



**DRAFT MINUTES**  
**TOWN OF NAGS HEAD**  
**BOARD OF COMMISSIONERS**  
**REGULAR MEETING**  
**WEDNESDAY, FEBRUARY 1, 2023**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, February 1, 2023 at 9:00 a.m. for a Regular Meeting.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Kevin Brinkley; and Comr. Bob Sanders

Board members Absent: Comr. Renée Cahoon

Others present: Town Manager Andy Garman; Attorney John Leidy; Lauren Arizaga-Womble; Kelly Wyatt; Kate Jones; Conner Twiddy; Amy Miller; David Ryan; Perry Hale; Chris Montgomery; Randy Wells; Nancy Carawan; Michelle Gray; Roberta Thuman; Joseph Garner; Jackie Hart; Richard Probst; Patty O'Sullivan; Tony Imperiale; Justin O'Sullivan; Shelly Blackstone; Wally Overman; Mary Anna Portner; Basil Belsches; Michael Mischou; Jordan Burns; David Ott; Ronnie Sawyer; Tyler Weeks; Marvin Burke; Jason Davidson; Marshall Guild; Win Bridgers; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 am. He noted that Comr. Renée Cahoon is on planned leave and is excused from today's meeting. A moment of silent meditation was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

MOTION: Comr. Brinkley made a motion to approve the February 1<sup>st</sup> agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.).

**RECOGNITION**

PRESENTATION – The Wall That Heals

Dare Co Vice-Chairman Wally Overman and Veterans Services Officer Patty O'Sullivan were on hand to present a video and powerpoint presentation concerning The Wall That Heals event scheduled for November 2023 at the Soundside Event site.

Brought here by efforts of Dare County Veterans Advisory Council (Chair Rick Probst, Tony Imperiale, and Justin O'Sullivan were present), the project was initiated by Marsha Brown, columnist for the *Coastland*

*Times*, whose husband passed away from complications of Agent Orange. Ms. O'Sullivan explained that a replica of the Memorial Wall in Washington DC with the 58,000 names of those who gave the ultimate sacrifice for their country will be brought here to the Soundside Event Site in Nags Head as the last stop across the country which is to begin in California. The Wall will be set up on November 15<sup>th</sup> and will be opened 24/7 until it is taken down on November 19<sup>th</sup> at 2 pm.

Board members thanked Vice-Chair Overman and Veterans Services Officer O'Sullivan for today's presentation and for the Wall That Heals to be brought to the Outer Banks/Nags Head. Mayor Cahoon expressed the Town's support for whatever is needed as it is an honor for the display to be brought to the Outer Banks.

The slides presented are attached to and made a part of these minutes as shown in Addendum "A".

NEW EMPLOYEE – Public Services Director Nancy Carawan introduced Facilities Maintenance Technician Joseph Garner who was welcomed by the Board to Town employment.

TWENTY YEARS – Fire Chief Randy Wells introduced Fire Dept Office Manager Jackie Hart who was congratulated by the Board for 20 years of service.

### **PUBLIC COMMENT**

Attorney Leidy opened Public Comment at 9:21 a.m.

#### PUBLIC COMMENT – BASIL BELSCHES

Basil Belsches, Nags Head resident; he spoke of the 2017 Comprehensive Plan where the neighborhood Historic Character Area is an area to be protected; there are several options to be presented later today to the Board concerning this – he supports Option 2 as proposed and asked the Board to endorse this option; he read a letter from Shelly Blackstone thanking Planning Director Kelly Wyatt and the Planning Board for their work on this issue.

#### PUBLIC COMMENT – BOBBY HARRELL

Bobby Harrell, Nags Head business property owner; he read a letter from the owner of the Hollowell St property, Elliot Katherman, that was being considered for affordable housing concerning the proposed rezoning of the property by the Town – the property owners in Old Nags Head Place knew that area was commercial when they purchased nearby - Mr. Katherman has invested in the Town for many years; Mr. Harrell stated that this site is ideally suited for the housing that was being proposed.

#### PUBLIC COMMENT – MICHAEL MISCHOU

Michael Mischou, Nags Head resident; he commended the Planning Board and the Planning and Development Dept for their work the past several months re: the rezoning proposal; he feels that the Board of Commissioners put a lot of work into the Town's Comprehensive Plan and he urged the Board to continue to follow the spirit of that Plan.

