



**DRAFT AGENDA**  
**Town of Nags Head Planning Board**  
**Nags Head Municipal Complex Board Room**  
**Tuesday, September 21, 2021; 9:00 a.m.**

- A. Call To Order
- B. Approval Of Agenda
- C. Public Comment/Audience Response
- D. Approval Of Minutes  
August 17, 2021 Planning Board Meeting.

Documents:

[AUGUST 17 2021 DRAFT MINUTES.PDF](#)

- E. Action Items
  - 1. Consideration Of A Text Amendment  
submitted Steve Pauls of Farmdog Surf School to add "Beach Recreation Equipment Rentals & Sales" as a permitted use within the C-4, Arts and Culture Zoning District.
  - 2. Consideration Of A Text Amendment  
to the Unified Development Ordinance allowing temporary accommodations for outdoor dining.
- F. Report On Board Of Commissioners Actions  
September 1, 2021

Documents:

[SEP 1 2021 BOC ACTIONS.PDF](#)

- G. Town Updates - As Requested
- H. Discussion Items
  - 1. Discuss Draft/Updated LID Manual  
and Residential Stormwater Regulations
  - 2. Discuss Electric Vehicle Action Plan

3. August 26, 2021, Director's Report

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment

**Town of Nags Head  
Planning Board  
August 17th, 2021**

The Planning Board of the Town of Nags Head met on Tuesday August 17th, 2021, in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

***Members Present***

Megan Vaughan, Kristi Wright, David Elder, Gary Ferguson, Megan Lambert, Molly Harrison

***Members Absent***

Meade Gwinn

***Others Present***

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding, Kylie Shephard, Margaux Kerr, Kate Jones

***Approval of Agenda***

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve, Kristi Wright seconded, and the motion passed unanimously.

***Public Comment/Audience Response***

None

***Approval of Minutes***

Chair Vaughan asked for a motion to approve the minutes of the July 20, 2021, meeting. David Elder moved to approve the minutes as presented, Molly Harrison seconded, and the motion passed unanimously.

***Action Items***

*Sketch Plan Review submitted by Quible & Associates, P.C. on behalf of Erik Dorn for the construction of a Cottage Court consisting of 3 dwellings and a commercial structure/use. The property is zoned C-2, General Commercial and is located at 3006 S. Virginia Dare Trail.*

Deputy Planning Director Kelly Wyatt presented an aerial of the subject property and explained that Quible & Associates had submitted a Sketch Plan Review package on behalf of Erik Dorn for the development a Cottage Court located at 3006 S. Virginia Dare Trail, formerly a go-cart track just north of Tortuga's Restaurant.

The project consists of three, 1500 square foot residential cottages with a 1,146 square foot commercial building, along with all the associated site improvements. Ms. Wyatt noted that this property is zoned C-2, General Commercial and the Cottage Court use is a permitted use via the

Special Use Permit process and subject to the standards required by Section 7.2, Supplemental Regulations, of the Unified Development Ordinance (UDO).

Pursuant to Section 4.3 of the UDO, a sketch plan review is mandatory for all new development other than one- and two-family dwellings, in cases where new construction and/or additions have a total habitable building area that is 5,000 square feet or greater. Ms. Wyatt reviewed Section 10.84.1 of the UDO which explains the purpose of the sketch plan in further detail.

Ms. Wyatt stated that the required pre-application meeting with Staff ("...to review the requirements that may apply to proposed development and methods that may be used to meet the Town's requirements.") was held on August 13, 2021.

At this time, Zoning, Town Engineer and Public Works Director have provided comments on the sketch plan package to the applicant and his engineer and architect; Staff anticipates additional comments will likely be provided by Building Inspections and the Fire Department.

Ms. Wyatt proceeded to review for the Board the comments received thus far:

### **Zoning**

1. The property seems to be comprised of two lots of record. Given that the development/use is based on the properties in combination, Staff would recommend a condition requiring the properties to be combined by recording a plat prior to the issuance of any land disturbance or building permits for the proposed use/site plan.
2. Account for the location of mechanical equipment in the site plan.
3. Per Section 8.6.4.1.1. "In Shaded X, X, or AE special flood hazard area west of NC 12 and SR 1243, 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."

No ground floor enclosures are shown, so height should be measured from the 9' LES.

4. With respect to the supplemental regulations applicable to cottage courts:

Section 7.2.2., Size and Arrangement Cottage courts, notes that one structure may be up to five thousand (5,000) square feet if it is combined with on-site management or another complementary business use. A commercial use should either be attached to one of the proposed dwellings, or a unit added into the building.

Ms. Wyatt noted that while the proposed commercial use is allowed, the currently proposed building does not have a dwelling component.

In addition, Section 7.2.3.2. states that "Individual cottages shall not contain more than 1½ stories. At least one-third of the cottage court units shall not exceed one story."

Ms. Wyatt noted that currently, all 3 of the proposed dwelling units are one and half stories. The applicants are aware that there is going to have to be at least one, one-story structure.

5. Parking for an ice cream shop is required at "one parking space per 55 square feet of customer service area, plus required parking for any other permitted accessory uses, including but not limited to retail sales."

