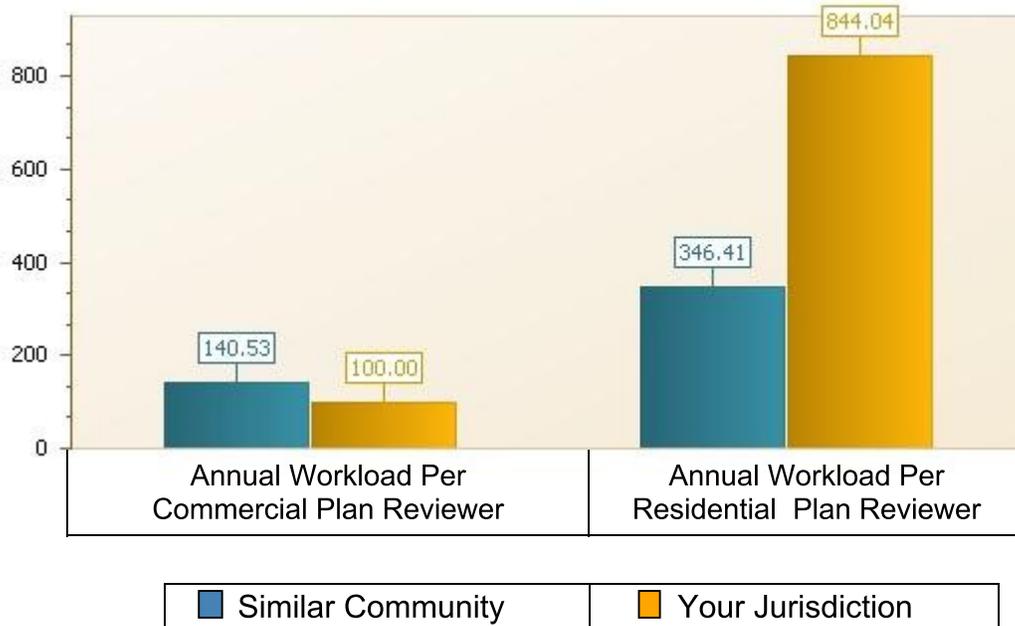
The information in Charts 5-3 through 5-14 depicts the staffing levels of your jurisdiction along with the average staffing levels of all the communities that fall within the range for each category as defined in Table 5 -1. To standardize these numbers this report converts all employees to full time equivalents. Therefore, in a department with two full time employees the number of personnel will be two. If a department has five full time code enforcers and seven part time code enforcers each working twenty hours per week the department is considered to have eight and one half full time employees. The data is further broken down by the responsibilities of each code enforcer. For example a department may allocate time as follows:

Table 5-2 Time Allocation Example

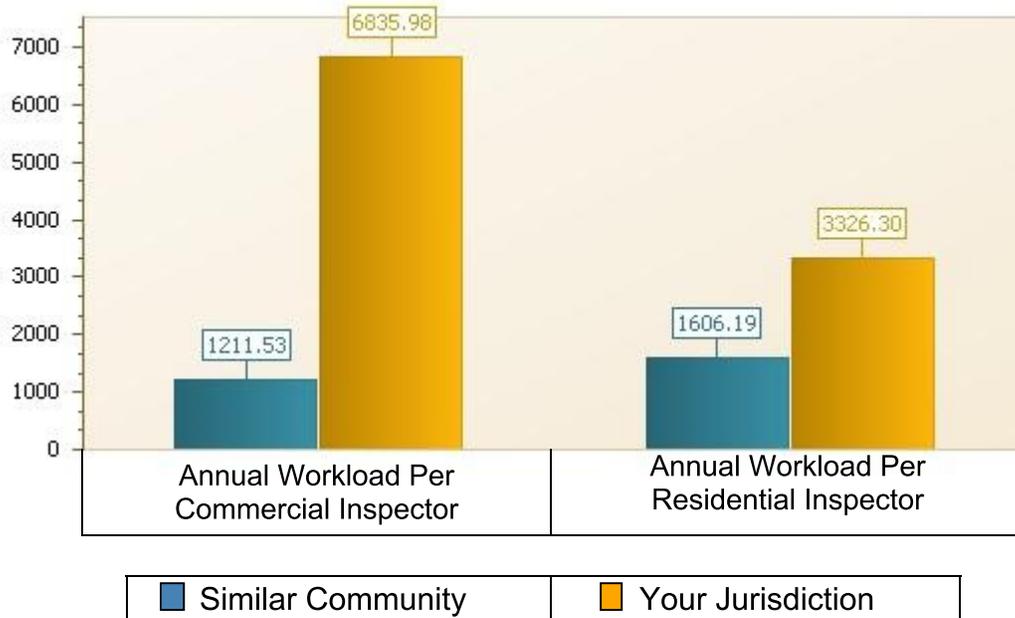
	Time allocation (hrs) employee #1 40 hrs per week	Time allocation (hrs) employee #2 30 hrs per week	Time allocation (hrs) employee #3 20 hrs per week	No. of equivalent full time employees
Commercial Plan Review	16	1.5	0	0.44
Residential Plan Review	8	1.5	0	0.24
Commercial Inspection	14	24	2	1.00
Residential Inspection	2	3	18	0.58
Total equivalent full time employees				2.25

The calculations used to make up the graphs for the example above would be the number of commercial plan reviews conducted in your jurisdiction divided by 0.44 (the number of commercial plan reviewers employed by your jurisdiction). Similarly assuming 732 residential inspections divided by the number of residential inspectors (0.58) returns a workload of 1,262 inspections per full time inspector per year. The calculation for the control group is the same except that the results are averaged.

**Chart 5-3 Building Plan Review Staffing Comparisons of Communities Serving Similar Populations**



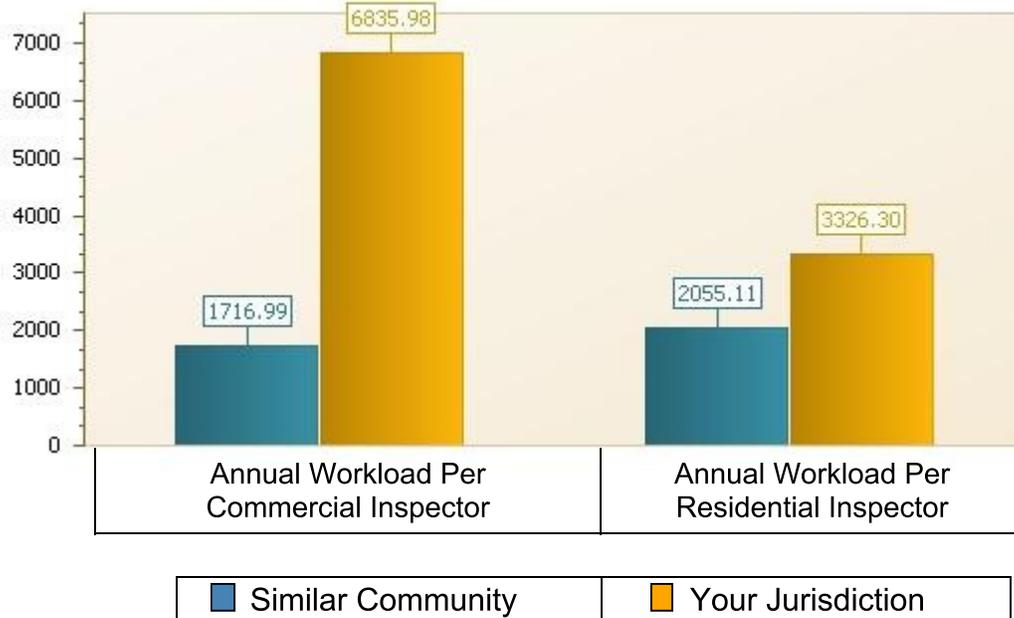
**Chart 5-4 Inspection Staffing Comparisons of Communities Serving Similar Populations**



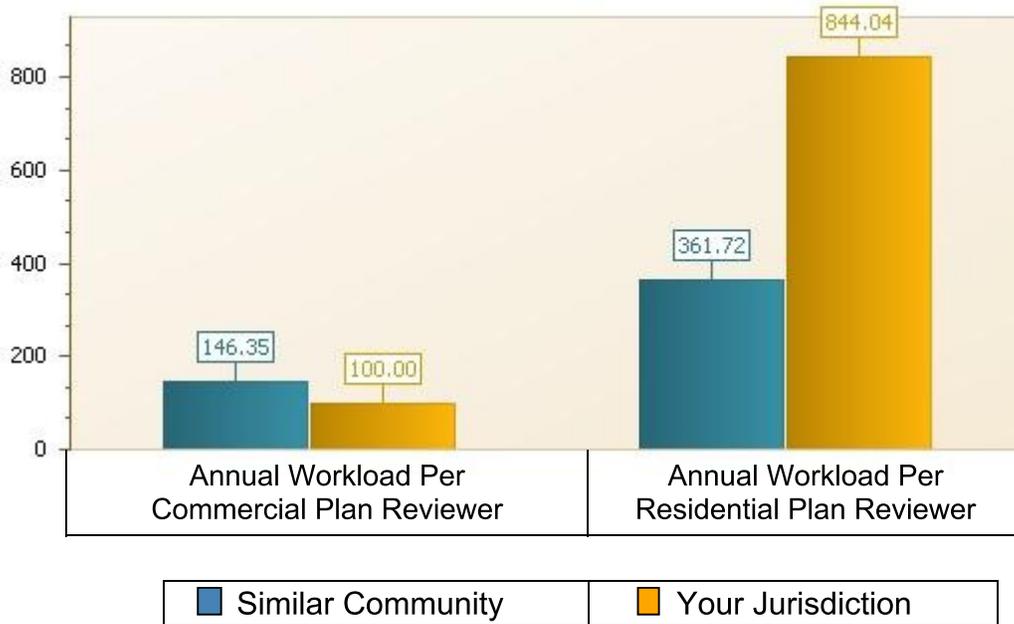
**Chart 5-5 Building Plan Review Staffing  
Comparison of Communities Serving Similar Square Miles**