There being no one else present who wished to speak, Attorney Leidy closed Public Comment at 9:28 a.m.

### **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

- Consideration of Budget Amendment #10 to FY 22/23 Budget

- Consideration of Tax Adjustment Report
- Request to advertise delinquent taxes
- Approval of minutes

**MOTION:** Comr. Brinkley made a motion to approve the Consent Agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.).

Budget Amendment #10, as approved, is attached to and made a part of these minutes as shown in Addendum "B".

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

The Request to advertise delinquent taxes memo, as approved, read in part as follows:

"RE: Request for Order of Advertisement and Request to Begin Foreclosures on 2022 Taxes

'Request for Approval for Advertisement:

In accordance with NCGS 105-369 advertisement of tax liens on real property for failure to pay taxes "... The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period of March 1 thru June 3... The posted notice and newspaper advertisement shall set forth the following information: ...The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes; in alphabetical order;...a brief description of each parcel of land to which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel; a statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items; ...a statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes; costs – each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement..."

'With your approval, staff intends to advertise the liens in the newspaper on March 15, 2023 in accordance with NCGS 105-369 for all amounts outstanding as of end of business on March 10, 2023.

'Request for Authorization to Begin Foreclosures on 2022 Taxes:

In accordance with NCGS 105-374, "Foreclosure of tax lien by action in nature of action to foreclose a mortgage..." and/or NCGS 105-375, "In Rem method of foreclosure... "docketing certificate of taxes as judgment - in lieu of following the procedure set forth in NCGS 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised..."

'With your direction, staff will begin the foreclosure process where necessary on the 2022 delinquent taxes thirty days after advertising."

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

Update from Planning Director

Planning Director Kelly Wyatt summarized her report which read in part as follows:

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on February 1<sup>st</sup>, 2023.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for December 2022*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, January 3<sup>rd</sup> – Technical Review Meeting (no applications to review)
- Wednesday, January 4<sup>th</sup> – Board of Commissioners Meeting
- Thursday, January 5<sup>th</sup> – CRS Users Group (Dave Hallac, NPS Supt. guest)
- Wednesday, January 11<sup>th</sup> – Committee for Art and Culture Meeting
- Thursday, January 12<sup>th</sup> – Board of Adjustment Meeting
- Tuesday, January 17<sup>th</sup> – Planning Board Meeting

'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, January 17<sup>th</sup>, 2022 and included the election of Chair and Vice Chair for Calendar Year 2023. The Board voted unanimously to appoint Megan Vaughan as the Planning Board Chair, and Megan Lambert as the Vice Chair. The Planning Board then continued their discussion of the Historic Character Area. At their previous meeting, the Planning Board acknowledged the extent of text amendments that would be necessary to the C-1, Neighborhood Commercial District in order for it reflect the nature and character of the Historic Character Area and as such, expressed interest in establishing a new zoning district for this particular area from Danube Street north to Hollowell Avenue, between NC 12 and US Highway 158. Staff prepared draft ordinance amendments for the establishment of the C-5, Historic Character Commercial Zoning District which includes the creation of an intent narrative, outline of the proposed districts purpose, updated table of uses and activities, establishing dimensional requirements, creating special development standards for commercial buildings, and identifying various other areas of the Town Code and Unified Development Ordinance (UDO) that would require updating, should this new C-5 District be adopted. At the conclusion of their discussion, the Planning Board voted unanimously to recommend adoption of the proposed text amendments to the Unified Development Ordinance to create the C-5, Historic Character Commercial Zoning District including amendments to the table of uses and activities, dimensional standards and special commercial building design criteria. The Planning Board also voted unanimously to recommend adoption of a zoning ordinance text amendment to rezone the moratorium area to a combination of the R-3, High Density Residential Zoning District and the C-5, Historic Character Commercial Zoning District.

'The Planning Board's next meeting is scheduled for February 21<sup>st</sup>, 2023. At this time, the agenda is expected to include adoption of the 2023 Submittal Calendar, continued discussion of a potential text amendments as it relates to the definition of dwelling unit, what elements constitute a dwelling and clarification of language related to accessory structures and accessory uses. Planning staff will also provide the Planning Board with a finalized version of the Historic Character Area text amendments incorporating all their recommended revisions from the January 2023 meeting.