Parking for commercial space is shown based upon "Restaurant – Take Out;" the intended use, understood to be an ice cream/custard shop, should be clarified/confirmed.

6. Lighting plan will be required, with both site lighting and building lighting included and specs for all light fixtures.

7. Ms. Wyatt reviewed the applicable Commercial Design Standards:

- a. Building Footprint/Orientation - Generally, the building shall be aligned with the front of the property (to within 5' and 15' of the front lot line) for at least thirty percent of the property frontage.

Ms. Wyatt noted that the proposed front building would need to move forward (eastward) in order to meet this standard.

- b. Parking Lot Orientation

Ms. Wyatt noted that once the structure is shifted the applicant should be able to meet these standards.

8. Commercial Landscaping Buffering Requirements will apply including: Parking Lot Buffers, compliance with regards to Interior Parking Lot Landscaping as well as compliance with Vegetation Preservation/Planting Requirements.

### **Town Engineer**

The applicants are proposing a net reduction in built upon area which is preferred, but they are proposing fill as part of the redevelopment plan. Any addition of fill would trigger the need for a Stormwater plan.

### **Public Works/Water**

No issues from the water perspective.

- The 12" on the Beach Rd is on the same side of the street as the lot. The main is also under concrete there.
- The 6" A/C line on Memorial Ave is across the street from the lot. The storm water drainage ditch on Memorial Ave. is on the same side of the street as the lot.
- The other 2 cottage courts (Whalebone and Haven on the Banks) each have 2" meters.

Looking at the location of the dumpster, it appears that it may be difficult for a front-load trash truck to maneuver to pick up; the location may need to be angled at 45 degrees from the main drive aisle.

Ms. Wyatt noted that Staff has discussed the areas that are deficient with the applicant and his representatives, and it may be that as part of their discussion with the Planning Board, they may seek guidance on the potential submission of zoning ordinance text amendments to address specific concerns.

Ms. Wyatt stated that she, as well as applicant Michael Strader, was available to answer any questions for the Board.

Ms. Wyatt confirmed for Mr. Ferguson that during their initial conversations the applicant had indicated the desire to preserve the existing vegetation on the Memorial Ave side, but that Mr. Strader could further clarify that.

Chair Vaughan inquired as to why the ordinance wants the buildings closer to the street. Ms. Wyatt explained that visually it wants the building in the forefront and the site improvements such as parking towards the back. Planning Director Michael Zehner further explained that one of the goals was to create an "activity zone" which had people closer to the street.

Ms. Wyatt confirmed for Mr. Ferguson that the Town does not dictate the orientation of a building as long as setbacks are being met. However, part of the sketch plan process is to have a conversation with the applicant and look at orientation of the building and discuss re-orientation if staff believes it to be more suitable. Mr. Ferguson stated that he was concerned about the possibility of large buildings built too close to main thoroughfares.

Michael Strader with Quible addressed the Board. He is the engineer of record for this project. Mr. Strader stated that they have done a lot of work since the sketch plan was submitted. Mr. Strader confirmed that based on their site evaluation and the existing elevations they will not need to bring addition fill to the lot. Mr. Strader noted that although they will not need to have a Stormwater Plan it is their intent is to provide as many Low Impact Development measures as they can.

Mr. Strader confirmed that it is their intent to preserve the existing buffer on the Memorial Avenue side (Westside) of the property. Mr. Strader also confirmed that they have a preliminary designed on-site wastewater system (pre-treatment) but it has not yet been submitted to Dare County Environmental Health for approval.

Mr. Strader then addressed the building orientation stating that initially it was their idea to have the covered pavilion be the part of the building that met that building configuration requirement but if the Board does not agree, their intent would be to pull the commercial building forward (but not all the way up to the 15-foot setback line) and have the pavilion area be more L-shaped. They hope to have lots of patrons along the frontage of the building but would not want them spilling into the street.

Mr. Strader stated that in general they feel they can meet almost all of the review commentary except for two:

- 1) The criteria that at least one-third of the cottage court units shall not exceed one story. Their intent was to have the dwelling units be one and a half stories and have the commercial building be one story.
- 2) The criteria that the commercial building must be attached to or incorporate a dwelling unit.

Mr. Strader noted that it's not the configuration that the applicant was going after and asked if there were any other means, processes or interpretations that would allow for the applicant to keep his proposed configuration.

Mr. Zehner clarified for the Board that when Staff met with Mr. Strader and the applicant there was discussion related to possible variances or potential text amendments.

Mr. Zehner explained for Ms. Wright and the Board that the supplemental guidelines for cottage courts allows for one unit to be larger if it incorporates a complementary business use.

Mr. Zehner confirmed for Ms. Harrison that Cahoon's Market and Cottages is an example of a cottage court that also has commercial and was the model for the cottage court standards.

Mr. Zehner confirmed for Ms. Harrison that Haven on the Banks is two separate parcels, the cottages are on one parcel and the event site is on a separate one.

Mr. Zehner explained for Ms. Wright that that front cottage could be strictly residential or be residential with a complementary business use; under the UDO it can't be a standalone commercial building. The applicant is asking about the possibility of the Board approving a text amendment that would remove that requirement.

