



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING (COVID-19)
WEDNESDAY, JULY 1, 2020**

(PLEASE NOTE: In accordance with State and County Regulations due to COVID-19, Face Coverings must be worn in indoor and outdoor public spaces where social distancing cannot be maintained)

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, July 1, 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: Interim Town Manager Greg L. Sparks; Attorney John Leidy; Andy Garman; Amy Miller; Randy Wells; Shane Hite; Anthony Dillion; Michael Zehner; Kelly Wyatt; Holly White; Mark Edwards; Nancy Carawan; Kylie Shephard; Sandra Garland; Anthony Dillon; Kate Jones; David Perry; Eddie Valdivieso; and Town Clerk Carolyn Morris

CALL TO ORDER

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

NEW INTERIM TOWN MANAGER

Mayor Cahoon acknowledged that this meeting is new Interim Town Manager Greg Sparks' first meeting. On behalf of the Board, Mayor Cahoon welcomed Interim Mgr Sparks to the Board meeting.

INTRODUCTION OF 2020 SEASON LIFEGUARDS

Fire Chief Randy Wells reported that in keeping with the Governor's Executive Order which extends Phase 2 of the COVID-19 pandemic that the Town's 2020 summer season lifeguards will be introduced via video at the August 5th Board meeting.

ADOPTION OF AGENDA

MOTION: Comr. Renée Cahoon made a motion to adopt the July 1st agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

RECOGNITION

New Employee, Environmental Planner Kylie Shephard, was introduced by Planning Director Michael Zehner and welcomed by the Board to Town employment.

New Employee, Payroll and Benefits Specialist Sandra Garland, was introduced by Finance Director Amy Miller and welcomed by the Board to Town employment.

Fire Chief Randy Wells introduced Fire Engineer Anthony Dillon who was recognized by the Board for ten years of service.

Fire Chief Randy Wells introduced Fire Lieutenant Mark Edwards who was recognized by the Board for 15 years of service.

Water Plant Superintendent Nancy Carawan introduced Water Operations Supervisor David Perry who was recognized and congratulated for 25 years of service.

PUBLIC COMMENT

Attorney Leidy announced Public Comment open. There being no one present who wished to speak, he closed Public Comment at 9:16 a.m.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #1 to FY 20/21 Budget

Write-off of old business licenses/registration fees

Approval of minutes

Consideration of agreement with Dare County for Coronavirus Relief Fund allocation

Consideration of FY 20/21 Reimbursement Resolution to reimburse the cost of certain expenditures

Consideration of resolution to update Town banking signatures

Consideration of updated Cashier Policy

Request for Public Hearing to consider a revised preliminary plat for a major subdivision known as Coastal Villas, for an approximately 11.17 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 and Parcel #: 006749039; PIN #: 989108893398); the revised Preliminary Plat proposes to create 17 building lots, along with an associated street and other required improvements, and requires a public hearing due to requested waivers

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

Budget Adjustment #1, as adopted, is attached to and made a part of these minutes as shown in Addendum "A".

Business licenses/registration fees write-off memo, as approved, read in part as follows:

"As per section 12-33 of the Town of Nags Head Code of Ordinances (copy attached), the current outstanding balance for the following year has been written off:

'2017 Business Licenses/Registration Fees - \$ 1,000.00"

The summary sheet for the agreement with Dare County for Coronavirus Relief Fund allocation, as approved, read in part as follows:

"North Carolina counties are receiving funding for local governments as part of the Coronavirus Relief Fund (CRF) established under the federal CARES Act. The attached agreement with Dare County allocates \$31,636 to the Town based on the Town's submitted proposal."

The agreement, as approved, is on file in the Town Clerk's office.

The FY 20/21 Reimbursement Resolution, as adopted, read in part as follows:

"WHEREAS, The Town Manager and the Finance Director have described to the Board of Commissioners the desirability of adopting a resolution, as provided under federal tax law, to facilitate the Town's use of financing proceeds to restore Town funds when the Town makes capital expenditures prior to closing on tax exempt financing.

'BE IT HEREBY RESOLVED by the Board of Commissioners of the Town of Nags Head, North Carolina as follows:

'Section 1. The project is the financing of the acquisition of vehicles and equipment as identified in the fiscal year 2020-2021 budget.