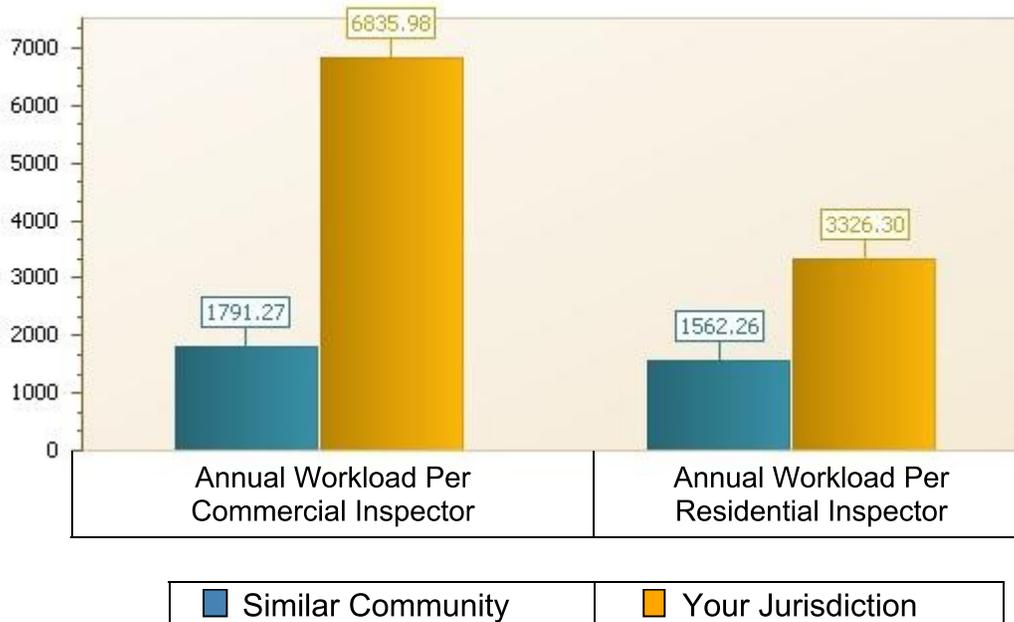
**Chart 5-6 Inspection Staffing Comparison of  
Communities Serving Similar Square Miles**



**Chart 5-7 Building Plan Review Staffing Comparison of Communities Similar Number of Permits**



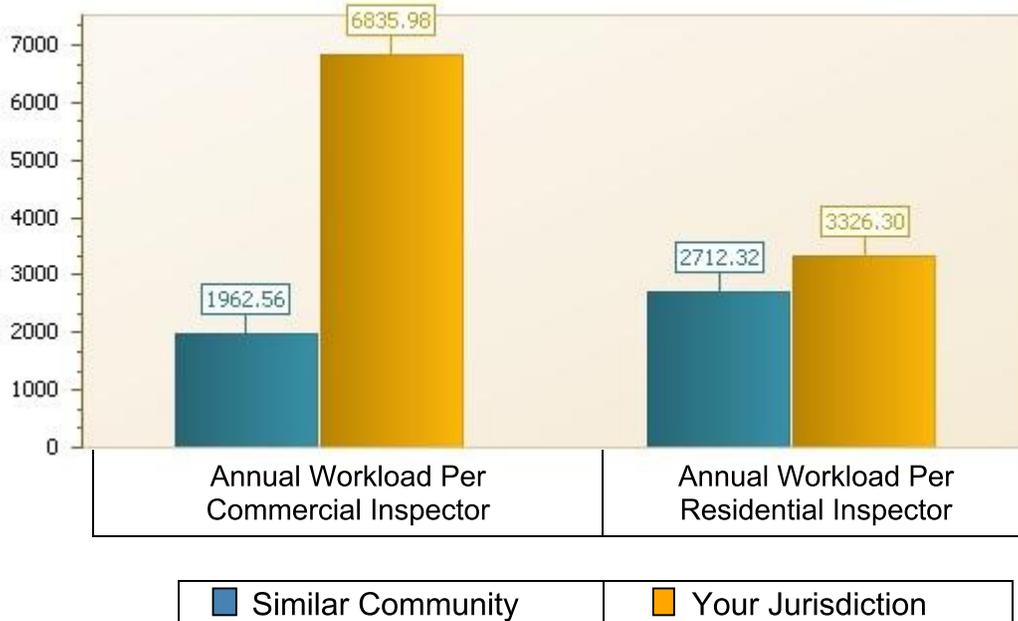
**Chart 5-8 Inspection Staffing Comparison of Communities Issuing Similar Number of Permits**



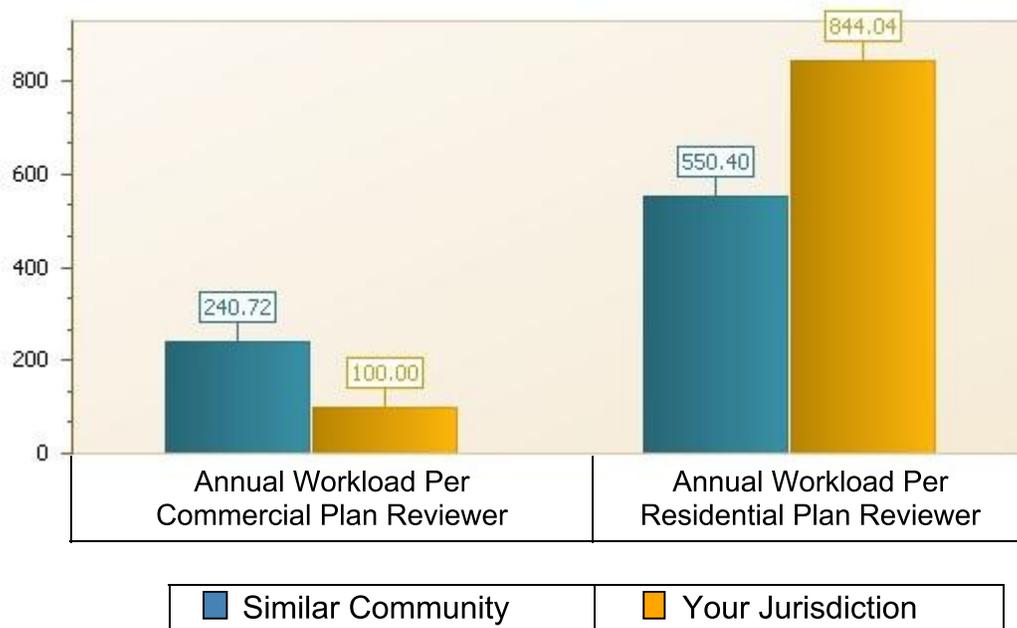
**Chart 5-9 Building Plan Review Staffing Comparison of Communities Conducting Similar Number of Inspections**



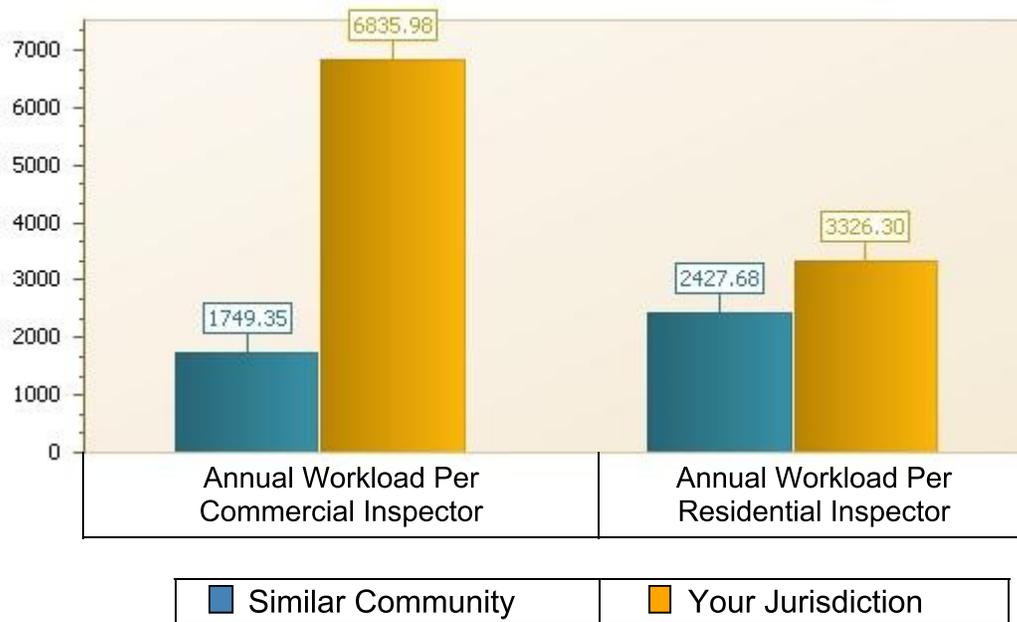
**Chart 5-10 Inspection Staffing Comparison of Communities Conducting Similar Number of Inspections**



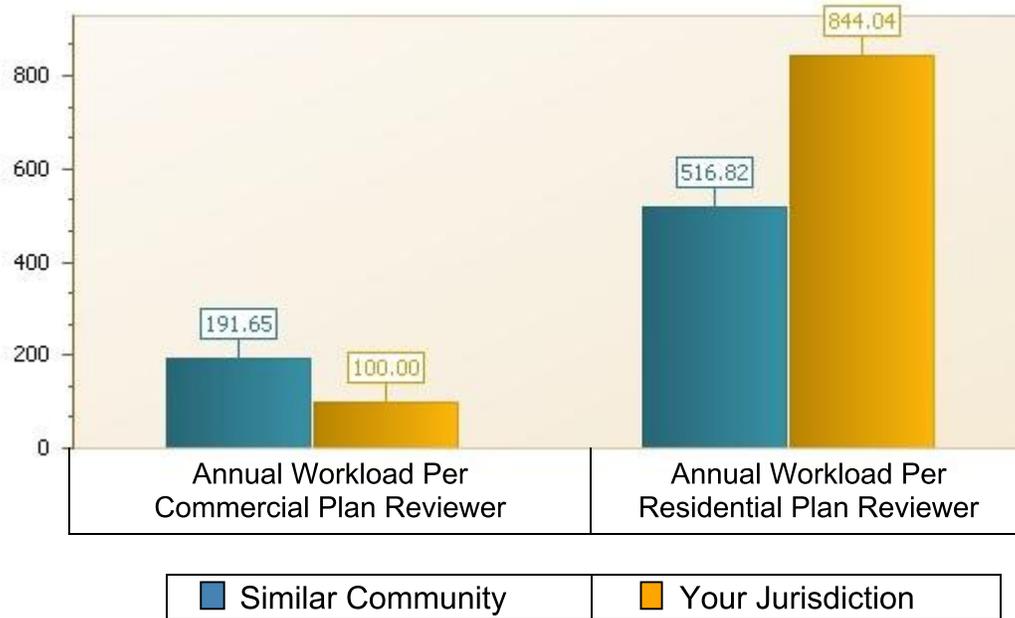
**Chart 5-11 Building Plan Review Staffing Comparison of Communities Conducting Similar Number of Plan Reviews**