Mr. Zehner further explained that if they add a second story to that building for a residential unit, the architectural design criteria would require them to change the heights of the other cottages. Although the requirements say one third, in this case two of the four buildings would need to be different height.

The Board and Mr. Zehner discussed the possible future impacts of removing this requirement.

Ms. Lambert inquired about the building plans for the commercial building noting that it showed a pizza oven and inquired if that was the same use as an ice cream shop in terms of fire suppression and other such requirements.

Mr. Strader confirmed that it would have no indoor seating, just pick up windows. They would be serving primarily custard but also other food as well, similar to Kill Devils Custard (in Kill Devil Hills).

Mr. Zehner confirmed that the parking requirements would be different for an ice cream shop vs. a takeout restaurant.

Chair Vaughan stated that when she looked at what was being proposed, it did not feel like a Cottage Court but more like a business with three rental cottages behind it. Chair Vaughan also noted that the intent of the regulations was a business that was complementary to the cottage court such as an on-site management office and not a standalone business that could be potentially become totally separate from the cottage court.

Mr. Elder agreed that conceptually it did look like two distinctive properties.

The Board and Mr. Zehner discussed some other potential development for those lots such a mixed-use development or commercial with accessory residential.

Mr. Elder stated that the regulations make sense as written even though it might not be what is requested or what the owner wants.

The Board agreed that there wasn't a lot of connectivity between the commercial and residential.

Mr. Strader noted that pulling the commercial building forward to meet the setback would be further deviating from that cottage court feel because it would pull the commercial building further away from the cottages.

Mr. Ferguson noted that the applicant has the opportunity to meet the standard even if they don't like it or otherwise apply for a text amendment to try and change the ordinance.

Mr. Elder noted that they can't change the UDO based on each individual property noting that they also have to look at other issues such density and the make-up of the neighborhood.

The Board confirmed for Mr. Strader that it is a cottage court so that front building would also be considered a cottage.

Discussion of potential future amendments to the Soundside Overlay District requirements with Jay Overton, PE, PLS of Albemarle & Associates on behalf of his client. No action required at this time.

Ms. Wyatt explained that Mr. Jay Overton, PE, PLS of Albemarle & Associates had requested an opportunity to discuss with the Planning Board and seek guidance on the possible submittal of a text amendment to the site design standards of the Soundside Residential Dwelling Overlay District.

As background information, Mr. Overton, on behalf of his client, David Martin submitted to the Board of Adjustment in July 2021 a request to vary numerous sections of the Unified Development Ordinance as it relates to the land disturbance associated with, and the development of, a single-family dwelling within the Soundside Residential Overlay District. As part of this variance request, Mr. Overton prepared a site development plan depicting the desired grading of Mr. Martin's property which would result in deviations from the requirements noted in Section 8.5.4.5, Site Design Standards within the Soundside Residential Dwelling Overlay District.

Following the denial of the variance request, Mr. Overton and Mr. Martin met with Planning Staff to discuss next steps at which time it was recommended that Mr. Overton produce a site development plan that would be compliant/substantially compliant with the requirements of Section 8.5.4.5 of the UDO as currently written.

Upon producing this substantially compliant development plan, Mr. Overton and Mr. Martin discussed with staff the primary differences between the two plans noting that due to the significant grade elevation fluctuations, the substantially compliant plan would result in more visible retaining/foundation walls in order to meet the requirements.

Believing that the topography of this property is unique from other neighboring properties, Mr. Overton would like to discuss with the Planning Board the intent of the Soundside Residential Dwelling Overlay District as well as receive guidance and input from the Planning Board on a proposed text amendment which would allow flexibility in the grading options available for properties that have existing elevation fluctuations of five feet or greater.

A draft of this proposed amendment was provided for the Board's consideration, along with two concept plans, the variance plan labeled C-301 and the substantially compliant plan labeled Plan B.

Ms. Wyatt presented these documents to the Board noting that the substantially compliant plan would require some retaining walls around the site improvements. Ms. Wyatt explained that the plan that was presented to the Board of Adjustment dealt more with grading the exiting topography in order to limit the number of foundation or retaining structures.

Ms. Wyatt noted that she as well as Mr. Overton and the property owner, Mr. Martin were available for discussion with the Planning Board.



Per Chair Vaughan's request, Ms. Wyatt discussed the history of the designation of the Soundside Overlay District. Ms. Wyatt noted that staff had found minutes that discussed the district and how it came to be. The conversation started in October 2004 as a request from the Board of Commissioners following some subdivision requests. Subsequently a moratorium was proposed until there were some regulations put in place. The conversations were focused on having some standards that would protect the architectural standards as well as the natural topography of the area. The district was eventually adopted in 2005 and the minutes related to that adoption speak to minimizing land disturbance and preserving the natural topography of the vegetation which is what Mr. Overton is wanting to discuss.

Ms. Wyatt confirmed for Mr. Ferguson that there have been building permits issued for this ~~cul-de~~ ~~sæcul-de-sac~~ and the Town does trash collection and things of that nature however there were subdivision waivers granted to keep the road "unimproved".