'Section 2. The project is to be financed. The currently expected type of financing (which is subject to change) is an installment purchase contract. The currently expected maximum amount to be contracted for the project is \$900,000.

'Section 3. The Town presently intends, and reasonably expects, to reimburse itself for the original expenditures incurred and paid by the Town from the General Fund and Water Fund within 60 days of adoption of this Resolution from a portion of the financing proceeds.

'Section 4. This Resolution shall become effective immediately upon the date of its adoption."

The Resolution to update Town banking signatures, as adopted, read in part as follows:

"BE IT RESOLVED by the Town of Nags Head Board of Commissioners that Southern Bank be, and hereby is, designated as a depository institution for the Town of Nags Head and that funds so deposited may be withdrawn upon a check, draft, note or order of the Town of Nags Head, AND

'BE IT FURTHER RESOLVED that all checks, drafts, notes or orders drawn against said account be signed by any one of the following:

- AMY MILLER, FINANCE DIRECTOR; and countersigned by any one of the following:
- BROOKE NORRIS, DEPUTY FINANCE OFFICER;
- BENJAMIN CAHOON, MAYOR;
- GREG SPARKS, INTERIM TOWN MANAGER;
- ANDREW GARMAN, DEPUTY TOWN MANAGER;
- CAROLYN F MORRIS, TOWN CLERK;

'whose signatures shall be duly certified to said Bank, and that no checks, drafts, notes or orders drawn against said Bank shall be valid unless so signed, AND

'BE IT FURTHER RESOLVED that said Bank is hereby authorized and directed to honor and pay any checks, drafts, notes or orders so drawn whether such checks, drafts, notes or orders be payable to the order of any such person signing and/or countersigning said checks, drafts, notes or orders, or any of such persons in their individual capacities or not, and whether such checks, drafts, notes or orders, or to the individual credit of any of the other officers or not. This resolution shall continue in force and said Bank may consider the facts concerning the holders of said offices, respectively, and their signatures to be and continue as set forth in the certificate of the Finance Director or Town Clerk, accompanying a copy of this resolution when delivered to said Bank or in any similar subsequent certificate, until written notice to the contrary is duly served on said Bank."

The updated Cashier Policy, as approved, read in part as follows:

"The cashier will accept all payments for the Town of Nags Head including cash, credit or debit card, check, e-check, or money order. These payments will be deposited daily in accordance with NCGS 159-32. All payments must be accompanied with documentation needed to determine the application of the payment to the correct Town account including but not limited to water or tax bill stub, planning permitting receipt, attorney letter, or other appropriate documentation. Payment will not be accepted without documentation. No permits are to be issued without receiving the required payment and appropriate documentation to the cashier. Water Plant Operators may accept payments during the hours the Town is not open for business from water customers whose water service has been discontinued due to non-payment of amounts due.

'Violation of this policy may result in disciplinary action up to and including dismissal."

The Agenda Summary Sheet for the Request for Public Hearing re: revised preliminary plat for a major subdivision known as Coastal Villas, as approved, read in part as follows:

"The subject application is a Preliminary Plat for a Major Subdivision known as Coastal Villas, revised from the previous version considered by the Board in January 2020. The revised Plat now proposes the new street from US 158 (as opposed to Sea Bass Court) and incorporates a parcel owned by Dare County, planned for a future well site, determined to have not been properly subdivided in 2004. The proposed layout of the Dare County parcel necessitates waivers from provisions of the Subdivision Regulations concerning street access, access to US 158, and frontage; similar waivers were considered and approved in 2004.

'Planning Board/Staff Recommendation

Staff recommends approval of the Preliminary Plat, with conditions, and recommends approval of the requested waivers.

'The Planning Board, at their June 16, 2020 meeting, voted 7-0 to recommend approval of the Preliminary Plat to the Board of Commissioners, with the conditions recommended by Staff, and recommended approval of the requested waivers based upon the required findings."

PUBLIC HEARINGS

Public Hearing to consider text amendments 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

Attorney John Leidy opened the Public Hearing to consider text amendments 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. The time was 9:18 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, June 24, 2020 and on Sunday, June 28, 2020 as required by law.

The summary sheet 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). A public hearing on the request was held at the Board of Commissioners meeting on May 6, 2020. The Board of Commissioners voted to table consideration of the proposed amendments and refer the matter back to the Planning Board for further review, with consideration of issues pertaining to location, visual impact, signage, and parking. The Planning Board has recommended further changes to the proposed amendment.