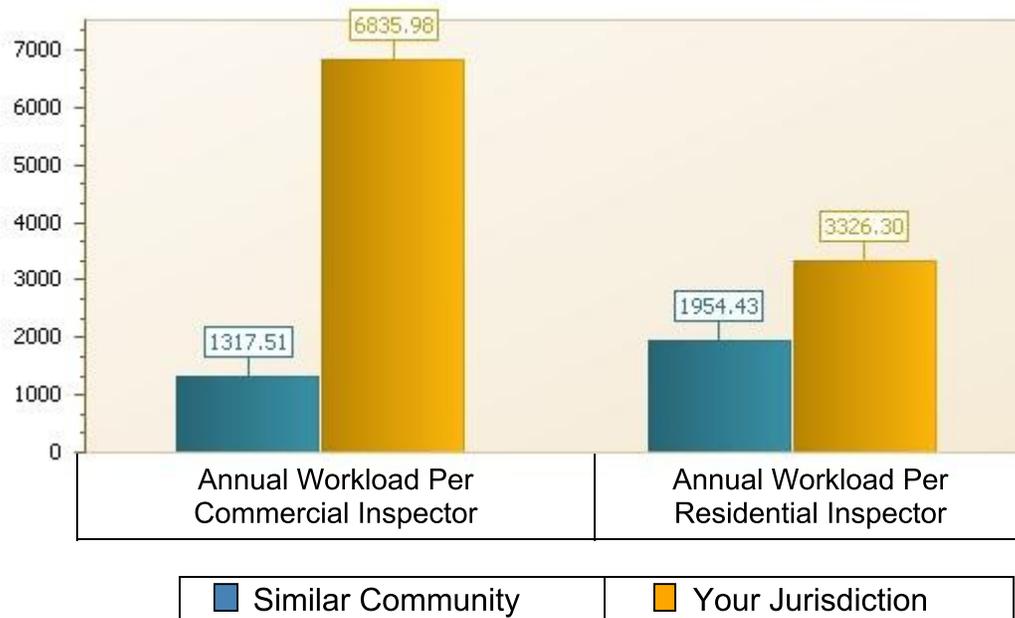
**Chart 5-12 Inspector Staffing Comparison of Communities Conducting Similar Number of Plan Reviews**



**Chart 5-13 Building Plan Review Staffing Comparison of Communities Issuing Similar Number of Permits Per Square Mile**



**Chart 5-14 Inspector Staffing Comparison of Communities Issuing Similar Number of Permits Per Square Mile**



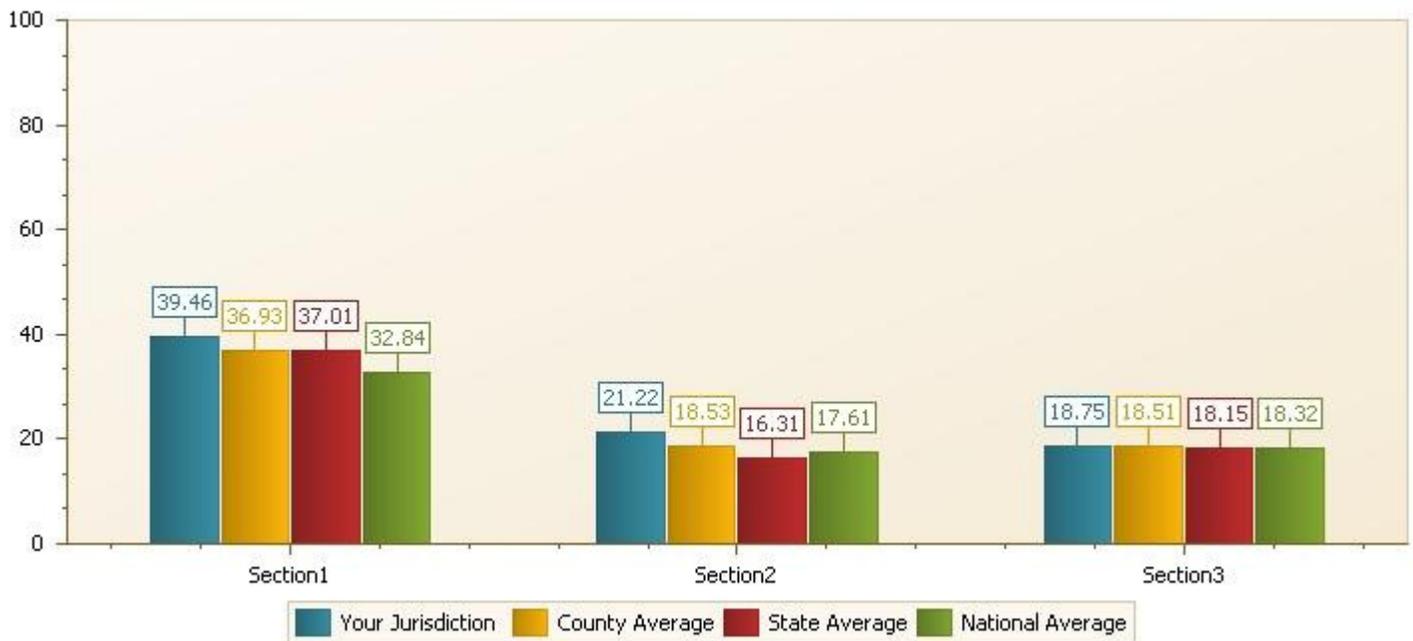
## Section 6 BCEGS Points Analysis

ISO has been surveying and evaluating building code adoption and enforcement in communities around the country since 1995. To maintain relevant information the BCEGS program is designed to conduct surveys on a 5 year cycle. The information in this section will give you some insight to trends in your jurisdiction, your state and across the country.

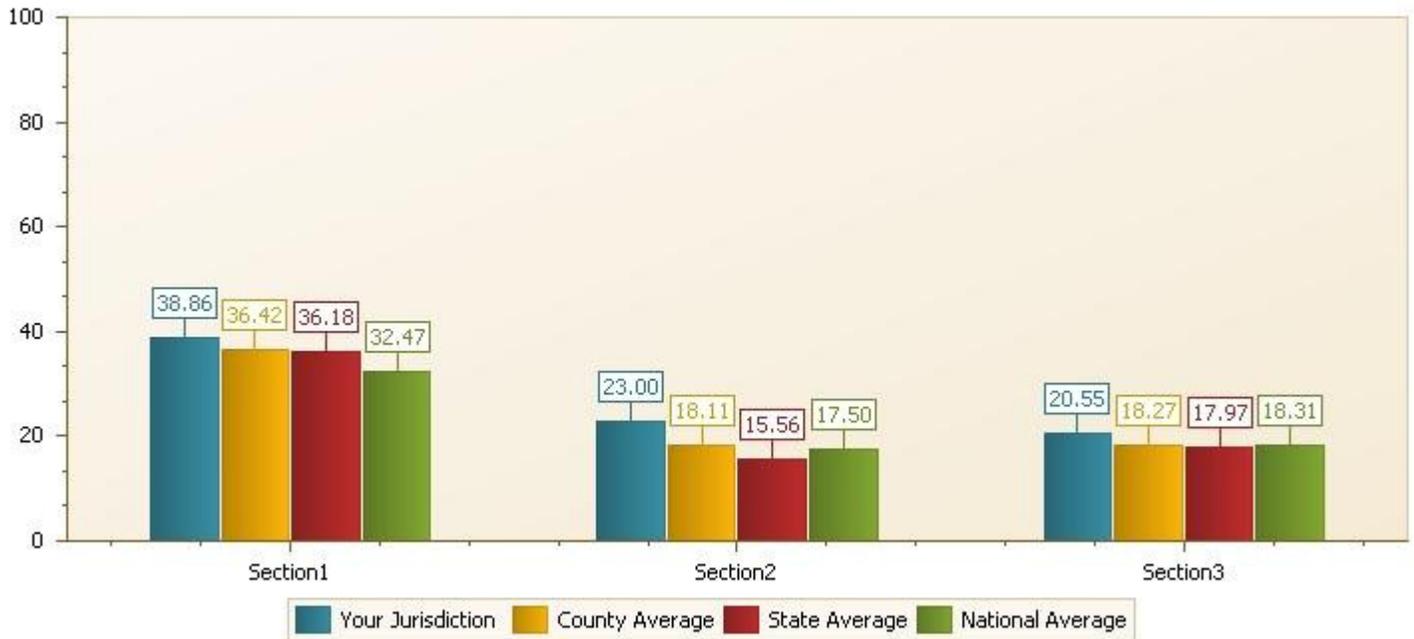
## Benchmarking Information

Charts 6-1 through 6-2 compare the points earned by your department in each Section to the points earned by other departments in your state, county, and across the country. The charts are broken down by commercial and residential. You may use Table 1 as a guide for how points are earned in each section.

### Chart 6-1 Comparison of Commercial Points Scored



### Chart 6-2 Comparison of Residential Points Scored



### Section 7 Natural Hazards

Different parts of the country are subject to a variety of potential natural hazards. The map below is an overview of those potentials:



In cooperation with AIR (an ISO company) we have prepared the following hazard report using the municipal building address you supplied during the survey meeting. A full explanation of how to read and interpret the following profiles can be found in Appendix A.