Jay Overton, engineer with Albemarle and Associates addressed the Board. Mr. Overton stated that the area is unique in many ways and there is a combination of public right-of-ways, easements, etc. There has been a great interest in the preservation of the uniqueness of the area which mainly focuses on the architectural, the vegetation and the lack of hard structures; Mr. Overton noted that it's a more natural setting.

Mr. Overton explained that development is restricted in this district because you can only go 10 feet beyond the edge of your building with any land disturbance; you can't go beyond the edge of your driveway with any land disturbance. When he builds a house it's extremely difficult to stay within ten feet with all the staging, equipment and people walking around the site. When the ground is flat and level it's easier to do so, but with the lots in question there is a difference of fifteen feet of elevation going sideways, making development much more challenging.

Mr. Overton presented the two plans to the Board and explained that when they started to design the site to meet the ordinance it didn't make sense because it was going to require a lot of bulk heading and a lot of oddities; things that were not in keeping with the Soundside Road Overlay District from the standpoint of aesthetics and what they were looking to preserve. They decided to go for the variance looking for relief from those design elements. If they were allowed to develop the lot like the UDO allows in other areas there would be no need for bulk heading, just a small retaining wall along the property line.

Mr. Overton explained that if they built according to the compliant plan, they would need to construct bulkheads and retaining walls due to the differing elevations and the inability to fill more than two feet. Mr. Overton noted that to build the pool and pool deck he would have to set the pilings 10 to 11 feet out of the ground. Mr. Overton explained that while this shows that the site can comply with the ordinance it doesn't match anything that's out there in that district.

Mr. Overton stated "Is there a way to be compliant with the ordinance? Yes there is" but both he and the owner feel that being compliant with the ordinance does not meet the intent of the neighborhood that he wants to live in. Mr. Overton stated that Mr. Martin is looking to move from Richmond (VA) and make this his permanent residence. Mr. Martin liked the flavor of the neighborhood and wants his home to be a complement to the neighborhood. Mr. Overton does not believe that the compliant plan is what the Boards had in mind when they created the Overlay District.

Mr. Overton believes that the ordinance over time will require some refinements because not in all cases are the standards going to result in what was intended. The elevation differences of these two lots makes them much different for instance than the (vacant) lot to the north; in that case there

would be no issue with compliance with the ordinance because they would not be dealing with 15 feet of difference in elevation across the site.

Mr. Overton presented a rendering showing how the site would look if they were allowed to grade the two adjoining lots and develop the site using the Alternative Site Designs in their proposed text amendment. Mr. Overton explained that this Alternative Site Designs would only apply to sites that have five feet or more elevation difference and that these alternative site designs would allow them to go outside of the boundaries and some of those restrictions so that they could develop a property that still met the intent of the ordinance.

Mr. Overton noted that this was a hard thing to try to explain because they are not used to looking at lots that have this much elevation difference.

Ms. Harrison inquired whether the real estate agent that sold Mr. Martin this lot had explain that there was a very unique set of situations to this lot.

Mr. Overton stated that he didn't think anyone realized the elements that they were discussing today (the uniqueness of the elevations) until Mr. Overton started the design process. Mr. Overton stated that it'd be like building along the side of Jockey's Ridge.

Ms. Lambert inquired if the issues they were encountering with the topography were because of the type of build being proposed and if it would be easier if there was a different structure being proposed.

Mr. Overton stated that no matter what you build there you would still have to deal with the cross slope.

Ms. Wright asked if they really needed to raise the structure up that high? Ms. Wright noted that she recently built a house with a similar cross slope, and they put the pilings at different levels; the house was level, and it was lower.

Mr. Overton stated that they are trying to achieve certain things and in this overlay district if there was an alternative design for five feet or more elevation difference it would create the flexibility to give them something better that's closer to what he feels was the intent of the district. He is not asking for more than what the UDO allows in other areas, he is asking that the restriction be removed just for the grading.

Mr. Overton confirmed for Mr. Ferguson that he did not get much input from the Board of Adjustment, and he felt that they were overwhelmed and did not understand what Mr. Overton was talking about and therefore did not see a hardship.

Mr. Ferguson stated that he would like to hear David Ryan's (Town Engineer) opinion on the subject and Mr. Overton confirmed that he had not had any conversations with him.

Mr. Overton reiterated that what they are requesting is to be allowed to grade the property as the ordinance requires and remove the specific additional requirement of the Overlay District; the proposed text amendment doesn't change the other requirements of the Overlay District it would just change some of the grading requirements.

Mr. Overton confirmed for Ms. Lambert that the Board of Adjustment denied the variance because they could not see the hardship.

Mr. Ferguson stated that it was difficult to meet the criteria for a hardship because they can't show that there is no reasonable use of the property. Mr. Ferguson inquired if they had thought about building a single-story building? The elevation is high, and they are in an X flood zone, do they even need pilings? Can the parking be outside rather than under the house?

Mr. Elder agreed noting that it appears that the issue is that on one side is a property owner that wants to develop a property in a prescribed manner and on the other side you have existing regulations (that preclude him from doing so) and they are asking the Planning Board to fill in the gap. Mr. Elder stated that he does not believe that's their role noting that Mr. Overton talked about the character of the area, yet Mr. Elder doesn't see another swimming pool anywhere near this property.