'Planning Board/Staff Recommendation

Initially, 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, maximum stand area and time limits were also suggested, as well as amendment of the definition of Outdoor Stand for consistency. Based upon discussion by the Board of Commissioners, Staff further recommended to the Planning Board that consideration be given to limiting the option for two stands to sites greater than a certain size, limiting signage to a total of fifteen (15) square feet for all outdoor stands, and clarifying where stands may be located on a site, in terms of being located within parking areas or needing to be located no closer to a property line than the distance from a principal building on a site or within a certain maximum distance from a principal building.

'Upon reconsideration at their meeting on May 19, the Planning Board voted 6-0 to recommend that two stands only be allowed on sites with an area of ten (10) acres or greater, that signage for all stands be limited to a total of fifteen (15) square feet, and that stands used for reservations or ticket

sales shall be located within shopping centers or group developments, such as within common areas or walkways, and shall not be located within any parking area.”

Director Zehner summarized his memo which 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). 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 as part of Staff’s recommendation.

‘The Board of Commissioners held a public hearing and considered the proposed amendment at their meeting on May 6, 2020. Ultimately, the Board voted unanimously to table consideration and refer the amendment back to the Planning Board for review and recommendation, requesting that the Planning Board consider the issues raised by the Board. The following excerpts are from the minutes of the Board of Commissioners’ meeting:

‘Applicant Kate Creef spoke electronically on behalf of the Outlet Center Nags Head; they had been asked about interest in providing a space for displaying fishing photographs and taking reservations for inshore and offshore fishing trips; they felt this would be a great opportunity to enhance the offerings at the Outlet Center and could also apply to other recreational activities that would appeal to their shoppers such as dolphin tours.

‘Comr. Fuller confirmed with Planning Director Zehner that 11 shopping centers would be affected/eligible for the outdoor stands under this ordinance modification. It was noted that in 2013 the Planning Board turned down a similar request it was believed because it was related to multiple food stands. Comr. Fuller also confirmed with staff that currently some items can be sold in the requested manner in accordance with current ordinance.

Attorney Leidy confirmed that there were no other public comments on this text amendment, and he concluded the Public Hearing at 9:23 a.m.

‘Comr. Fuller spoke in opposition to the request as he feels the service being requested already exists and has for years; he expressed concern that it in effect only adds more signage – signage for these types of businesses tend to look carnival-like and additional signage is not what the town is after right now. He also feels that the building itself would be used as signage.

‘Comr. Brinkley spoke indicating that he does not share the same concerns as Comr. Fuller and in addition he does not feel that it would create an increase in traffic or trash.

'Comr. Siers said that he looks on it as an opportunity for others to experience more about the Outer Banks that they may not be aware of – he has no issues with the request.

'Comr. Renée Cahoon discussed parking and Director Zehner stated that no additional parking spaces will be needed if 50 spaces are already provided.

'Mayor Cahoon said that he had one reservation and that is adding another freestanding sign unit to the parking lot.

'In response to a question from Comr. Renée Cahoon re: removal of the outdoor stands, Director Zehner said that the structure would essentially be permanent but would not be able to operate year-round.

'Mayor Cahoon summarized some modifications as discussed such as location on site, visual impact, signage, and parking.

'MOTION: Comr. Fuller made a motion to deny the request for outdoor stands as presented. Comr. Renée Cahoon seconded the motion with the friendly amendment (accepted by Comr. Fuller) that the proposal be sent back to the Planning Board for review and recommendation re: today's comments made by Board members.

'WITHDRAWAL OF MOTION: Comr. Fuller withdraw his motion; Comr. Renée Cahoon withdrew her second.

'MOTION: Comr. Brinkley made a motion to table the discussion and refer the outdoor stands proposal, along with the issues expressed today by Board members [re: location on site, visual impact, signage, and parking] back to the Planning Board for review and recommendation. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

'The proposed ordinance returned to the Planning Board on May 19, 2020. Based upon discussion by the Board of Commissioners, and the Board's motion, Staff further recommended to the Planning Board that consideration be given to limiting the option for two stands to sites greater than a certain size, limiting signage to a total of fifteen (15) square feet for all outdoor stands, and clarifying where stands may be located on a site, in terms of being located within parking areas or needing to be located no closer to a property line than the distance from a principal building on a site or within a certain maximum distance from a principal building.