'Planning staff will be presenting an update on the Planning Board's recommendation at the Board of Commissioners February 1<sup>st</sup>, 2023 meeting.

'Board of Adjustment – Pending Applications

The appeal application submitted by Woda Cooper Development, Inc. scheduled to be heard on Thursday, January 12<sup>th</sup>, 2023 was withdrawn from consideration prior to the meeting date.

'Additional Updates

- DWMP/Septic Health Advisory Committee – The next meeting of the Septic Health Advisory Committee is scheduled for Tuesday, January 31<sup>st</sup> at 10am in the Board Room. Staff is requesting that the Board of Commissioners consider the appointment of new members to this committee at their February 1<sup>st</sup>, 2023, meeting. As previously noted, staff sent a targeted mailer to property owners in higher risk areas of groundwater rise, specifically sent to property owners in South Nags Head. Approximately 480 letters were sent out, and since then we have noticed an increase in inquiries, resulting in 15 new inspection requests. Staff will soon be sending out this same letter to property owners within Old Nags Head Cove Subdivision as that area has also been identified as high risk of septic failure due to groundwater rise.
- Estuarine Shoreline Management Plan – Planning staff and the consultant team of Biohabitats and Moffit and Nichol, provided an update on the draft Estuarine Shoreline Management Plan Report to the Board of Commissioners at their January 4<sup>th</sup>, 2023 meeting. Any comments received have since been incorporated into the plan and staff is requesting that the Board of Commissioners consider adoption of the plan at their February 1, 2023 meeting.
- NC Resilient Coastal Communities Program – With installation of the data loggers complete, data is now being collected for improved accuracy in calibrating the hydrologic and hydraulic model for the installation of the infiltration system design.

'Town staff has requested a six (6) month extension to the RCCP Phase 3 grant program contract based upon feedback received from state and federal agency representatives from the NCDEQ pre-application scoping meeting, that identified potential barriers to permitting. Additional data collection may be necessary and alternative approaches required to address the specific regulatory concerns and comments.

- Electric Vehicle Action Plan – No new updates currently.
- ETIPP Project/Program – Jordan Burns, from the National Renewable Energy Lab (NREL-DOE) will be providing an update via zoom to the Board of Commissioners at their February 1<sup>st</sup>, 2023, meeting.
- Whalebone Park: Phase 1 Planning – No new updates currently.
- Dune Management Cost Share Program – Currently there are 70 property owners that have submitted applications for the dune management cost share program. \$270,000 was the total amount funded to this program, and \$247,000 is currently allocated, leaving a balance of \$23,000 as of January 25, 2023.
- Nags Head Dog Park - \$30,000 is the total amount funded for various improvements to the dog park. Staff has updated the proposed site plan based upon a reduced scope of work. Currently awaiting pricing on the reduced scope of work.
- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture –The Art and Culture Committee is looking forward to providing the Board of Commissioners with their update in March 2023 on the 2022 Season and ideas for the discussion regarding the upcoming 2023 Season.

'Upcoming Meetings and Other Dates

- Wednesday, February 1<sup>st</sup> – Board of Commissioners Meeting
- Thursday, February 2<sup>nd</sup> – CRS Users Group Meeting & Planners Lunch
- Tuesday, February 7<sup>th</sup> – Technical Review Meeting
- Wednesday, February 8<sup>th</sup> – Committee for Art and Culture Meeting
- Thursday, February 9<sup>th</sup> – Board of Adjustment Meeting (no hearings scheduled)
- Tuesday, February 21<sup>st</sup> – Planning Board Meeting”

Update/Request for Public Hearing to consider UDO/Zoning Map amendment re: existing land uses pertaining to the Historic Character Area and the moratorium adopted October 19, 2022

Planning Director Kelly Wyatt summarized her memo which read in part as follows:

“In response to the Board of Commissioners-adopted moratorium of October 19, 2022, prohibiting all non-residential developments located within the C-2, General Commercial Zoning District applicable to the areas from Danube Street north to Hollowell Avenue, between US Highway 158 and NC12, Planning staff is coming before the Board of Commissioners at their February 1, 2023 meeting to provide an update on the research and analysis that has been completed to date, to outline the Planning Board’s recommended revisions to the Unified Development Ordinance and Zoning Map, and to request that the public hearing on this item be held at the Board of Commissioners March 1, 2023 meeting.