Chair Vaughan stated that from what she read, the topography of the area was an important factor for the creation of the Overlay District and one of the main things they are talking about is the land disturbance piece which would be a pretty big change.

Ms. Harrison noted that she understands what's happened – what they are proposing does not fit to the regulations in an aesthetic way to the neighborhood. However, Ms. Harrison questioned if they should change the rules for this one situation.

Mr. Ferguson confirmed for Mr. Overton that it would be helpful if they could hear what the Town Engineer has to say.

Conduct the stakeholder interview of the Planning Board for the update of the Decentralized Wastewater Management Plan (DWMP).

Principal Planner Holly White arranged a Zoom call/meeting with Tetra Tech who is the consultant that is working on the update of the DWMP. On the zoom call were Holly Miller, Project Manager and Mary Clark, Assistant Project Manager.

Ms. Miller, who is an engineer among other things, gave an overview of her company and fellow team members and how they would be involved with this project.

Ms. Miller then gave a PowerPoint Presentation to review with Board how the update was proceeding noting that following the presentation there would be a Q&A with the Board and discussion from there.

The presentation included an:

Overview of the Current Todd D. Krafft Septic Health Initiative Program

- Education and Outreach on Septic Health
- Free Inspections of system and Tank
- \$30 rebate credited to water bill for septic tank pump outs
- Low interest loans for septic repairs
- Water quality monitoring

Update Work Program:

- Task 1 Project Scoping & Data Collection -- Community Engagement
- Task 2 Data Analysis & Synthesis

- Task 3 Management Planning
- Task 4 Plan Delivery

Tasks and Schedule – A schedule for when each task is expected to be completed

- Ms. Miller stated that they had completed Task 1 and were now into Task 2 where they're really diving into those stakeholder engagements starting with the Planning Board at today's meeting.

Community Perceptions Summary

- Residents don't understand the nexus between septic systems, groundwater & storm water
- Those claiming knowledge about septic systems were more likely to regularly pump their tanks
- There is strong support for the current SHI program

Community & Stakeholder Engagement

- Stakeholder Interviews
- Community Questionnaire Survey
- Public Forum Meeting
- Social Media – YouTube, Facebook, etc.
- Water Bill Stuffers

Next Steps

- Stakeholder Interviews
- Community Questionnaire Survey
- Summarize Comments
- Complete Data Analysis
- Draft DWMP Plan Update Revision
- Present Draft Plan
- Present Finalized Plan to the Board

Ms. Miller proceeded to hold an interview with the Planning Board asking them several questions regarding their thoughts, perceptions and questions about the program.

Mr. Ferguson inquired about the number of septic pump outs. Ms. Miller stated that they were still analyzing the data, but it appeared that trend is increasing as well as inspections are increasing significantly over the last couple of years.

Mr. Zehner reminded the Board that the Town wouldn't necessarily know how many tanks are pumped out, they would only know the ones that were pumped and submitted for the water bill credit.

Mr. Zehner confirmed for Mr. Ferguson that the whole point of this update was to identify what is working and what's not working and what could work better including other ideas and incentives. Mr. Zehner also confirmed that the water bill credit has recently been increased from \$35 to \$45.

Mr. Zehner noted that the data that Tetra Tech is analyzing will give them a good picture of how the program has progressed over the years.

Ms. Harrison inquired if the Town could require the septic contractors to report on the number of tanks they had inspected and/or pumped so they could have actual real-time data?

Ms. Miller stated that they could look into the possibility but reminded the Board that septic permitting is done through Dare County. Ms. Miller stated that as part of the stakeholder interviews, they will be talking to septic providers so that could be a question that is posed to them. Ms. Miller stated that having that information as well as seeing what it looks like as the septic system ages. They could red flag a system because they know it's age, they know there's been issues in the past. That is something that they are working as part of the mapping system – identifying some of those high priority areas that might become an issue in the future. Ms. Miller stated they will be looking at groundwater elevation changes throughout the Town as well as looking at future conditions with sea level rise to see if that might become an issue from a water quality standpoint.

Ms. Harrison asked what if every property in the Town had to report this information? If there was some kind of documentation for every property? It seems so important but it's so easy to forget, you just take it for granted that it's working so it would be good to be reminded to have it inspected and regularly pumped.

Ms. Miller stated that they could include this in their review but noted there might be some ordinance changes that need to happen and/or some legal implications related to that. Ms. Miller stated that it was an interesting idea but something they will need to research further. Ms. Miller stated that they will also be looking at State requirements and what type of data is collected at the state level.

Ms. Miller asked the Board if they thought that septic failures were the result of lack of maintenance and lack of understanding and what the Town could do in way of educating the community.

Mr. Elder stated that it seems that often failures are due to inundation which is often a Stormwater abatement issue. Mr. Elder noted that maintenance might be pushed over to maintenance of swales and other water management measures. Mr. Elder also believes that the amount of fill that is required for newer systems (which the Town has no control over) is also to blame.