'Upon reconsideration at their meeting on May 19, the Planning Board voted 6-0 to recommend that two stands only be allowed on sites with an area of ten (10) acres or greater, that signage for all stands be limited to a total of fifteen (15) square feet, and that stands used for reservations or ticket sales shall be located within shopping centers or group developments, such as within common areas or walkways, and shall not be located within any parking area.

'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;
- 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).

'Beyond comments made by the Commissioners concerning the necessity of the service proposed and the proposal to allow up to two outdoor stands on a property, concerns raised with respect to location, parking, and signage are relevant under current regulations. Currently, outdoor stands are 1) allowed to be located on a site in compliance with minimum district yard regulations for principal use structures, 2) are allowed to be located on a site with fifty (50) or more existing parking spaces without providing additional parking spaces, or provide a minimum of three (3) additional parking spaces for sites with less than fifty (50) parking spaces, and 3) install a temporary sign with an area up to fifteen (15) square feet.

'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

Previously, 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.

'Upon reconsideration at their meeting on May 19, the Planning Board voted 6-0 to recommend, in addition to those modifications previously recommended, that two stands only be allowed on sites with an area of ten (10) acres or greater, that signage for all stands be limited to a total of fifteen (15) square feet, and that stands used for reservations or ticket sales shall be located within shopping

centers or group developments, such as within common areas or walkways, and shall not be located within any parking area.

STAFF RECOMMENDATION

Staff previously recommended 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 was 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 current definition of Outdoor Stand, as follows, be amended consistent with the amendment of Section 7.76.1.:

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 supports and recommends those additional modifications recommended by the Planning Board. Both the original modifications recommended by Staff and the Planning Board, as well as the additional modifications recommended upon reconsideration, have been incorporated into the attached adoption ordinance and markup of Section 7.76, highlighted to differentiate from the applicant's proposal. It is important to note that the limitation on sites ten (10) acres or greater in area would, currently, only apply to one (1) of the eleven (11) properties previously identified by Staff; if the limit were five (5) acres, the allowance would apply to three (3) of the eleven (11) sites.

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."

In response to Mayor Pro Tem Siers, Director Zehner said that only one site can have two outdoor stands – which is partly why staff used the size of 10-acre sites.

Comr. Fuller said that the maximum signage allotment has already been met and if the amendment is adopted, the sites would be allowed over the maximum signage. Director Zehner did not agree stating that only one stand per site is being allowed.

Applicant Creef said that the Outlet Center would like to get a business in operation before the end of this season in order to help local businesses; she is available to answer any questions the Board may have.

Comr. Renée Cahoon questioned if this is in addition to tickets already being sold. Ms. Creef said that she does not sell tickets in her office as was done previously such as for the Lost Colony plays.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 9:26 a.m.

Comr. Brinkley thanked Director Zehner and staff as well as the Planning Board for their review and discussions - he spoke in favor of the application.

Comr. Fuller said that he is not in favor of the application as the use is already an allowed use; any of the now 22 - 24 stores can already do this; the opportunity already exists in the mall; he feels that the only reason to approve this is to allow additional square footage of building space that he feels is not needed.

Mayor Pro Tem Siers said that these companies are not local, they are corporate and may not be put back after this year – but that he sees no issue to this request and would not hold them back.

Comr. Renée Cahoon said that as long as the stands do not impede the parking lot, she is okay with the request.

MOTION: Comr. Brinkley made a motion to adopt the text amendments 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, as requested. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 1 with Comr. Fuller casting the NO vote.

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum “B”.

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

Update from Planning Director

Planning Director Michael Zehner presented his monthly update which included a Planning Board report on Large Occupancy Homes as well as the Planning Board’s recommendation re: residential stormwater regulations. His memo with Planning Dept updates is attached to and made a part of these minutes as found in Addendum “C”.

Director Zehner provided an update on the following items:

Regulations on large occupancy homes

Residential stormwater regulations – from January 2020 Board Retreat

2020 Census – now have higher response rate - their campaigns are encouraging

Farmers Market – have been proactive for sanitizing and hopes the Board would reconsider unfreezing funds for the part-time position.