### CATASTROPHE HAZARD REPORT VERISK - MARKETING LOCATION PASSPORT

**ORDER NAME:** Nags Head, NC

**ORDER DATE:** 09/25/2019

**ORDER TIME:** 01:38:17 PM

**RESPONSE DATE:**  
09/25/2019

**RESPONSE TIME:**  
01:38:18 PM

**Location Name**

**Entered Address:** 5410 S CROATAN HWY, NAGS HEAD, NC 27959

**Catastrophe Hazard Information**

**Matched Address:** 5410 S Croatan Hwy , Nags Head, NC 27959

**Match Type:** Street Level

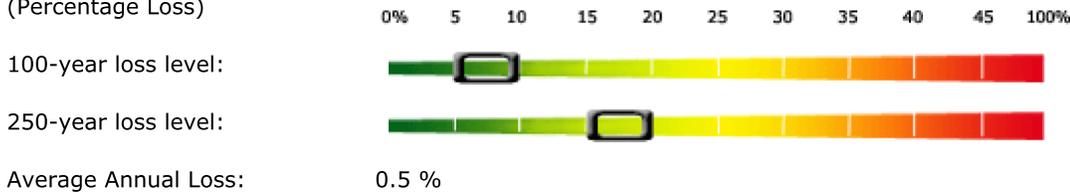
**Latitude:** 35.934346

**Longitude:** -75.612179

Hurricane Profile

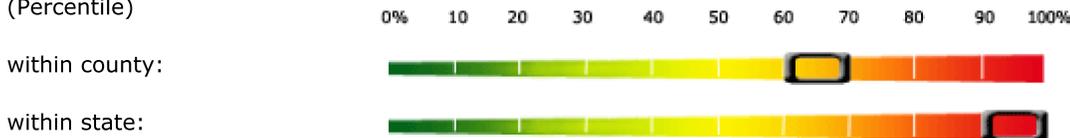
**Risk**

(Percentage Loss)



**Relative Risk**

(Percentile)



**Hurricane Information**

Storm Surge Potential: Yes

Distance to effective coast: 0 - 500 feet

Distance to actual coast: 0.1134 miles

Coastal County: Yes

Elevation: 8 - 9 feet above mean sea level

Terrain/ Land Use:

Barren Land (Rock/Sand/Clay)

**Florida Wind Loss Mitigation Profile**

Exposure Area:

Exposure Area Enhanced: Terrain C

High Velocity Wind Region:

Windspeed Region:

Windborne Debris Region:

**Historical Hurricanes**

<b>Name</b>	<b>Date of Landfall</b>	<b>Intensity at Landfall (Saffir - Simpson)</b>	<b>Distance of Track to Property (mi)</b>	<b>Intensity Closest to Property (Saffir - Simpson)</b>
Gloria	September 27, 1985	4	14	4
Unnamed	September 14, 1944	3	25	3
Bob	August 19, 1991	3	46	3
Edna	September 11, 1954	3	59	3
Emily	August 31, 1993	3	46	3

Thunderstorm Profile

**Risk**

(Percentage Loss)

100-year loss level:

250-year loss level:

Average Annual Loss:



<0.1 %

**Relative Risk**

(Percentile)

within county:

within state:



**Hazard Information**

Tornado:

Very High/ High/ Moderate/ **Low**/ Very Low

Hail Storm:

Very High/ High/ Moderate/ **Low**/ Very Low

Straight-line Wind:

Very High/ High/ **Moderate**/ Low/ Very Low

**Nearest Historical Tornadoes**

Date	Distance (mi)	Intensity (Fujita Scale)
September 17, 1952	1.28	3
November 23, 1992	43.99	3
October 4, 1964	27.40	2
July 16, 1967	41.40	2
July 14, 1963	42.69	2

**Nearest Historical Hail Storms**

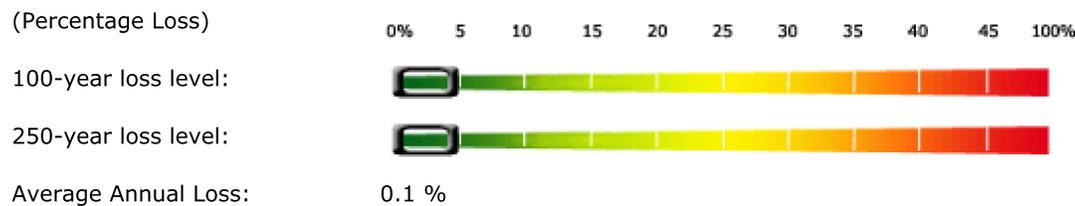
Date	Distance (mi)	Intensity by Average Hail Size (in)
June 13, 1998	44.31	2.0-3.0
June 15, 1998	37.64	2.0-3.0
August 1, 1980	7.28	1.3-2.0
June 22, 1990	17.48	1.3-2.0
June 3, 1978	40.07	1.3-2.0

**Nearest Historical Straight - Line Wind Storms**

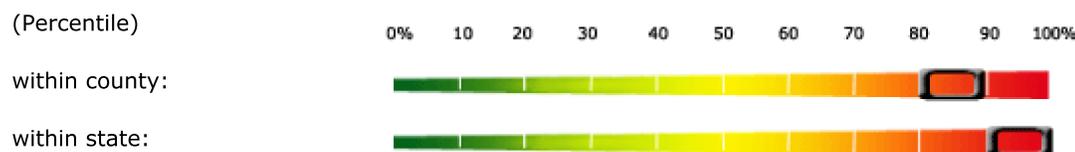
Date	Distance (mi)	Intensity by Average Wind Speed (mph)
March 8, 2005	32.15	90-100
April 11, 1999	5.01	80-90
July 12, 1976	4.01	80-90
June 3, 1978	40.07	80-90
May 24, 1988	35.69	70-80

Winterstorm Profile

**Risk**



**Relative Risk**



**Hazard Information**

Wind Frequency: Very High/ High/ Moderate/ **Low**/ Very Low

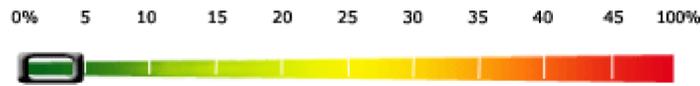
Snow Frequency: Very High/ High/ Moderate/ Low/ **Very Low**

Earthquake Profile

**Risk**

(Percentage Loss)

100-year loss level:



250-year loss level:

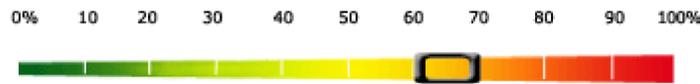


Average Annual Loss: <0.1 %

**Relative Risk**

(Percentile)

within county:



within state:



**Earthquake Information**

CA DOI Zone: Not Applicable

Liquefaction Potential:

Landslide Zone:

Alquist - Priolo Fault Zone: Not Applicable

Soil Type: Stiff clay and Sandy soil(firm soil)

Intensity by Probability of Exceedance (PE):

Modified Mercalli Intensity:	VI	VII	VIII	IX	X	XI	XII
30 Year PE	0.17 %	0.09 %	0.03 %	0.00 %	0.00 %	0.00 %	0.00 %

Intensity by Return Period:

Return Period	100 Year	200 Year	250 Year	475 Year
Modified Mercalli Intensity:	3.0	3.0	3.0	3.0

**Fault Information**

No significant active fault has been mapped within a 200 mile radius of the address.

**Historical Earthquakes**

No significant historical earthquake has been recorded within a 200 mile radius of the address.

Flood Profile

**Flood Information**

Source: DFIRM  
Flood Zone: 500-Year Flood Zone  
FEMA Flood Zone: X500 Flood Zone  
Elevation: 8 - 9 feet above mean sea level

Shortest Distance to:

Water Body: More than 5 miles  
100 Year Flood Plain: 0.03 miles  
500 Year Flood Plain: More than 5 miles

## Appendix A - Natural Hazard General Information

*AIRProfiler* is designed to provide users with vital, peril-specific characteristics of the property location, such as storm surge potential and distance to nearest active fault, as well as risk scores, which are quick measures of the risk and relative risk associated with the property.

This release of *AIRProfiler* includes hurricane profiles for all states in the continental U.S. at risk from hurricanes, as well as earthquake, severe thunderstorm and flood profiles for the forty-eight contiguous states.

- The Address Profile displays important information regarding the accuracy of the look-up for the entered address, the geocode of that address and a street map. The Hurricane Profile provides hurricane risk information for the location as well as other related hazards including storm surge potential and distance to nearest historical hurricane track.
- The Earthquake Profile, in addition to showing risk level and ranking, shows susceptibility of the location to different hazards. Those hazards include liquefaction, landslide potential, and fault zone information.
- The Flood Profile provides the proximity of a location to one of five flood zone categories as well as the location's distance to various flood plain boundaries based on FEMA Digital Q3 flood data.
- The Severe Thunderstorm Profile provides information about risk from tornado, hail, and straight-line windstorms for a given location, including distance to nearest historical storms and annual frequency.

Based on the address information provided, *AIRProfiler*® displays the corrected and standardized address following USPS® rules and guidelines, as well as the geocode (latitude and longitude), county, and ZIP Code of the location. *AIRProfiler*® performs a look-up in the LOCATION™ database. The hazard is then assessed based on an exact address or ZIP Code match.

AIR's geocoding algorithm, based on the TIGER® geographical database, is used to convert the location address entered by the user into the corresponding latitude and longitude. Depending on the address match, either the exact geocode, or the geocode of the appropriate ZIP Code centroid, is used for assessing the risk.

- The Address Profile also provides a street map of the location.

Given a location, the loss potential from specific perils is represented by various risk scores. Risk scores are determined by performing a loss analysis on a typical residential building at that location. The analysis is performed using AIR's state-of-the-art modeling technologies. Note that content and time element (loss of use) calculations are excluded from the analysis. Based on this analysis of the location, AIRProfilier® provides two sets of scores:

**Risk Scores.** The user can obtain indications of risk based on three measures of potential loss: the 100-year loss level, the 250-year loss level, and the average annual loss. These levels represent, respectively, the loss likely to occur in one year out of every 100 years, one in every 250 years, and every year on average over a period of many years. The resulting risk scores are expressed in percentage terms, as below:

Low Risk		Moderate Risk				High Risk			Very High Risk
<5%	5-10%	10-15%	15-20%	20-25%	25-30%	30-35%	35-40%	40-45%	>45%

**Relative Risk Scores.** In addition to the risk score of a given location, AIRProfilier® also displays the location's relative risk by county and state. Relative risk ranks the loss potential of a location with respect to the loss potential of other locations in the county or state. The format of the ranking is based on percentile values from 10% to 100% percent.

The AIRProfilier® Hurricane Profile provides users with information about the hurricane risk potential for a specific location. Risk scores for 100-year, 250-year and annual average losses, as well as relative risk ranking within county and state, are displayed. The profile also displays the following hurricane risk information:

- Storm surge potential
- Distance to coast
- Elevation
- Terrain/Land use
- Intensity and nearest distance to historical storm track for nearest historical hurricanes

In addition to strong winds and tides, storm surge can pose significant danger to life and property during hurricanes. Storm surge is caused by winds pushing water toward the shore. When combined with high tide, storm surge can cause an increase in the mean water level and so result in severe flooding and substantial property loss. The densely populated Atlantic and Gulf coastlines that lie less than ten feet above mean sea level are particularly vulnerable to storm surge.

The AIRProfilier® Hurricane Report indicates whether or not the property is at risk from storm surge.

The AIR*Profiler*® Earthquake Profile provides users with information about the earthquake risk potential for specific location. Risk scores for 100-year, 250-year and average annual losses, as well as relative risk ranking within county and state, are displayed. The profile also displays the following risk information:

- The California Department of Insurance (DOI) zone
- Liquefaction potential
- Landslide zone
- Earthquake fault (Alquist-Priolo) zone
- Soil type
- Seismicity
- Fault information
- Historical earthquakes

When seismic waves pass through water-saturated, loosely packed sandy soils, contact pressure between the individual grains is lost. The grains become more densely configured, causing pore pressure to increase. If drainage is inadequate, what was once solid ground now behaves as a dense fluid, incapable of supporting buildings. Structures that may have survived the effects of shaking can deform, tilt or sink. They may remain structurally intact, but have become unusable and unsalvageable.