Ms. Miller agreed stating that Stormwater is running off and potentially inundating the older, lower lots because of those elevation differences. Ms. Miller reminder the Board that a septic system needs about 18 inches of soil to help percolate through, but they are noticing groundwater levels are well above that in several locations throughout the Town. This results in wastewater leeching into the groundwater and into ditches and further going out into the ocean or sound. Ms. Miller stated that there are issues that are happening both above ground and below.

Ms. Miller confirmed that there will be areas (such as areas south of Whalebone Junction) that because of a higher water table will reach a break point sooner than later and that will be presented as part of the mapping system. An important question to ask is: in the future will septic systems even work in some areas of Nags Head? Ms. Miller believes the answer is no, so they will be looking at a decentralized cluster system potentially if that does occur. They will also be looking at advanced systems as there's a lot of new technology in relation to septic health as well as treatment of septic that can really reduce the amount of flow that is needed. Ms. Miller stated that they will be looking at multiple options to make the Town more resilient for the future.

The Board further discussed alternative options to failing septic systems and what those might look like, including the possibility of a centralized sewer system in some areas, such as the one used in The Village (where the upsides and downsides are clearly understood) as well as the use of gray water as an alternative to Town water for irrigation. Mr. Elder talked about the possibility of separating washer waste from the septic system as it is not considered bio waste.

Ms. Miller noted that the use of gray water is going to be one their potential suggestions to help with the load on the septic systems themselves noting that it can be reused for irrigation and help reduce the water usage for the entire town. This would reduce the volume and you would not have as much treatment happening within the system itself.

Mr. Elder suggested the idea of creating a pilot program for people that are willing to try these alternatives. Social Media could be really useful for something like this because most people don't know that there are alternatives.

Ms. Miller confirmed for Mr. Ferguson that one of the big goals of the program is to improve water quality and by doing all of these things improve septic health systems. Mr. Ferguson believes that one of the purposes is to avoid a central system. If the issue is water quality, a central wastewater system could help the Town get there, but Mr. Ferguson is not so sure that it's what the Town really wants; he thinks that's exactly what the Town doesn't want.

Mr. Zehner asked the Board whether ~~noted that~~ a goal of the Town's commitment to septic health and the reliance on on-site wastewater is to limit development potential. Mr. Ferguson agreed that it does to a large extent and it also allows for more green space which adds to the character of the Town.

Mr. Zehner thanked everyone for their feedback and encouraged the Board to send any further thoughts and suggestions to Holly or Kylie via email. Mr. Zehner also noted that there will be other opportunities for public engagement as the project moves forward. Ms. Miller reiterated Mr. Zehner's thoughts stating that they will continue to dive into all these things and start compiling their recommendations to the Town based on the feedback provided.

### ***Report on Board of Commissioners Actions – August 4th, 2021***

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's August 4, 2021, Meeting. Of note: on the consent agenda were two requests for public hearings, one on the CAMA Land Use Plan and the other related to lot coverage and recycling dumpsters – these will be heard in September; after a Public Hearing was held to consider a Special Use Permit/Change of Use Application submitted by Outer Banks Community Church to operate a Religious Complex within Croatan Center Shopping Center - the Board passed a motion to approve the application as presented; after a Public Hearing was held, the Board passed a motion to approve the FY 2021/2022 Public Beach and Coastal Waterfront Grant pre-application for Epstein Street Beach Access as presented; Mr. Zehner gave his Director's Report which was well received; it was Board consensus that staff bring back a revised lighting policy for the September Board meeting; and, further, staff is to pursue the amber demonstration with Dominion Power; finally the Board passed a motion to approve the removal of three trees in the SED-80 Zoning District at 468 W Villa Dunes Drive as requested.

### ***Town Updates***

None

### ***Discussion Items***

#### *Discuss Whalebone Park - Phase 1 Project*

Mr. Zehner explained that they wanted to put together a Scope of Work for what they are calling Phase One. The intent of the Whalebone Park - Phase 1 project is to evaluate the need for renovations and/or improvement of Whalebone Park by:

- 1) Identifying current issues and constraints that prevent the Park from being utilized as intended or limit the Park's opportunities as a resource.
- 2) Identifying opportunities to improve the active/passive recreational and cultural use of the park; and
- 3) Determining what connections to amenities outside of the park should be prioritized and improved, and what amenities can be provided in the park that would be resources to the Whalebone Junction Character Area.

Mr. Zehner is requesting feedback from the Board to make sure they agree with the Scope of Work.

Mr. Zehner confirmed for Mr. Ferguson that Staff is driving this project as part of the implementation of the comprehensive plan and the Town's recreational plan. This was embedded as part of the Department's work plan that was presented both to the Planning Board and the Board of Commissioners in 2019 and the following year as well and was prioritized because it was seen as an achievable goal.

Mr. Elder was unable to join the other Planning Board members during their site visit but did go and do a solo visit noting that he was surprised how disconnected the park was given its location.

#### July 27, 2021, Director's Report

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at their August 4th Meeting. The report included a Fourth Quarter Permitting Report, an update on Dowdy Park events; Decentralized Wastewater Management Plan, Estuarine Shoreline Management Plan and an update on the Electric Vehicle Action Plan.