Comr. Fuller questioned if the Market vendors are following safe practices as many of them go from place to place each week. Director Zehner said that the vendors are taking the appropriate actions for safety. In addition, sanitizing actions for the Market include protocols followed if an issue is encountered, sanitation stations, hand-washing stations, sanitized restrooms, and additional spacing.

Mayor Cahoon asked about the mask-wearing requirement – Director Zehner said that signs requiring masks and social distancing have been provided for each vendor. Comr. Fuller said that consistently the playground at Dowdy Park is always full and no masks are being worn.

Board members would like to see, as a value of the Board, police presence at the Farmers Market all day tomorrow during the event.

Comr. Renée Cahoon said that she would be in favor of unfreezing the part-time Dowdy Park position only after tomorrow’s Market and seeing how everything works.

Mayor Cahoon requested an immediate post-action report from staff after tomorrow’s Dowdy Park Farmer’s event.

MOTION: Mayor Cahoon made a motion to unfreeze the \$16,000 Dowdy Park part-time position funds for a 30-day period - until the August 5th Board meeting - and to have staff spend the funds at their discretion. The motion was seconded by Comr. Brinkley which passed unanimously.

Director Zehner continued summarizing his report:

The CAMA access grant application for Huron Street was not approved.
The Jacob and Islington beach access projects are moving forward.

Mayor Cahoon spoke in favor of Director Zehner's presentation on stormwater control measures/possibilities and he noted that a tiered approach may work. He felt that the stormwater discussion would be well served in a Board workshop setting in late fall/winter and Board members agreed. Director Zehner said that he would continue to refine the stormwater system ideas and projects and then return to the Board.

Consideration of Town Code Sec 26-7 amendment re: Camping

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

"In the consideration of expected seasonal enforcement activities, Staff identified an inconsistency in the Town Code with respect to the use of vehicles, specifically trailers and recreational vehicles, for camping. Formerly the Town Code, and now the UDO, prohibit the use of trailers within the Town for sleeping or habitation; however, Section 26-7, Camping, of the Town Code, which has been in place since at least 1990, defines open air camping as "any act of living, residing or sleeping at night, in the open air or in an automobile or vehicle which does not meet the requirements of a mobile home, as defined. The term "camping in the open air" includes, but is not limited to, sleeping out of doors in a tent, sleeping bag, blanket or hammock, or without any paraphernalia other than the clothes worn on the body," and provides that "No person shall engage in the act of open air camping within the town; except, that an owner or lessee of improved real property and his immediate family and any person in the company of a member of the immediate family may camp upon the property; provided, however, that sanitary facilities including a bathroom with running potable water is available on such property for the use of all persons engaged in open air camping as permitted by this exception. The total number of persons authorized shall not exceed five."

'Based upon the inconsistency, Staff has prepared a draft amendment to Section 26-7 of the Town Code which is understood to address the issue based upon past practice. The draft proposes to remove the reference to the use of automobiles or vehicles from the definition of open air camping, and also specifically preclude the use of vehicles for camping under the circumstances where camping is allowed.

'STAFF RECOMMENDATION

Staff recognizes that this amendment may require further consideration and input from the Board; while Staff believes that it addresses the identified inconsistency and the Board could adopt the amendment, further feedback and direction would be welcome."

Mayor Cahoon confirmed with Director Zehner that the purpose is to remove all ambiguity re: open-air camping; Director Zehner said that the Town Code may be modified to allow camping on a residential site for a specific amount of time. Comr. Brinkley assured Board members that Police always use discretion when dealing with kids in the backyard camping, etc.

MOTION: Comr. Fuller made a motion to adopt the Town Code ordinance amendment re: camping as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

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

Comr. Renée Cahoon confirmed that staff will return at some point with another proposal with further clarifications for Board consideration.

Consideration of resolution to adopt Hazard Mitigation Plan

Planner Holly White summarized her memo which read in part as follows:

"Dare County and Currituck County, and the towns of Manteo, Nags Head, Kitty Hawk, Kill Devil Hills, Southern Shores, and Duck, joined efforts on updating their Hazard Mitigation Plans. This effort has been referred to as the *Outer Banks Regional Hazard Mitigation Plan*. The Town's previous Hazard Mitigation Plan was part of the *Albemarle Regional Hazard Mitigation Plan* ("Albemarle RHMP") that expires in June 2020 and can be viewed at www.nagsheadnc.gov/DocumentCenter/View/2097/Albemarle-Regional-Hazard-Mitigation-Plan. While good practice, especially given the Town's susceptibility to hazards, local governments are required to prepare and update hazard mitigation plans in order to be eligible for FEMA Disaster Assistance and Mitigation Grants.