Liquefaction risk at a given site is represented by that site's potential to experience damage resulting from liquefaction. Liquefaction potential is a measure of a soil's susceptibility to liquefaction combined with a location's level of earthquake risk. AIR applies standard methodologies used by the Division of Mines and Geology (DMG), United States Geological Survey (USGS), to calculate liquefaction potential. The AIR*Profiler*® Earthquake Profile describes a location's liquefaction potential by one of five levels: very high, high, moderate, low, or very low.

The underlying soil type may have a determining effect on potential earthquake damage to structures. Certain types of soils, such as soft soils, are capable of amplifying seismic waves, hence causing more severe damage. Also, some types of soil, such as bay mud, sandy soil, and stiff to soft soil, are also more susceptible to liquefaction. Soil is classified according to its mechanical properties.

The AIR*Profiler*® Earthquake Profile for a particular location uses ten soil type classifications:

- Hard rock
- Rock
- Very dense soil
- Stiff soil
- Soft soil
- Rock to very dense soil
- Very dense to stiff soil
- Stiff to soft soil
- Bay mud Water

One measure of earthquake intensity is the level of ground shaking at any particular location. Over the years, several intensity scales have been proposed, but the Modified Mercalli Intensity (MMI) scale is the most commonly used, especially in the United States. The MMI scale describes the intensity of an earthquake based on human reaction and observed damage to natural and man-made structures. This is useful because it allows for an attribution of intensity to events that occurred prior to the advent of modern measuring devices, as well as in instances in modern times where those devices were not available. The drawback to this standard of measure is that the MMI scale is highly subjective. The following table lists the MMI scales and definitions.

MMI	Definition
I.	People do not feel any movement.
II.	A few people might notice movement if they are at rest and/or on the upper floors of tall buildings.
III.	Many people indoors feel movement. Hanging objects swing back and forth. People outdoors might not realize that an earthquake is occurring.
IV.	Most people indoors feel movement. Hanging objects swing. Dishes, windows and doors rattle. The earthquake feels like a heavy truck hitting the walls. A few people outdoors may feel movement. Parked cars rock.
V.	Almost everyone feels movement. Sleeping people are awakened. Doors swing open or close. Dishes are broken. Pictures on the wall move. Small objects move or are turned over. Trees might shake. Liquids might spill out of open containers.
VI.	Everyone feels movement. People have trouble walking. Objects fall from shelves. Pictures fall off walls. Furniture moves. Plaster in walls might crack. Trees and bushes shake. Damage is slight in poorly built buildings. No structural damage.
VII.	People have difficulty standing. Drivers feel their cars shaking. Some furniture breaks. Loose bricks fall from buildings. Damage is slight to moderate in well-built buildings; considerable in poorly built buildings.
VIII.	Drivers have trouble steering. Houses that are not bolted down might shift on their foundations. Tall structures such as towers and chimneys might twist and fall. Well-built buildings suffer slight damage. Poorly built structures suffer severe damage. Tree branches break. Hillsides might crack if the ground is wet. Water levels in wells might change.
IX.	Well-built buildings suffer considerable damage. Houses that are not bolted down move off their foundations. Some underground pipes are broken. The ground cracks. Reservoirs suffer serious damage.
X.	Most buildings and their foundations are destroyed. Some bridges are destroyed. Dams are seriously damaged. Large landslides occur. Water is thrown on the banks of canals, rivers, lakes. The ground cracks in large areas. Railroad tracks are bent slightly.
XI.	Most buildings collapse. Some bridges are destroyed. Large cracks appear in the ground. Underground pipelines are destroyed. Railroad tracks are badly bent.
XII.	Almost everything is destroyed. Objects are thrown into the air. The ground moves in waves or ripples. Large amounts of rock may move.

The data presented in *AIRProfiler*® is developed by calculating MMI values for each location. It incorporates all potential seismic sources, the distance of those sources from the location of interest, and local site conditions. Because MMI is considered as a measure of what the ground is doing during an earthquake, rather than an index of damage to structures, damageability of building at the site is not included in the calculation. Those who are more interested in damage estimation should refer to 100- and 250-year loss levels.

The MMI values are represented in two ways in the Earthquake Profile:

- Intensity by PE (probability exceedance)
- Intensity by Return Period

The first representation, defined by probability of exceedance, is the probability that at least one event of that MMI will occur within 30 years. The second representation, based on return period, depicts the maximum intensity of an event that is likely to occur within the designated return period; that is, the intensity corresponds to the maximum event that is likely to occur within the return period displayed.

Proximity to an active fault is an important indication of seismicity for a specific location. The *AIRProfiler*® Earthquake Profile displays the property's distance to the nearest known active faults. Important characteristics of these faults are displayed, including fault length, and the magnitude and frequency of the "characteristic" event associated with that fault. (Scientists believe that many faults tend to produce earthquakes of a particular size, or magnitude, that is "characteristic" of that particular fault, and that occur with a particular frequency, or recurrence rate).

The AIRProfiler® Flood Profile provides users with information about the flood risk potential for a specific location. Each location is characterized by its proximity to one of five flood zone categories as follows:

- Water body: Includes large lakes and rivers
- 100-year flood plain: Areas where there is 1% chance of being flooded
- 500-year flood plain: Areas where there is 0.2% chance of being flooded
- Outside flood plain: Areas outside of water body, 100- and 500-year flood plains
- No data: Areas where there is no data available

The proximity of the location to FEMA defined flood zones is also provided:

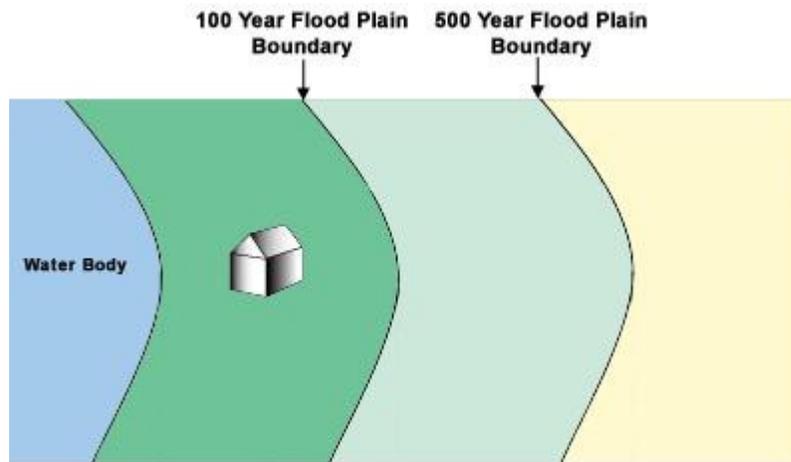
FEMA Zone	Description
V	An area inundated by 100-year flooding with velocity hazard (wave action); no BFE*s have been determined.
VE	An area inundated by 100-year flooding with velocity hazard (wave action); BFEs have been determined.
A	An area inundated by 100-year flooding, for which no BFEs have been determined.
AE	An area inundated by 100-year flooding, for which BFEs have been determined.
AO	An area inundated by 100-year flooding (usually sheet flow on sloping terrain), for which average depths have been determined; flood depths range from 1 to 3 feet.
AOVEL	An alluvial fan inundated by 100-year flooding (usually sheet flow on sloping terrain), for which average flood depths and velocities have been determined; flood depths range from 1 to 3 feet.
AH	An area inundated by 100-year flooding (usually an area of ponding), for which BFEs have been determined; flood depths range from 1 to 3 feet.
A99	An area inundated by 100-year flooding, for which no BFEs have been determined. This is an area to be protected from the 100-year flood by a Federal flood protection system under construction.
D	An area of undetermined but possible flood hazards.
AR	An area inundated by flooding, for which BFEs or average depths have been determined. This is an area that was previously, and will again, be protected from the 100-year flood by a Federal flood protection system whose restoration is federally funded and underway.
X500	An area inundated by 500-year flooding; an area inundated by 100-year flooding with average depths of less than 1 foot or with drainage areas less than 1 square mile; or an area protected by levees from 100-year flooding.
X	An area that is determined to be outside the 100- and 500-year floodplains.
100IC	An area where the 100-year flooding is contained within the channel banks and the channel is too narrow to show to scale. An arbitrary channel width of 3 meters is shown. BFEs are not shown in this area, although they may be reflected on the corresponding profile.

500IC	An area where the 500-year flooding is contained within the channel banks and the channel is too narrow to show to scale. An arbitrary channel width of 3 meters is shown.
FWIC	An area where the floodway is contained within the channel banks and the channel is too narrow to show to scale. An arbitrary channel width of 3 meters is shown. BFEs are not shown in this area, although they may be reflected on the corresponding profile.
FPQ	An area designated as a "Flood Prone Area" on a map prepared by USGS and the Federal Insurance Administration. This area has been delineated based on available information on past floods. This is an area inundated by 100-year flooding for which no BFEs have been determined.
IN	An area designated as within a "Special Flood Hazard Area" (or SFHA) on a FIRM. This is an area inundated by 100-year flooding for which BFEs or velocity may have been determined. No distinctions are made between the different flood hazard zones that may be included within the SFHA. These may include Zones A, AE, AO, AH, A99, AR, V, or VE.
OUT	An area designated as outside a "Special Flood Hazard Area"(or SFHA) on a FIRM. This is an area inundated by 500-year flooding; an area inundated by 100-year flooding with average depths of less than 1 foot or with drainage areas less than 1 square mile; an area protected by levees from 100-year flooding; or an area that is determined to be outside the 100- and 500-year floodplains. No distinctions are made between these different conditions. These may include both shaded and unshaded areas of Zone X.
ANI	An area that is located within a community or county that is not mapped on any published FIRM.
UNDES	A body of open water, such as a pond, lake, ocean, etc., located within a community's jurisdictional limits, that has no defined flood hazard.
*BFE = Base Flood Elevation	

The Flood Profile provides the shortest distance of the location to the various flood plain boundaries. Three types of distance measurement is provided:

- Shortest distance to the boundary of water body
- Shortest distance to the boundary of 100-year flood plain
- Shortest distance to the boundary of 500-year flood plain

The following map illustrates the way distance from flood plain boundaries are calculated:



The AIRProfiler® Severe Thunderstorm Profile provides users with information about the severe thunderstorm risk potential for a specific location. The Severe Thunderstorm Profile includes risks due to tornado, hail, and straight-line wind. Risk scores for 100-year, 250-year and annual average losses, as well as relative risk ranking within county and state, are displayed. The profile also displays the following risk information:

### Annual Frequency

This field represents the annual frequency of occurrence for tornado, hail, and straight-line windstorms. A qualitative description of the frequency (very high, high, moderate, low, or very low) is displayed.