#### **Planning Board Members' Agenda**

Mr. Elder stated that he would like the Planning Board and the Town to start thinking about/discussing other types of electrical vehicles – golf carts, scooters, bikes, new technology and their future impacts on the Town.

#### **Planning Board Chairman's Agenda**

Chair Vaughan and Mr. Zehner briefly discussed the Sustainable Tourism Initiative that she had recently heard about. Mr. Zehner stated he knows that it's an initiative spearheaded by Twiddy & Company in cooperation with NC State University and that he received a late invitation to attend a presentation at Jenette's Pier which he was unable to attend.

#### **Adjournment**

A motion to adjourn was made by David Elder. The time was 12:25 PM.

Respectfully submitted,  
Lily Campos Nieberding



**BOC ACTIONS**  
**WEDNESDAY, SEPTEMBER 1, 2021**

1. Call to order - Mayor Cahoon called the meeting to order at 9 am. The tragedies in Afghanistan and Louisiana were remembered.
2. Agenda - The Board approved the agenda as presented.
3. Recognition

Presentation - Dr. Jack Bagwell, President of College of the Albemarle, provided a powerpoint presentation with an update of the new Dare facilities and what services are provided; he stated that Albemarle COA addresses seven (7) counties that are very diverse areas. Locally Dean Tim Sweeney is the person to contact.

New employees - Public Works Director Eric Claussen introduced the following new employees: Facilities Maintenance Technicians Egan Mansfield, Jerry Hvozdovic, and Chase Hundley who were welcomed by the Board to Town employment. Director Claussen also introduced Sanitation Equipment Operator Marcelo Mora who was welcomed by the Board to Town employment. Director Claussen noted that Sanitation Equipment Operator Edwin Maldonado was unable to attend this morning's meeting.

Fifteen years of service - Police Chief Phil Webster introduced Police Sergeant Greg South who was recognized by the Board for fifteen years of service with the Town.

4. Public Comment - Mayor Cahoon read the emailed comment from Soundside Road resident Michelle Chimento thanking the Town for the work done on Soundside Road and pointing out that speeding continues to be a problem.
5. Consent Agenda - the Consent Agenda was approved as presented and consisted of the following:  
Consideration of Budget Adjustment #3 to FY 20/21 Budget  
Consideration of New Year (FY 21/22) Tax Adjustment Reports  
Approval of minutes  
Consideration of resolution authorizing the surplus and donation of Police Dept items to COA  
Consideration of three-year Cintas contract for Public Works uniforms  
Consideration of amendment #2 to Beach Nourishment Capital Project Ordinance for beach sprigging  
Housekeeping item - Consideration of Traffic Control Map amendment re: E. Dove Street
6. Public Hearing - Public Hearing to consider adoption of the Town of Nags Head CAMA Land Use Plan Update - The Board unanimously adopted the CAMA Land Use Plan Update as presented.
7. Public Hearing - Public Hearing to consider a text amendment to the Unified Development Ordinance pertaining to lot coverage associated with recycling dumpsters - The Board unanimously adopted the ordinance amending the Unified Development Ordinance re: lot coverage/recycling dumpsters as presented.
8. Planning Director - Update provided by Planning Director - Re: Whalebone Park scope, Comr. Renée Cahoon said that the issues she sees are overall maintenance, shading and the need for a restroom facility.



**9.** Street Lighting Policy - The Board approved the Street Lighting Policy as presented with the modification to add a bullet under "General" indicating that Town-wide fixtures require full cut-off unless there is proof that costs are significantly greater.

Staff is to follow up with Dominion Energy for an update on the new utility poles that were to be installed along US 158; and with the S Nags Head Comfort Inn concerning a blue LED light.

**10.** Appointments - The Board appointed, and was appreciative of, the full docket (10 people) of those interested in serving on the Estuarine Shoreline Management Plan Advisory/Steering Committee. The appointees are as follows:

Adnan Jalil; Ann Daisey; Cola Vaughan; Louisa Farr; Mike Kelly; Michael O'Steen; Molly Harrison; Ralph Buxton; Randy Blanton; and Robert Netsch.

**11.** Committee Reports - Comr. Fuller - Dare County Tourism Board - The DCTB is moving forward with the development of the Soundside walkway, in cooperation with Nags Head.

**12.** Fishing tournament resolutions - Both the Fraternal Order of Eagles Surf Fishing Tournament [scheduled for Saturday, October 30<sup>th</sup>] resolution and the Outer Banks Association of Realtors Surf Fishing Tournament [scheduled for Friday, October 15<sup>th</sup>] resolution were adopted as presented.

**13.** USFWS resolution - The Board adopted the resolution opposing the designation by US Fish and Wildlife Service of Red Knot Rufa as Critical Habitat, amending the first WHEREAS with "Carteret" from "Carteret" to "Dare".

**14.** Interim Manager Garman - Project updates

**a.** NCDOT Traffic Studies/Crosswalk Recommendations

- Public Works Director Claussen first provided a verbal update: NCDOT has collected traffic volume counts and is currently conducting a traffic study for the intersection of Grey Eagle/US158; In addition, NCDOT is working with their Wilson Office to review options to improve traffic circulation and safety at the intersection of NC12/SOOIR; Lastly, NCDOT will be installing the two lighted pedestrian pushbutton signs (from Little Bridge) at the NC12 crosswalks at the Jennette's Pier and Bonnett Street locations.