'In addition to FEMA Disaster Assistance, the Hazard Mitigation Plan is an important component of the Town's participation in the Community Rating System ("CRS") program. The CRS program recognizes and encourages community floodplain management activities that exceed the minimum NFIP standards to enhance public safety, reduce damages to property and public infrastructure, avoid economic disruption and losses, reduce human suffering, and protect the environment. Through participation in the CRS program, all Town property owners receive a 20% discount on flood insurance.

'While Dare County has acted as lead on this Hazard Mitigation Plan update process, Planning Staff has been responsible for reviewing and providing feedback on the draft Plan, as well as vetting any information that was needed specifically for the Town. Public involvement has been an important part of this planning process. A Planning Team was developed to assist in gaining community feedback and participation as well as meet the criteria of the CRS program for Hazard Mitigation Plans. The Dare County Team included representatives from the County, each of the towns, and representatives of the public from each community; Nags Head's team members included staff members Shane Hite, Deputy Fire Chief; Michael Zehner, Director of Planning & Development, and Holly White, Principal Planner, as well as two citizen representatives, Meade Gwinn and Megan Lambert.

'PLAN

The draft Hazard Mitigation Plan was made available to the public in January 2020 for feedback. Following this, a final draft Plan was produced and sent to the State for review. After review by the State, the draft Plan was submitted to FEMA for review. FEMA approved the Plan as of June 10, 2020. Formal notification from FEMA will be sent upon approval of the Plan by all of the jurisdictions involved. The approval process requires that the State review and FEMA approval occur prior to the individual jurisdictional adoption. A draft resolution of adoption is attached.

'The Outer Banks Hazard Mitigation Plan can be viewed at www.obx-hmp.com under the "Review Draft Documents" tab.

'POLICY CONSIDERATIONS

The following 2017 Comprehensive Plan policies support the development and adoption of a hazard mitigation plan:

- NR-10 Protect the public health and safety of the town from natural and manmade hazards through proactive planning and mitigation efforts.
- NR-11 Ensure that the town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster event.
- NR-12 Support mitigation projects that reduce the potential damaging effects of hazards on the town.

STAFF & PLANNING BOARD RECOMMENDATION

Staff recommends that the Board of Commissioners consider adoption of the *Outer Banks Regional Hazard Mitigation Plan*. At the June 16, 2020 Planning Board Meeting, the Planning Board recommended approval of the *Outer Banks Regional Hazard Mitigation Plan*."

MOTION: Comr. Brinkley made a motion to adopt the resolution adopting the Hazard Mitigation Plan as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

"WHEREAS, the Town of Nags Head is vulnerable to an array of natural hazards that can cause loss of life and damages to public and private property; AND

"WHEREAS, the Town is committed to protecting the public health and safety of the Town from natural and manmade hazards through proactive planning and mitigation efforts; AND

"WHEREAS, The Town of Nags Head 2017 Comprehensive Plan includes goals and policies that 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 development and implementation of a hazard mitigation plan can result in actions that reduce the long-term risk to life and property from natural hazards; AND

"WHEREAS, it is the intent of the Town of Nags Head Board of Commissioners to protect its citizens and property from the effects of natural hazards by preparing and maintaining a local hazard mitigation plan and supporting mitigation projects that reduce the potential damaging effects of hazards on the Town; AND

"WHEREAS, it is also the intent of the Town of Nags Head Board of Commissioners to fulfill its obligation under North Carolina General Statutes, Chapter 166A: North Carolina Emergency Management Act and Section 322: Mitigation Planning, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to remain eligible to receive state and federal assistance in the event of a declared disaster affecting the Town of Nags Head; AND

"WHEREAS, the Town of Nags Head, in coordination with Currituck County, Dare County, and the Towns of Duck, Kill Devil Hills, Kitty Hawk, Manteo, and Southern Shores has prepared a regional hazard mitigation plan with input from the appropriate local and state officials and the community; AND

'WHEREAS, the North Carolina Division of Emergency Management and the Federal Emergency Management Agency have reviewed the Outer Banks Regional Hazard Mitigation Plan for legislative compliance and has approved the plan pending the completion of local adoption procedures.