### Historical Severe Thunderstorms

In this section of the Severe Thunderstorm Profile, AIRProfiler® identifies information on the five most severe tornado, hail, and straight-line wind events within 50 miles of the given location. The following characteristics are displayed: year, date, distance from location, and intensity. The description of intensity varies by peril. For tornadoes, the Fujita scale is used. The intensity of hailstorms is measured by average hailstone size and the intensity of straight-line windstorms is derived from a measurement of maximum wind speed.

---

©2005 AIR Worldwide Corporation. All rights reserved.  
No portion of this publication may be reproduced in whole or in part on any medium without the express written permission of AIR Worldwide Corporation.  
Send questions or comments about this web site to [airprofiler@air-worldwide.com](mailto:airprofiler@air-worldwide.com)  
Version 2.2.1.20040326  
AIR Worldwide Corporation Privacy Policy | Conditions of Use (6)

A description of the listed hazards follows:

- A. **Brush and Forest Fires:** Areas with heavy vegetation and a dry season can be subject to forest and brush fires. Local building and zoning regulations address this hazard in some areas of the country. Buffer zones which are free from brush and other fuel sources, as well as the use of fire resistive exterior siding and roofing can be utilized to mitigate this hazard.
- B. **Earthquake:** Earthquakes are caused by a tension release from the earth's tectonic plates that causes the ground to shake or vibrate. Most casualties associated with earthquakes are caused by structural failures in buildings and fires caused from electrical shorts and gas leaks. All of the model codes have seismic zones where buildings should be constructed to withstand at least a moderate earthquake. The codes are currently geared towards avoiding a structural collapse. This is a life safety issue and a building can still sustain enough physical damage to render it unusable after the earthquake occurs. Since 1900 earthquakes have occurred in 39 states and caused damage in all 50.
- C. **Floods:** Floods are one of the most common disasters in the United States, and cause damage to thousands of structures annually. Floodplain construction is addressed in most building codes and many zoning regulations. Flood mitigation is addressed through the National Flood Insurance Program which provides insurance credit incentives for complying with FEMA regulations. Flood as a hazard falls outside the scope of the BCEGS program.
- D. **Hail:** Consists of icy pellets of various sizes that are usually associated with thunderstorms or tornadic activity. Large hail can cause substantial damage to roof surfaces. In a typical year the insurance industry pays out \$1.5 billion in hail damage claims. In rare cases hail has caused structural damage and building collapses. Building codes usually do not address potential damage from hail.
- E. **High Winds:** High strait line winds can occur anywhere in the United States and are caused by pressure and temperature variances in the Earth's atmosphere. High strait line winds are common in thunder storms, in the open plains where there are no obstructions to slow down the wind, in mountainous areas from upslope and downslope wind effects, on the East Coast from "Northeasters", and on the Pacific Coast from Santa Anna winds. Model Code groups have formulated maps based on 50 year mean recurrence intervals. The model codes currently apply the concept of "fastest wind speed" which is determined by an anemometer 33 ft. above the ground in open terrain. The anemometer measures the time it takes for one mile of air to pass its location. Wind maps are not based on potential maximum wind gust, but on "fastest wind speed," which has created confusion in media coverage of storms.
- F. **Hurricane:** This is a tropical low pressure system with a circular wind rotation of 74 mph or greater usually accompanied by rain, lightning, and sometimes tornadoes. These storms have the ability to travel inland for hundreds of miles, maintaining hurricane force winds.

- G. The Saffir-Simpson scale is used to rate the strength of a hurricane from 1 to 5 with 5 being the most severe. The Saffir-Simpson scale uses wind speed and storm surge to rate the hurricane's strength and potential for devastation. Model codes have addressed the probability of hurricanes by creating wind zones that range from 110 mph on barrier islands to 70mph inland. Structures must be designed and built to compensate for the potential additional stress placed on structures by the wind in these zones. The structural designs must take into account both Positive and Negative Wind Loads. Roof systems must be anchored to the wall systems to resist the wind loads. The wall systems must also be strapped or bolted to the foundation and footing system to create a continuous resistive system. Building codes also address the potential storm surge for coastal construction, by requiring structures to be elevated on pilings.
- H. **Landslide/mudflow/debris flow:** This hazard is more common in, but not limited to mountainous areas. Earthquakes and heavy rains cause landslides. Mudflows and debris flows can be caused by heavy rains as well as volcanic eruptions in areas with snow and ice present. This is usually a localized occurrence, and is more of a zoning than a building code issue.
- I. **Lightning:** All states are subject to lightning in varying degrees. Lightning rods can be installed on structures in high probability areas, but most building codes do not address when lightning rods are required. In a typical year the insurance industry pays out over \$1 billion in residential lightning damage claims.
- J. **Snow Loads:** This is a concern in snow belt areas in northern states and in mountainous areas. There are snow load maps created by the model code groups that address this situation. Some areas require a minimum roof pitch and higher design factors to compensate for the additional weight imposed on roofs by snow.
- K. **Soil Liquefaction:** This is a seismic concern. There are some soil types which, in the presence of a high enough water table, will take on the physical properties of a liquid when shaken by an earthquake. Buildings constructed in areas subject to liquefaction need to be designed to reduce or eliminate the possibility of uneven settling or tilting during an earthquake.
- L. **Soil Subsidence:** This is the shrinking or settling of soil due to its composition. Some soils compact or or shrink excessively and this could cause foundation failure if not compensated for by foundation reinforcement. Some areas are subject to sink holes. These are typically caused by lime deposits being dissolved by underground water.
- M. **Swelling Soils:** This is common in clay based soils that do not drain well and needs to be compensated for by foundation reinforcement. Footings or foundations placed on or within expansive soils need to be designed to resist differential volume changes to prevent structural damage to the supported structure. As an alternative to special design the soil can be removed and replaced or stabilized.

- N. **Tornado:** Tornadoes are formed from mesocyclones or supercell thunderstorms. Tornadoes can strike in many places in the United States, but the greatest probability of tornadic activity is in a corridor from Texas to Wisconsin known as tornado alley. They occur usually in the spring or fall of the year during the late afternoon when the atmosphere is least stable. Tornadoes are measured by the Fujita Scale (F-SCALE), which measures the wind speed and damage potential. The scale ranges from F0 to F5 with F5 being the most severe storm. Damages from a direct hit by the strongest tornadoes cannot be mitigated, but the collateral damages that occur in surrounding areas can be reduced. The wind provisions of the model codes can help to limit damages from the most common, weaker tornadoes.
- O. **Tsunamis:** (tidal wave) These are large sea waves usually caused by earthquakes or volcanic eruptions, and are most common in the Pacific Ocean. The potential devastation of a Tsunami is enormous, but little is being done to mitigate this hazard. Several Pacific Coast States have enacted zoning regulations to prevent schools and hospitals from being built in low areas subject to tsunamis.
- P. **Volcanoes:** There are numerous dormant and active volcanoes in the Western United States, and the potential danger is catastrophic near these volcanoes. Collateral damage could occur for hundreds of miles. Building codes can do little to address this danger, but some areas require additional roof structure design to compensate for volcanic ash load. Zoning restrictions are a more viable means of mitigation.



## Agenda Item Summary Sheet

Item No: **G-2**  
Meeting Date: **May 6, 2020**

**Item Title:** From April 15<sup>th</sup> Board meeting – Discussion of 2020 Fireworks

**Item Summary:**

At the April 15<sup>th</sup> Board of Commissioners meeting, the Board considered the fireworks display for 2020. It was suggested at that time that due to the COVID-19 pandemic and to discourage mass gatherings, that fireworks for 2020 not be provided. This agenda item is provided for further discussion concerning holding a fireworks display this year.

Number of Attachments: 0

**Specific Action Requested:**

Provided for Board discussion.

Submitted By: Administration Date: April 28, 2020

**Finance Officer Comment:**

The Town will be able to cancel the contract and will need to notify the Visitors Bureau regarding grant award funding. Contract cost of \$25,000 is split in half between the Town and the Visitors Bureau grant. The Board's decision will be reflected in the fiscal year 2020-2021 Manager's Recommended Budget.

Signature: Amy Miller Date: April 28, 2020

**Town Attorney Comment:**

N/A

Signature: John Leidy Date: April 28, 2020

**Town Manager Comment and/or Recommendation:**

As requested by the Board, this item is provided for discussion of this year's fireworks display.

Signature: Cliff Ogburn  Date: April 28, 2020



## Agenda Item Summary Sheet

Item No: **G-3**  
Meeting Date: **May 6, 2020**

**Item Title:** From April 15<sup>th</sup> Board meeting – Discussion of status of recycling program

**Item Summary:**

Town Manager Ogburn and staff will provide an update of the Town's recycling program and present plans for discussion at the May 6<sup>th</sup> Board of Commissioners meeting.

Attached memo from Town Manager Ogburn provides additional details.

Number of Attachments: 1

---

**Specific Action Requested:**

Provided for Board discussion.

Submitted By: Administration

Date: April 28, 2020

---

**Finance Officer Comment:**

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

Provide for Board review and discussion.

Signature: Cliff Ogburn

A handwritten signature in black ink, appearing to read "Cliff Ogburn".

Date: April 28, 2020



**Ben Cahoon**  
Mayor

**Michael Siers**  
Mayor Pro Tem

**Cliff Ogburn**  
Town Manager

**Town of Nags Head**  
Post Office Box 99  
Nags Head, North Carolina 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

**M. Renée Cahoon**  
Commissioner

**J. Webb Fuller**  
Commissioner

**Kevin Brinkley**  
Commissioner

## MEMORANDUM

To: Board of Commissioners

From: Cliff Ogburn, Town Manager

Date: April 29, 2020

Re: Discussion of status of recycling program

At your May 6 meeting, I will ask the Board to render a decision on the town's recycling program. As the Board is aware, the town amended its contract with Bay Disposal earlier this year to allow for the incineration of recycling materials. This resulted from the changes to the recycling market and the substantial increases in costs to process recycling materials. At your April 15 meeting, I shared that the NC State Department of Environmental Quality has found a processing facility with reasonable costs that could serve northeastern North Carolina communities. Details about this continue to evolve. Since our last meeting, we have been offered a combination of pricing from the new processing facility, RDS of Portsmouth, VA, and Bay Disposal which is equivalent to the pricing of our current contract. This would allow us to continue with our current program as is. I have included a brief pricing analysis in the sidebar on the following page. I have concerns about the RDS contract since it includes penalties for contaminated loads which would create uncertainty as to how this would increase our costs. Additionally, RDS would like us to execute a five-year contract, which I would not recommend, primarily since our current hauling contract expires in 2022. I believe the town would need to align these contract terms and our preference would be to contract with one vendor for these services.