- Director Claussen then presented an update on crosswalk recommendations with a PowerPoint presentation – The existing supplemental signs that are displayed below the pedestrian crosswalk signs do not meet the intent of the MUTCD; If used, the existing signs shall be placed in the middle of the street on the yellow lane line, however, there are turning movement conflicts at 18 of the 42 pedestrian crosswalks along NC12; Another option was presented, using Yield to Pedestrian signs and Yield Bars, which could be installed more consistently along NC12; Staff has communicated with NCDOT on the appropriateness of these applications along the Beach Road and if NCDOT would be willing to install and maintain; Additionally, staff is to obtain the cost of additional pushbutton lighted pedestrian signage; and to analyze the installation of a new sidewalk connection between Baymeadow/US158 along the south side of Seachase as well as make recommendations to improve the pedestrian crossing at Seachase/NC12.

It was Board consensus for staff to provide additional updates from NCDOT at next month's meeting re: the above for final Board review/discussion.

Director Claussen is to find out additional information re: if DOT maintains pushbutton actuations for the lighted crosswalk signs; he also mentioned that a standalone trail/pedestrian counter could provide the Town with that data.

Mayor Cahoon stated that he does not want to lose sight of the need for a discussion on an appropriate speed limit for the Beach Road.

**b.** Beach Driving ordinance – The Board adopted the updated Beach Driving Ordinance as presented.

**c.** Summary of Waste Reduction Task Force items - A summary was provided. It was Board consensus that the Task Force did a great job with its charge - until there is a specific charge, there is no need to call them together.

In addition, Interim Manager Garman indicated that he will schedule a meeting some time in September to review/discuss the bulk collection process.

**d.** Outer Banks Visitors Bureau grants for Epstein, Bonnett, and Barnes Streets - Board members spoke in favor of applying for the grants as listed.

**15.** Interim Manager Garman - Board members thanked Town Engineer David Ryan for the Beach Nourishment Project update which identified April 2022 as the date to issue the Notice To Proceed.

**16.** Mayor Pro Tem Siers - He asked about Soundside Road/Jockey's Ridge Access. Interim Manager Garman stated that an email will be forwarded to the Board the first of next week with an update on Soundside Road traffic counts, law enforcement reports, etc. from this summer.

**17.** Mayor Pro Tem Siers - He reported on a recent meeting with builders concerning fire safety in large residential homes. He is to provide a more detailed report after the committee meets again.

**18.** Comr. Renée Cahoon - She stated that she has observed golf cart conflicts with others such as pedestrians, bicyclists, and strollers on the Beach Road multi-use path. She asked if the Town can request/require rental companies to have stickers placed on golf carts indicating that they are not allowed on the path. It was Board consensus that staff review the multi-use path ordinance for clarity and bring back their findings and recommendations for Board discussion.

**19.** Comr. Renée Cahoon - She asked for more police presence this upcoming Labor Day holiday weekend during the surf tournaments at Jennette's Pier in addition to the multi-use path, crosswalks, etc. especially in the area between Surfside Hotel south to the Comfort Inn.

**20.** Comr. Renée Cahoon - She stated that the Outer Banks Visitors Bureau (OBVB) has done a good job with all the people now here; she would like to see steps taken to enhance the experience of visitors, residents, and property owners. She suggested that the OBVB provide a positive customer experience for everyone such as with an interactive app that would provide beach access information, such as their location. This would encourage visitors to follow the law and would be a good way to communicate.

**21.** Comr. Brinkley – He thanked Soundside Road resident Michelle Chimento for her email concerning Soundside Road and the Jockey's Ridge Access. He is looking forward to continued Police Dept work in that area and in receiving reports from staff.

**22.** Comr. Fuller - The Outer Banks Visitors Bureau and DCTB have done a great job at bringing people here in the shoulder season, he feels the DCTB should begin to focus more on trying to represent and understand resident concerns in general. With the new sustainable tourism, there needs to be a focus on ways the new and old residents aren't put upon by the increasing number of tourists. Comr. Renée Cahoon agreed noting that the statute establishing the organization indicates one of the purposes is to mitigate tourism impacts.

**23.** Mayor Cahoon – The Board adopted the resolution in opposition to Senate Bill 105 re: Budget Appropriations Bill which includes environmental provisions, as presented.

**24.** Closed/Open Sessions - The Board entered Closed Session at 11:56 a.m. and re-entered Open Session at 12:45 p.m.

**25.** Appointment of Town Manager - The Board unanimously passed a motion to appoint Andy Garman as Town Manager. Town Manager Garman thanked the Board for the opportunity they have given him and he stated he looked forward to continuing to work for the Board and in meeting their goals for the Town.

**26.** Adjournment - The Board recessed to Tuesday, September 21, 2021 at 8:30 a.m. at the Villas Clubhouse on Villa Dunes Drive for a Board Retreat. The time was 12:50 p.m.