'NOW, THEREFORE, BE IT RESOLVED that the Town of Nags Head hereby adopts the Outer Banks Regional Hazard Mitigation Plan, and agrees to take such other official action as may be reasonably necessary to carry out the proposed actions of the Plan."

Consideration of scope for update of the Decentralized Wastewater Management Plan

Environmental Planner Kylie Shephard summarized the agenda summary sheet which read in part as follows:

"Staff has developed a draft scope for the project to update the Town's *Decentralized Wastewater Management Plan*. This project and the update of the Plan works to implement a recommended action of the Town's Comprehensive Plan to "Update the Decentralized Wastewater Management Plan to evaluate the overall effectiveness of the program and recommend additional measures as necessary," (NR-26g) and advances actions recommended in the Town's *Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report*. This project is included on the Department's FY2020-2021 Strategic Work Plan.

'Staff Recommendation

Staff recommends that the Board review and discuss the draft scope, suggesting any revisions deemed necessary."

The memo presented by Ms. Shephard read in part as follows:

"Staff has developed the attached draft Scope for the project to update the Town's Decentralized Wastewater Management Plan, presented to the Board for review and pre-approval. This draft scope anticipates tasks to be performed by Town Staff and the yet-to-be-engaged consultant. The project will be managed by Town Staff. This project and the update of the Plan works to implement a recommended action of the Town's Comprehensive Plan to "Update the Decentralized Wastewater Management Plan to evaluate the overall effectiveness of the program and recommend additional measures as necessary," (NR-26g) and advances actions recommended in the Town's *Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report*. This project is included on the Department's FY2020-2021 Strategic Work Plan. Staff would request any comments, questions, or suggested revisions to the scope."

In response to an inquiry by Mayor Pro Tem Siers, Ms. Shephard said that the consultant would help to improve practices, develop ways to include stakeholders in the process and create a public outreach program. The public outreach program would be a great way to protect the community and to involve the homeowners.

Comr. Renée Cahoon asked about the steering committee purpose and Director Zehner said that it would help with the focus of the plan - what the plan is intending to address.

Comr. Fuller spoke against a Board member serving as a liaison on the steering committee as that Board member usually ends of chairing that committee and telling staff what to do - he said that to him it would not serve a useful purpose.

Mayor Cahoon asked about the test sites and confirmed with Ms. Shephard that there were an adequate number of wells.

It was Board consensus to approve the Decentralized Wastewater Management Plan scope as presented and that staff take into account the Board's comments/questions from today's discussion.

The scope, as approved, is attached to and made a part of these minutes as shown in Addendum "E".

WEST SIDE OF US 158 MULTI-USE PATH CONSTRUCTION PROJECT

Dep Town Manager Andy Garman summarized issues with - as well as the progress of - the multi-use path projects. He stated that in recent weeks delays on the 8C project have resulted in additional changes – staff met with the contractor yesterday and is meeting with them on a regular basis. Staff needs to pin down how the project is to proceed and get the information out to the public. Dep Manager Garman stated that project 8B is the south portion of the project; project 8C is the north portion.

Eddie Valdivieso of RPC Contracting was present and provided some explanation. He said that he is in daily communication with Town Engineer David Ryan and the 8C project completion date is July 16th for substantial completion and July 20th for final completion.

In response to Mayor Cahoon, Mr. Valdivieso said that in his opinion a lot of dynamics are involved especially on the design side with many pieces to the puzzle. It is a hard project under the current traffic conditions and some issues that were not thought to be in conflict with traffic ended up being in conflict with traffic. Issues that are common on these types of projects such as utilities and change in elevation have occurred and take time to resolve.

In response to Mayor Pro Tem Siers, Mr. Valdivieso stated that the construction issues, and not design issues, were found to have caused the most problems. Project 8C had the most conflicts with subtle design changes made out in the field. Project 8B completion date is mid-August and in response to a question from Comr. Renée Cahoon, Mr. Valdivieso said that traffic couldn't be any worse than it is at this time; he is also confident that in the Project 8B phase the traffic will be more manageable/tolerable. NCDOT is also expected to improve traffic with construction moving south at the traffic loop signals.

Comr. Brinkley confirmed that as construction workers finish one of the projects, they will move to assist with the other.