‘As outlined in the adopted moratorium, the Planning Board had three opportunities to discuss potential outcomes within the Historic Character Area. At their first meeting on November 10, 2022, the Planning Board’s primary focus and discussion centered around the current/existing zoning regulations, possible incompatible land uses and what would result to any nonconforming situations created as a result of any possible rezoning. The Planning Board also expressed interest in having more information on what protections could be in place for Historic Cottage Row. It was noted that while there may be a zoning district designation better suited for this area, the zoning district alone would not offer any architectural protections for residential structures. In 2015 restrictions on the ability for local governments to adopt residential architectural standards were adopted by the North Carolina General Assembly. S.L. 2015-86 became effective law in North Carolina on June 19, 2015. This and prohibits the regulation of “building design elements”. This prohibition covers exterior building color, type or style of exterior cladding material, style or materials of roofs or porches, exterior nonstructural architectural ornamentation, location of architectural styling of windows and doors, including garage doors, location of rooms, and interior layout of rooms. These limits have been codified as NCGS 160D-702(b).

‘At their December 13<sup>th</sup>, 2022 meeting, planning staff summarized for the Planning Board what had been expressed to them from property owners within the Historic Cottage Row area, as well as within Old Nags Head Place. Property owners within Historic Cottage Row conveyed strong support for having their properties rezoned from a commercial designation to a residential designation and property owners within the Old Nags Head Place Subdivision requested that consideration be given to rezoning their properties and the neighboring properties from a commercial designation to a residential designation. Specifically, they were interested in the R-3, High Density Residential Zoning District, given that the area has been developed to the R-3 dimensional standards, despite it being zoned a mixture of R-3, High Density Residential, CR, Commercial Residential and C-2, Commercial Services.

‘Also at the December 13 meeting, staff presented to the Planning Board a series of three (3) maps for their consideration. The first was the area of the moratorium mapped with the current zoning designations, the second map depicted the moratorium area with a C-1, Neighborhood Commercial zoning designation and the third map depicted the moratorium area with a combination of R-3, High Density Residential zoning and C-1, Neighborhood Commercial zoning designation. Staff noted that lots west of NC 12, adjacent to Historic

Cottage Row had dimensional standards more aligned with that of the R-3, High Density Residential Zoning designation, thus the recommended R-3 zoning. After discussion on the proposed mapping, the consensus of the Planning Board was they preferred the option depicting the area of the moratorium with a combination of the C-1, Neighborhood Commercial zoning designation and R-3, High Density Residential zoning designation.

Planning staff and the Planning Board discussed possible text amendments that would be necessary to ensure that Section 6.6, Table of Uses and Activities, would reflect the intent of the Historic Character Area as stated within the Town's Comprehensive Land Use Plan. Noting the extent of text amendments that would be necessary, staff introduced the idea that the Planning Board could also consider establishing a new zoning district, leaving the C-1, Neighborhood Commercial zoning district intact. The Planning Board expressed interest in this option.

At their January 17<sup>th</sup>, 2023, meeting, staff prepared and presented draft ordinance amendments for the establishment of the C-5, Historic Character Commercial Zoning District. At the conclusion of their discussion, the Planning Board voted unanimously to recommend adoption of the proposed text amendments to the Unified Development Ordinance to create the C-5, Historic Character Commercial Zoning District including amendments to the table of uses and activities, dimensional standards, and special commercial building design criteria. The Planning Board also voted unanimously to recommend adoption of a zoning map amendment to rezone the moratorium area to a combination of the R-3, High Density Residential Zoning District and the C-5, Historic Character Commercial Zoning District.