On Monday, May 4<sup>th</sup>, Bay Disposal is meeting with RDS to discuss a contract between the two entities. The goal of this discussion would be to provide Bay Disposal with terms that would allow the town to contract solely with them for recycling hauling and processing. We think this would eliminate the concerns about the misalignment of contract timelines as well as surcharges for contaminated loads. My intent is to provide the Board with these additional details as soon as they are available in advance of the meeting.

If Bay is successful in negotiating this contract the Board will need to determine if it wishes to continue recycling at the same price or suspend the program to realize a cost savings.

**Option A – Recycle w/ Bay and RDS**

Recycling Processing with RDS = \$57 per ton  
Approximately 902 tons @ \$57 = \$51,414  
Hauling w/ Bay Disposal = \$162,810  
Additional Bay hauling charge per ton = \$23  
Approximately 902 tons @ \$23 per ton = \$20,746  
**Total cost for both contracts = \$234,970**  
(\$51,414 + \$162,810 + \$20,746)  
*(\*Does not include any charges for contaminated loads; this could add an additional \$121 per contaminated ton)*

**Option B –Current contract w/ Incineration**

Previous contract pricing:  
Hauling = \$195,000 (includes processing of materials collected by Bay Disposal)  
Processing for materials delivered by town forces = \$70 per ton; 579 tons at 70 per ton = \$40,530  
**Total cost for current contract = \$235,530**  
(\$195,000 + \$40,530)

**Option C – Eliminate Recycling**

Bay contract price for hauling and processing of materials collected by Bay Disposal = \$195,000  
Bay collects approximately 323 tons which are included in their price; 323 tons diverted to Dare County @ \$76 per ton = \$24,548  
579 tons collected by the town @ \$70 per ton would increase to \$76 per ton = \$3,420  
**Total savings over current costs = \$167,032**  
(\$195,000 - \$24,548 - \$3,420)

If the Board chooses to suspend the program to realize a cost savings, all material would be diverted to the Dare County Transfer Station @ \$76 per ton. Several adjustments to our program need to be considered with this option. This would include any schedule changes and how we would treat the existing blue recycling carts. Our initial thought is that we will treat the blue carts as trash carts. If the schedule is not changed, we would be collecting trash two days in a row on the red and green routes, since the blue recycling carts are collected one day after the green trash carts.

Staff feels as though the best option regarding the schedule would include very limited changes to avoid confusion so close to the season. Staff recognizes the inefficiency of collections two days in a row on these routes; we believe we have the capacity to collect both green and blue carts on the same day however this would create a change to the schedule on two of our routes. The Board would need to determine if it is better to leave things the way they are this summer in order to maintain continuity, or to eliminate a day of back to back service. If we decide it is better to eliminate the back to back collection, we would recommend collecting both carts on Tuesday on the red and green routes. We recognize that now the green route would essentially receive one day of trash service, however they would have additional cart capacity since the recycling carts would be used for trash. I think the Board and

staff believe that a suspension of this service would be temporary due to the current economic circumstances, and that our program could be reinitiated at some point in the future.



## Agenda Item Summary Sheet

Item No: **H-1**  
Meeting Date: **May 6, 2020**

**Item Title:** Committee Reports

**Item Summary:**

At the May 6<sup>th</sup> Board of Commissioners meeting, Board members will provide reports from meetings they have attended on behalf of the Town.

Number of Attachments: 0

---

**Specific Action Requested:**

Provided for Board update.

Submitted By: Administration

Date: April 28, 2020

---

**Finance Officer Comment:**

No unbudgeted fiscal impact.

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

N/A

Signature: Cliff Ogburn

Date: April 28, 2020



## Agenda Item Summary Sheet

Item No: **H-2**  
Meeting Date: **May 6, 2020**

**Item Title:** Consideration of Board/Committee appointments/reappointments

**Item Summary:** At the May 6<sup>th</sup> Board of Commissioners meeting, request appointments/reappointments be made to the following:

<u>Planning Board</u>	David Elder – term expires 5/3/20
<u>Board of Adjustment</u>	Don Milbrath (ALT) – term expires 6/7/20
<u>Personnel Grievance Panel</u>	Jean Flanigan (ALT) – term expires 6/7/20
<u>Firemen’s Relief Fund Board</u>	Annette Ratzenberger – term expires 6/20
<u>Firemen’s Relief Fund Board</u>	Rose Lay – term expires 5/20

All have indicated their interest in being reappointed.

Attached please find the Candidate Charts of those interested in serving on the Planning Board and Board of Adjustment. Also attached are tracking charts with current rosters for each.

Number of Attachments: 6

---

**Specific Action Requested:**

Provided for Board appointment/reappointment.

Submitted By: Administration

Date: April 29, 2020

---

**Finance Officer Comment:**

No unbudgeted fiscal impact.

Signature: Amy Miller

Date: April 29, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 29, 2020

---

**Town Manager Comment and/or Recommendation:**

N/A

Signature: Cliff Ogburn

Date: April 29, 2020

Tracking Chart for Town of Nags Head **CURRENT** Planning Board

Meeting Date: May 6, 2020

<i>Name of Board/Committee</i>	<i>Current members</i>	<i>Contact Info</i>	<i>Last appointed date</i>	<i>Seat expires</i>	<i>Eligible for Re-appointment</i>	<i>Notes</i>
Planning Board 3 <sup>rd</sup> Tuesday at 9:00	Megan Vaughan Chair	Phone/email on file	02/07/18	02/07/21	No	
7 members Three (3) year terms	Kristi Wright Vice-Chair	Phone/email on file	01/08/20	01/08/23	No	
	David Elder	Phone/email on file	05/03/17	05/03/20	Yes	Interested in being reappointed
	Megan Lambert	Phone/email on file	11/07/18	11/07/21	No	
	Meade Gwinn	Phone/email on file	01/02/19	01/02/22	No	
	Gary Ferguson	Phone/email on file	01/08/20	01/08/23	No	
	Molly Harrison	Phone/email on file	01/08/20	01/08/23	No	

**CANDIDATES** Characteristic Chart – Planning Board

Meeting Date: May 6, 2020

Applicant Name	Bd/Comm Interested in Serving	Yrs of Residency	Location of Residency	Education	Role in Community	Attributes to offer Bd/Comm	Special Interest in Bd/Comm	Currently serving on Town Bd/Comm
Barbara Ayars (7/31/18)	Planning Bd	6 yrs.	Gallery Row	BA & Law Degree	Retired attorney	Knowledge of environmental law	Assist w/maintaining a balance between ecosystem protection and use	No
Ellen Heatwole (8/28/18)	BOA/ Planning Bd	3 yrs.	SNH	Studies for ministry	Realtor	Knowledge of small business	Interested in keeping the town a great place to live, work and play	No
Lauren Evans (11/1/18)	BOA/ Planning Bd	7 yrs	Villa Dunes	BA Hospitality Mgmt	Restaurant Server	Knowledge in event planning and art	Wants to stay connected to decisions within the town	Arts & Culture
Al Friedman (12/27/18)	BOA/ Planning Bd	2.5 yrs.	SNH	Former Engineer	Realtor	Knowledge of management skills, logistics	Interested in being active in determining the direction town is going	No
Anne Farmer (1/30/19)	BOA/ Planning Bd	7 yrs. full time	SNH	MD-Economics	Information Technology	Experience on various bds/assocs.	Interested in being part of town to ensure it thrives	No
AG (Don) Milbrath (10/16/19)	Planning Bd	5 yrs.	Beach Road	BS Bus Admin Accounting	Self-employed Manager	Experience with Planning & Zoning Committees	Interested in utilizing experience for community good	BOA - (ALT)
Jim Troutman (01/16/20)	Planning Bd	14 yrs.	Southridge	Banking	Retired Banker	Career banker w/construction experience	To assist Town & BOC w/common sense review of future development maintaining NH values	No

Tracking Chart for Town of Nags Head **CURRENT** Board of Adjustment

Meeting Date: May 6, 2020

<i>Name of Board/Committee</i>	<i>Current members</i>	<i>Contact Info</i>	<i>Last appointed date</i>	<i>Seat expires</i>	<i>Eligible for Re-appointment</i>	<i>Notes</i>
Board of Adjustment 2 <sup>nd</sup> Thursday at 9AM as necessary  5 Regular Members 4 Alternate Members	Jack Cooper, Chair	Phone/email on file	9/5/18	9/5/21	No	
	Margaret Suppler Vice-Chair	Phone/email on file	2/06/19	2/06/22	No	
	Judy Burnette	Phone/email on file	6/05/19	6/05/22	No	
	John Mascaro	Phone/email on file	03/04/20	03/04/23	No	
	Bobby Gentry	Phone/email on file	2/07/18	2/07/21	No	
	Angelina Lowe (ALT)	Phone/email on file	03/04/20	03/04/23	No	
	Don Milbrath (ALT)	Phone/email on file	06/07/17	06/07/20	Yes	Interested in being reappointed
	Tina Adderholdt (ALT)	Phone/email on file	2/21/18	2/21/21	No	
	VACANT Alternate					



**Tracking Chart for Town of Nags Head CURRENT  
Personnel Grievance Panel**

**Meeting Date: May 6, 2020**

<i>Name of Board/Committee</i>	<i>Current members</i>	<i>Contact Info</i>	<i>Last appointed date</i>	<i>Seat expires</i>	<i>Eligible for Re-appointment</i>	<i>Notes</i>
<b>Personnel Grievance Panel</b> 3 Registered Voters 3 Alternates	Perry White	Phone/email on file	03/04/20	03/04/23	No	
	Jeanne Kramer	Phone/email on file	11/04/17	11/04/20	No	
	Tina Adderholdt	Phone/email on file	09/05/18	09/05/21	No	
	Sandra Futrell (ALT)	Phone/email on file	03/04/20	03/04/23	No	
	Jean Flanigan (ALT)	Phone/email on file	06/07/17	06/07/20	Yes	Interested in being reappointed
	Vacant (ALT)					

**Town of Nags Head CURRENT  
Firemen's Relief Fund Board of Trustees**

**Meeting Date: May 6, 2020**

<i>Name of Board/Committee</i>	<i>Current members</i>	<i>Contact Info</i>	<i>Last appointed date</i>	<i>Seat expires</i>	<i>Eligible for Re-appointment</i>	<i>Notes</i>
<b>Firemen's Relief Fund Board of Trustees</b>	Robert Muller (Chair)	Phone/email on file	6/2009		N/A	Appointed by State Comr of Insurance - Serves at the pleasure of the State
	Annette Ratzenberger	Phone/email on file	6/2017	6/2020	Yes	Interested in being reappointed
	Rose Lay	Phone/email on file	5/2018	5/2020	Yes	Interested in being reappointed
	Phil Wolfe (Treasurer)	Phone/email on file	12/2020	12/2022	N/A	Appointed by Fire Dept
	Scott Hooper	Phone/email on file	12/2018	12/2020	N/A	Appointed by Fire Dept



## Agenda Item Summary Sheet

Item No: **J-1**  
Meeting Date: **May 6, 2020**

**Item Title:** Town Manager Ogburn – Update on plans for summer 2020 re: tents on the beach, lifeguards, and enforcement of social distancing on the beach

**Item Summary:**

At the May 6<sup>th</sup> Board of Commissioners meeting, Town Manager Ogburn will provide an update on plans for summer 2020 re: tents on the beach, lifeguards, and enforcing social distancing on the beach.