Comr. Fuller asked about complaints received from business owners in the area of the projects; Mr. Valdivieso said that he has met with them and has responded by moving some of the construction barrels and by taking several other actions to alleviate their concerns.

Dep Town Manager Andy Garman said that the Outer Banks Hospital and Outer Banks Mall are located in the Project 8C area; The Outlets Mall is located in the Project 8B area.

On behalf of the Board, Mayor Cahoon thanked RPC Contracting, Eddie Valdivieso, for speaking with the Board concerning updates on issues found with construction of the west side multi-use path project (Projects 8B and 8C). Mr. Valdivieso reported that substantial completion for the 8C path project is July 16th; for the 8B path project it is mid-August. Traffic conflicts, unexpected utility line locations to

include changes in elevation, and subtle design changes made out in the field have all contributed to the delays. Town staff is to continue to update the public on the status.

NEW BUSINESS

Committee Reports

Mayor Cahoon questioned Jennette's Pier status as it was noted that people are allowed out on the pier. Comr. Brinkley reported that there has not been a recent meeting of the Jennette's Pier Advisory Committee.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy stated that he had nothing new to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Interim Town Manager Greg Sparks - thank you to Board

Interim Town Manager Sparks thanked the Board for his appointment and stated that he has been made to feel very welcome by everyone. He emphasized that he is in the process of getting up to speed on the Town's issues to include: Hiring of the Public Works Director and the Town Manager recruitment process - he noted that headhunter proposals are due to him by July 10th.

BOARD OF COMMISSIONERS AGENDA

Comr. Kevin Brinkley - Update on recycling

Dep Planning Director Andy Garman provided an update on recycling:

Subscription service for Town residents – Thus far there are 129 residents that have expressed interest; Bay Disposal has noted in conversation to former Town Manager Cliff Ogburn that a specific number of interested residents are required before they will initiate service

Reduce and Recycle Committee - Thus far there are 25 people who have expressed interest in serving on the committee to look into ways to reduce the number of items from the waste stream and to come up with other progressive ideas to meet the Town's goals. Appointments and consideration of a charge is scheduled to take place at the August 5th Board of Commissioners meeting.

Mayor Cahoon said that it is important to call the committee a task force which is more accurate; an accurate charge for the task force will be critical.

Comr. Brinkley thanked Dep Mgr Garman for his report and said that August will be a good time to begin a discussion/appointments.

Comr. Brinkley noted that many feel that the Town will be recycling in the off season - Dep Mgr Garman said that the Town's recycling centers will continue to be able to be utilized and those

comingled items are being incinerated at this time. Comr. Brinkley thanked staff and the Public Works Department for maintaining the recycling centers.

Mayor Cahoon – September 2020 Board Retreat

Mayor Cahoon suggested a discussion at the August Board meeting of possible dates for a September 2020 Board Retreat. He feels that it would be appropriate to first get past this summer season and for the Board to then sit down and set some objectives going into the winter.

Comr. Renée Cahoon - Enforcing mask-wearing on the Outer Banks

Comr. Renée Cahoon noted that the Governor’s Executive Order mandated the wearing of masks and she has also seen more people here on the Outer Banks than ever before. She feels it is the responsibility of the Outer Banks Visitors Bureau to communicate to the public that the Outer Banks requires mask-wearing - she is concerned that not enough communication is being given to the public.

She feels it is their job to do this - to outline parameters to the public and to be the area’s advocate for public health - also where does the public call to report an issue?

Comr. Fuller agreed with Comr. Renée Cahoon and pointed out that the Outer Banks Visitors Bureau currently has a campaign to run throughout the summer on all radio stations and media stations speaking to the mask-wearing issue and to emphasize the three W’s (Wear, Wait, and Wash). In addition, the Visitors Bureau has purchased printed ads in local magazines bringing people in and speaking of safe procedures. The Visitors Bureau has also created a web page that highlights business safety protocols and they have produced masks that are branded and handed out free from welcome centers. He feels they can do more but some is being done.

Comr. Renée Cahoon spoke in favor of this campaign and suggested a stronger message that is more visible to the public so that people are prepared before they visit. She feels that the message should also be extended that businesses need to enforce mask use and other safety methods.

ADJOURNMENT

MOTION: Comr. Brinkley made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:20 a.m.

Carolyn F. Morris, Town Clerk

Date Approved: August 5, 2020

Mayor: _____
Benjamin Cahoon