The draft ordinance reviewed by the Planning Board is included for the Board of Commissioners consideration and contains the following amendments:

- Section 6.2.2, Zoning Districts Established, to include the proposed C-5, Historic Character Commercial District.
- Section 6.2.4, Commercial Districts, to include the C-5, Historic Character Commercial District and create a draft intent narrative, outlining the district's purpose.
- Section 6.6, Table of Uses and Activities to include the C-5, Historic Character Commercial District to propose which uses should be allowed within the proposed C-5 District. Note that due to the significant historical character of this area, staff has proposed that all commercial uses be reviewed via the Special Use Permit process so as to allow both the Planning Board and Board of Commissioners the ability review each application. Additionally, you will note that there are far fewer uses permitted in the proposed C-5 District than within the CR, C-1 and C-2 Districts.
- Section 8.2, Development Standards – Primary Districts, to establish dimensional requirements for the proposed C-5, Historic Character Commercial District. Note that the proposed lot coverage allowance is 40% of the lot area, however it may be increased to 50% with the use of permeable paving materials. This reduction in lot coverage allowance is a result of significant discussion by the Planning Board on the standing water concerns within this area and the need to encourage, promote and in some cases require, more utilization of permeable surfaces.
- Section 7.15, Supplemental Regulations for Pet Shop/Grooming Shops. The Planning Board felt as though grooming only would be an acceptable use to allow within the proposed C-5 District.
- Section 8.3, Special Development Standards, to add Section 8.3.2 which sets forth special commercial building design criteria for both new and existing commercial structures within the proposed C-5, Historic Commercial District. Additionally, this section recommends applying a maximum habitable building area based upon the lot's frontage on either NC 12 or US Highway 158.
- Section 8.6.6.4, Special Requirements for the C-3 District and C-5 District, to set forth lot coverage allowances within the C-3 and C-5 District, noting that the C-5 District contains a special allowance for increased coverage with the use of permeable materials.
- Section 10.82, Applicability of Commercial Design Standards to add the proposed C-5 District to those districts to which the design standards apply.
- Sections 10.24, 7.78, 7.45, 7.23 and Appendix A, Definitions to be updated with the C-5, Historic Character Commercial District.

'Also included for the Board of Commissioners consideration are the various attachments presented to the Planning Board for discussion purposes. These include:

'Attachment A – Various draft text amendments within the Unified Development Ordinance and Town Code establishing the C-5, Historic Character Commercial District.

'Attachment B - A series of three (3) maps for the Planning Boards consideration:

- Existing Zoning Map. This map shows the existing zoning designations within the area of the moratorium.
- Option 1. This option depicts rezoning the entire area of the moratorium to C-5, Historic Character Commercial.
- Option 2. This option depicts the combination of rezoning the area of the moratorium to C-5, Historic Character Commercial and R-3, High Density Residential.

'Attachment C – Chart compiled by staff listing all the commercial businesses located within the Historic Character Area and whether the use would be permitted within the C-5, Historic Character Commercial District as currently proposed. With the proposal to limit habitable building area to 3,500 square feet on lots adjacent to NC 12 and 10,000 square feet adjacent to US Highway 158, we have also noted whether the existing building conforms to the area limitations.

'Attachment D – Article 5 of the Unified Development Ordinance, Nonconformities.

'Staff will be available to participate in the discussion at the Board of Commissioners February 1, 2023, meeting."

Mayor Pro Tem Siers thanked Ms. Wyatt and the Planning Board for all the work done on the amendment. He also asked to make sure that the definition of "habitable" is very clear.

Comr. Brinkley appreciated the presentation for the Board and for the public.

Comr. Sanders also thanked staff and the Planning Board for their efforts.

**MOTION:** Mayor Pro Tem Siers made a motion to schedule a Public Hearing to consider UDO and Zoning Map amendment requests pertaining to the Historic Character Area and the moratorium adopted on October 19, 2022 for the March 1<sup>st</sup> Board of Commissioners meeting. The motion was seconded by Comr. Brinkley which passed 4 – 0 (Comr. Renée Cahoon was excused.).

Presentation from Jordan Burns, National Renewable Energy Laboratory (NREL) Re: ETIPP Project Update Time Specific 10:00 a.m.

Dep Planning Director Kate Jones summarized her memo which read in part as follows:

"Town staff have been collaborating with the Department of Energy on a technical assistance grant to support resilience efforts in planning for 46-72 hours of backup for critical facilities. Thus far, the following steps have been completed since the beginning of the project in late 2021.

- Staff develop a list of critical facilities by surveying key town staff.
- Potential locations and use of microgrids was discussed and identified.
- Energy use data was acquired for the critical facilities from Dominion power. Limitations on energy use data sharing only permits the town access to town owned facilities.