Attached please find Town Manager Ogburn’s memo with additional details and a proposed beach sign encouraging social distancing.

Number of Attachments: 2

---

**Specific Action Requested:**

Provided for Board discussion.

Submitted By: Administration

Date: April 28, 2020

---

**Finance Officer Comment:**

Insufficient information to determine fiscal impact.

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

Provided for Board review and discussion.

Signature: Cliff Ogburn

Date: April 28, 2020



**Ben Cahoon**  
Mayor

**Michael Siers**  
Mayor Pro Tem

**Cliff Ogburn**  
Town Manager

**Town of Nags Head**  
Post Office Box 99  
Nags Head, North Carolina 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

**M. Renée Cahoon**  
Commissioner

**J. Webb Fuller**  
Commissioner

**Kevin Brinkley**  
Commissioner

## MEMORANDUM

To: Board of Commissioners

From: Cliff Ogburn, Town Manager

Date: April 29, 2020

Re: Update on plans for summer 2020 re: tents on the beach, lifeguards, and enforcement of social distancing on the beach

---

At Commissioner Fuller's request, I will update and discuss with the Board plans for the upcoming summer (2020) to include tents on the beach, lifeguards, and enforcement of social distancing as part of relevant state and local orders.

As of May 1, 2020, the Town of Nags Head is under a State of Emergency Order with restrictions to maintain the public's health, safety, and welfare due to the impacts of COVID-19. The Governor's Executive Order No. 121, issued on March 27, 2020, prohibits gatherings of more than 10 people and requires social distancing to the extent individuals are using shared or outdoor spaces outside their residence. All individuals must keep a six-foot distance between one another unless they are part of the same family.

Dare County's Stay at Home Order, which the Town included in its most recent State of Emergency proclamation, further requires that all individuals are required to wear a mask or cloth face covering in public settings where other social distancing measures are difficult to maintain. This requirement is in place, currently, until May 22. The earliest a decision will be made regarding visitor entry into Dare County is May 8.

On April 23, 2020, NC Governor Cooper held a press conference to announce several important updates regarding the stay at home order and plans to reopen the state. First, he announced that the original stay at home order from Executive Order 121, which was set to expire on April 29th, has now been extended through Friday, May 8th. Governor Cooper also laid out a multistep plan for reopening the state in phases after May 8th, provided that certain metrics are met pertaining to the trajectory of cases, the ability to test and trace, and the availability of personal protective equipment. If and when those metrics are met, the state's reopening would impact the town's beach as follows:

### Beginning May 8 - Phase 1

- Continue to limit gatherings to no more than 10 people.
- Continue to recommend face coverings in public spaces when 6 feet of social distancing isn't possible, which is required as part of the Dare County Order.
- Encourage employers to continue teleworking policies.
- Continue rigorous restrictions on nursing homes and other congregant care settings.
- Local emergency orders with more restrictive measures may remain in place.

### At least 2-3 weeks after Phase 1 (May 22-29) - Phase 2

- Lift Stay at Home order with strong encouragement for vulnerable populations to continue staying at home to stay safe.
- Increase the number of people allowed at gatherings.

### At least 4-6 weeks after Phase 2 (June 19 – July 3) - Phase 3

- Lessen restrictions for vulnerable populations with encouragement to continue practicing physical distancing and minimizing exposure to settings where distancing isn't possible.
- Further increase the number of people allowed at gatherings.

### **Ocean Rescue Staffing for Summer 2020**

At the present time, the status of 16 of our 22 J-1 Visa Ocean Rescue staff is uncertain. The earliest date they may enter the US for employment has been moved from May 15 to June 15. Six of these guards have confirmed that they will not be able to wait until the June 15<sup>th</sup> date, seven are undecided, and nine are committed to coming at that time. Captain Motz has been able to recruit a few guards locally. At this time, it is unknown when visitors will be permitted entry into Dare County or what the beach population will be this summer. Ocean Rescue must be prepared ahead of a re-entry decision for visitors due to the need for advance training and education. Guards will be prepared for Memorial Day but with a reduction in the number of Lifeguard stands from 15-10. In addition to the guards assigned to those stands, six guards will patrol the beach via ATV, four supervisors will be split coverage on the beach and one Captain will be assigned daily, bringing the total daily staffing number to 21 guards for 11 miles of beach. This is a process that is continuously evaluated with the goal of having a highly trained and capable Ocean Rescue staff ready when the visitors are allowed reentry. Guards will train in groups of 10 or less. They will undergo daily health screenings to include temperature checks. Guards will be instructed to adhere to social distancing restrictions as much as possible.

Additionally, we will be following the suggestions made by Peter Wernicki, Medical Advisor of the USLA:

- Follow the directives of your employing agency, which should be informed by and consistent with the directives of state and local public health authorities.
- Use social distancing at work, avoiding large meetings, close training, and close proximity to others (example: one guard per stand/tower).
- Practice good personal hygiene, including regular hand washing.
- Use universal precautions when providing medical aid. Avoid mouth to mouth or mouth to mask resuscitation. Use a bag-valve-mask or positive pressure ventilator.
- Regularly clean the surfaces with which you, your fellow lifeguards, and the public come in contact.
- Avoid touching other people, including your fellow lifeguards, unless necessary.

- Consider regular temperature checks by lifeguards.
- If you feel ill, advise your supervisor.

### **Tent Monitoring and Removal**

The Public Works Facilities Maintenance Division will conduct beach monitoring & removal of unattended equipment from 5am to 7am, Monday thru Saturday, from May 23, 2020 to September 7, 2020. Ocean Rescue staff will tag tents on Sunday and Public Works will tag tents Monday to Saturday. All tagged tents will be photo documented and logged. Tagged tents will be removed by FM staff Monday through Saturday. Staff will hand out pamphlets explaining the rules and providing visitors with town staff contact info if they have any questions. If the collection crews are stopped by an owner prior to the removal of a tent, staff would leave the equipment, provide the owner with the pamphlet, and answer any questions they may have. Large umbrellas are included in the monitoring and removal process. After collection, all items are treated as trash and disposed of. No retrieval is possible.

Two trucks will be used for the process; one will run north to south beginning at Eighth Street and another will run south to north beginning at McCall Court. Facilities Maintenance will adjust the process as necessary to develop a successful and consistent program.

### **Social Distancing – Enforcement on the Beach**

While these requirements remain in effect per state and local orders, the Town's Beach Ambassador and Ocean Rescue staff will educate and inform our beach goers of the importance of gathering in groups of less than 10 individuals while maintaining a six-foot distance between parties. Obviously, enforcement will be nuanced and it is impractical to enforce distancing requirements on related or affiliated groups. Where we see the greatest potential for conflict is when someone establishes their location on the beach and another party places their equipment too close. While the town's beaches are spacious and most beachgoers are at least six feet apart, occasionally this may happen and someone may become uncomfortable and ask for assistance; most likely from our Ocean Rescue staff. Our protocol will be to ask the offending party for voluntary compliance followed by a response from the Town's Beach Ambassador or other Police staff if necessary. Our efforts will be strongly focused on compelling compliance through education and signage; not with heavy-handed enforcement. We do understand that even after the social distancing and mass gathering mandate is lifted, we may still receive calls from concerned citizens. We will play a role in mediating any disputes in order to provide a safe environment for our residents and visitors. Police staff will be training our Ocean Rescue staff in conflict resolution and de-escalation techniques to help them in these situations until LE arrive.

I am concerned that the public will expect that we strictly enforce this requirement. If visitation resumes before state and local orders are lifted, it will create practical difficulties with enforcement of these requirements. A clear effort from our staff to educate the public will hopefully show that we are making an attempt to inform the public of the social distancing requirements.

It is important to note that the town has not increased staffing levels to enforce social distancing and we will do our best to keep the beaches safe and our visitors compliant while maintaining a friendly visitor experience. We do not plan to try and limit beach populations via partial beach access closures or using any other means, as has been done in southern beach communities. If there is an inherent conflict between local and state orders, additional limitations may be something that the board should discuss.

Public beach bathhouse facilities will remain closed at this time until further guidance is received from Health Department officials regarding their safe opening.

I have attached a rendering of a potential sign for education purposes that will be placed at beach accesses and on lifeguard stands.

**THANK YOU FOR  
PRACTICING**

**SOCIAL DISTANCING**



TOWN OF  
**NAGS HEAD**



## Agenda Item Summary Sheet

Item No: **L-1**  
Meeting Date: **May 6, 2020**

**Item Title:** Mayor Ben Cahoon – Discussion of “actionable” items from Envisioning Exercise – Future of Nags Head - from the Jan 23-24, 2020 Board Retreat

**Item Summary:**

One of the topics of discussion at the January 2020 Board of Commissioners Retreat concerned envisioning the future of Nags Head.

While this item will remain as a standing agenda item, discussion will continue once the Board can resume normal meetings.

---

Number of Attachments: 0

**Specific Action Requested:**

Provided for Board discussion.

Submitted By: Administration

Date: April 28, 2020

---

**Finance Officer Comment:**

Insufficient information to determine fiscal impact.

Signature: Amy Miller

Date: April 28, 2020

---

**Town Attorney Comment:**

N/A

Signature: John Leidy

Date: April 28, 2020

---

**Town Manager Comment and/or Recommendation:**

I will participate in the discussion as necessary.

Signature: Cliff Ogburn

Date: April 28, 2020