- Energy use scenario modelling was completed by NREL and partners which will be discussed in the presentation.
- Ongoing discussions with Dominion Energy are further supporting the project and will be discussed during the presentation.

#### 'Updates

Jordan Burns, from the National Renewable Energy Laboratory (NREL) will be providing a power point presentation via zoom. She will be updating the board on the status of the project, the modelling results which includes energy scenarios for each of the selected critical town facilities with a particular focus on the town administrative building and police department, the water plant, fire station 16, and the public services complex.

'Staff would like the Board to view the presentation, and provide feedback on the project thus far, and well as give direction for the focus of the remainder of the project, given the original charge and outcomes thus far.

'Staff and project partners will be available to answer any questions. Attachments: Original grant application and grant scope of work."

Jordan Burns from the National Renewable Energy Laboratory (NREL), via Zoom Platform, spoke concerning the Energy Transitions Initiative Partnership Project (ETIPP), a program to help communities with renewable energy. The three project progress activities were listed as: Site selection, Energy System Modeling, and Outreach Materials. Town staff have been collaborating with the Department of Energy on a technical assistance grant to support resilience efforts in planning for 46 - 72 hours of backup for the Town's critical facilities.

Brooke Garc from Sandia Company, via Zoom Platform, spoke re: Modeling Onsite Renewable Energy Systems/Microgrid options for specific areas of the Town.

Mayor Cahoon asked about joining with the Town of Kill Devil Hills since they have an almost identical water plant right next to the Town's plant. Response was that it would be very beneficial; Ms. Jones is to contact the Town of Kill Devil Hills.

Board members thanked everyone who participated in the very informative presentation.

The slides presented are attached to and made a part of these minutes as shown in Addendum "D".

#### Presentation from NCDOT re: Town paving and drainage projects

Time Specific 10:30 a.m.

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

"At the February 1<sup>st</sup> Board of Commissioners meeting, representatives from the North Carolina Department of Transportation (NCDOT) will be providing an update on the following topics:

- S. Croatan Hwy. (US Hwy 158) Surface Overlay Project
- Whalebone Junction (S. Virginia Dare Trail) and E. Gray Eagle St. modification requests
- Ocean outfall repair work"

NCDOT Dep Division Director, Ronnie Sawyer, introduced NCDOT staff in attendance: Assistant Construction Engineer David Ott, Tyler Weeks, Marvin Burke, Jason Davidson, Marshall Guild, and Division Engineer Win Bridgers.

S Croatan Hwy (US 158) Surface Overlay Project - Assistant Construction Engineer David Ott summarized the project which is from Eighth St to E Gray Eagle Street of 6.4 miles to be constructed by contractor Fred Smith (who purchased RPC Contracting Co), bid amount was \$4,790,000. Project begins the week of February 6<sup>th</sup>.

Mayor Cahoon confirmed that pipes will be installed prior to paving so no removing of new pavement will be required. Mayor Pro Tem Siers confirmed that temporary pavement markings are installed prior to permanent markings later. It was noted that therma-plastic is now used for pavement markings. Comr. Sanders confirmed a smooth transition in/out of roadways leading to US 158.

Town Manager Garman stated that the deceleration lanes are included in the project as are side streets (back to the radius), signal loops in private driveways; Mr. Ott said that Town streets are included depending on whether they are asphalt or concrete; reflective markings to be provided at the end of the project; NCDOT is pushing for permanent markings by summer but can't promise that yet. Mr. Ott also said that no upgrade to the loop systems will take place at this time – they are replacing what is there.

Whalebone Junction Concept (realignment of Gulf Stream Street) - in front of 7-Eleven intersection. Marshall Guild explained that it is a high impact, low cost project, if the Town is interested. Town Manager Garman also asked about moving the crosswalk a little south so people are not walking in the middle of the turn lane to cross to Jennette's Pier. It was indicated that a time would be scheduled for a meeting to discuss this.

Ocean Outfall Repair Work – NCDOT staff is in the process of trying to secure funds for the Red Drum outfall repair.

The slides presented by NCDOT representatives are attached to and made a part of these minutes as shown in Addendum "E".

Presentation from Pedestrian Project Advisory Committee – Final Report  
Time Specific 11:00 a.m.

Town Engineer David Ryan introduced Pedestrian Project Advisory Committee member Lynda Frattone who summarized her experience on the committee. Ms. Frattone stated that the Committee members represented a fairly large diverse group of Nags Head; projects were discussed in detail and based on all information discussed, the committee was able to establish priorities for the Board's consideration; she specifically thanked Engineer David Ryan as Chair of the committee as he was very open to receiving the members' comments.

Along with Town Engineer David Ryan, members were Board liaison Comr. Renée Cahoon, Aaron McCall, Lynda Frattone, Meade Gwinn, Bill Simmonds, Rick Termeer, and Dep Fire Chief Shane Hite. The goal of the committee was to expand on the projects identified in the 2014 Town Pedestrian Plan to encourage safe travel by pedestrians and bicyclists and to identify improvements throughout the Town. A final report was provided in the Board's backup materials. Although a specific project may be listed as the first project, costs and other factors may delay that project from being constructed first, which the committee acknowledged.

In response to Mayor Cahoon, Engineer Ryan said that an infrastructure at Jockey's Ridge State Park was discussed.

Board members thanked Ms. Frattone for presenting and for working on the committee. They thanked the committee members for their work.

The Committee's final report as presented is attached to and made a part of these minutes as shown in Addendum "F".

### Consideration of final Estuarine Shoreline Management Plan

Dep Planning Director Kate Jones summarized her memo which read in part as follows:

"Town staff have been collaborating with the consultant team of Biohabitats and Moffat & Nichol, as well as the Local Advisory Committee to advance the Estuarine Shoreline Management Plan (ESMP) project. The project and plan is a comprehensive effort to address the management of seventeen linear miles of estuarine shoreline in the Town while balancing land use, ecosystem health, public health, and recreational opportunities.

'The project website is available here: <https://www.nagsheadnc.gov/1057/Estuarine-Shoreline-Management-Plan>

#### 'Updates

The draft Estuarine Shoreline Management Plan was provided via hardcopy to the Board of Commissioners at their January 2023 meeting. An electronic copy of the plan was made available on the town's website, with an opportunity to provide comments via email, phone or in person. Comments from the advisory committee were received in December and incorporated into the drafts at that time. To date, no comments from the public have been received.

#### 'Staff Recommendation

Staff would like the Board to consider the adoption of the Estuarine Shoreline Management Plan as is, or adoption of the plan with any recommended changes.

'Staff will be available to answer any questions."

Board members thanked staff and the group that worked on the Plan.

Manager Garman explained the living shoreline improvements made with the NC Coastal Federation who was also a partner in this project; they want to include Nags Head NH in the grant application in a cost-share grant program. This allows private property owners to share in the cost of implementing the living shoreline – opportunity for the Town's property owners. The Coastal Federation will be submitting the application on the Town's behalf.

**MOTION:** Comr. Brinkley made a motion to adopt the final Estuarine Shoreline Management Plan as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.).

The Plan, as adopted, is on file in the Town Clerk's Office.

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

#### From Jan 4<sup>th</sup> Board meeting

- Consideration of Deed of Trust as collateral for financing
- Adoption of Resolution for final approval of FY 23 Projects (Public Services Complex and Smart Meter Infrastructure) financing application

Dep Town Manager Amy Miller summarized the agenda summary sheet which read in part as follows:

"At the January 4<sup>th</sup> Board of Commissioners meeting a public hearing was held to consider proposed financing for the Public Services Complex and the Smart Meter Infrastructure projects. The Board subsequently adopted the resolutions approving the negotiation of an installment financing contract for financing of the FY 2023 Projects as presented.

'At the February 1<sup>st</sup> Board of Commissioners meeting, staff is requesting Board consideration of the following documents that continue the process of financing the projects:

- Deed of Trust as collateral for financing – Please be expressly aware that you are permitting the real property to be burdened with up to \$100,000,000 in debt, but only to the extent you have approved taking on the debt (currently not to exceed \$19,900,000).
- Resolution for final approval of the FY 23 Projects financing application (Documents listed in the resolution are available upon request)"

Ms. Miller read the following statement from the attorneys who wanted to emphasize the following to the Board:

Deed of Trust as collateral for financing – "Please be expressly aware that you are permitting the real property to be burdened with up to \$100,000,000 in debt, but only to the extent you have approved taking on the debt (currently not to exceed \$19,900,000)."

Comr. Brinkley confirmed with staff that the deed of trust is a substitute deed of trust, the Town is using the complex as collateral for the funds to do the work. This is a new deed of trust as the fuel tank deed at the Public Works Complex was switched to Dowdy Park.

MOTION: Comr. Brinkley made a motion to adopt the resolution approving the FY 23 Projects (Public Services Complex and Smart Meter Infrastructure) financing application as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.).

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

*"WHEREAS*, the Town of Nags Head, North Carolina (the "*Town*") is a validly existing municipal corporation of the State of North Carolina (the "*State*"), existing as such under and by virtue of the Constitution, statutes and laws of the State;

*'WHEREAS*, the Town has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price of such property;

*'WHEREAS*, the Board of Commissioners of the Town (the "*Board*") has previously determined that it is in the best interest of the Town to enter into an Installment Financing Contract (the "*Contract*") with the Nags Head Leasing Corporation, a North Carolina nonprofit corporation (the "*Corporation*"), to finance (a) the construction, equipping, and furnishing of public services facilities, (b) the conversion of the Town's residential and commercial water meters to an Advanced Metering Infrastructure (AMI) system (collectively, the "*2023 Projects*"), and (c) the costs related to the execution and delivery of the Contract;

*'WHEREAS*, in order to secure the Town's obligations under the Contract, the Town will enter into a Deed of Trust, Security Agreement and Fixture Filing (the "*Deed of Trust*") granting a lien on the real property on

which all or a portion of the 2023 Projects will be located and the improvements thereon that may be necessary to effectuate the proposed financing;

'*WHEREAS*, the Corporation will execute and deliver its Limited Obligation Bonds (Town of Nags Head, North Carolina), Series 2023 (the "*Bonds*") in an aggregate principal amount not to exceed \$19,900,000, evidencing proportionate undivided interests in rights to receive certain Revenues (as defined in the Contract) pursuant to the Contract;

'*WHEREAS*, in connection with the sale of the Bonds to PNC Capital Markets LLC (the "*Underwriter*"), the Corporation will enter into a Contract of Purchase (the "*Purchase Contract*") between the Corporation and the Underwriter relating to the Bonds, and the Town will execute a Letter of Representation to the Underwriter (the "*Letter of Representation*");

'*WHEREAS*, there have been described to the Board the forms of the following documents (collectively, the "*Instruments*"), copies of which have been made available to the Board, which the Board proposes to approve, enter into, and deliver, as applicable, to effectuate the proposed installment financing:

- (1) the Contract;
- (2) the Deed of Trust;
- (3) an Indenture of Trust dated as of March 1, 2023 (the "*Indenture*") between the Corporation and The Bank of New York Mellon Trust Company, N.A., as trustee, including the form of the Bonds; and
- (4) the Purchase Contract and the Letter of Representation.

'*WHEREAS*, to make an offering and sale of the Bonds, there will be prepared a Preliminary Official Statement with respect to the Bonds (the "*Preliminary Official Statement*"), a draft thereof having been made available to the Board, and a final Official Statement relating to the Bonds (together with the Preliminary Official Statement, the "*Official Statement*"), which Official Statement will contain certain information regarding the Town and the Bonds;

'*WHEREAS*, it appears that each of the Instruments and the Preliminary Official Statement is in an appropriate form and is an appropriate instrument for the purposes intended;

'*WHEREAS*, the Board conducted a public hearing on January 4, 2023 to receive public comment on the proposed Contract, the Deed of Trust, and the 2023 Projects; and

'*WHEREAS*, the Town has filed an application to the Local Government Commission of North Carolina (the "*LGC*") for approval of the Contract and will receive the approval of the LGC before executing and delivering the Contract;

***NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, AS FOLLOWS:***

***Ratification of Instruments.*** All actions of the Town, the Mayor, the Town Clerk, the Town Manager, the Finance Director, the Town Attorney and their respective designees (individually and collectively, the "*Authorized Officers*"), whether previously or hereinafter taken, in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

***Authorization of the Official Statement.*** The form, terms and content of the Preliminary Official Statement are in all respects authorized, approved and confirmed, and the Underwriter's use of the Preliminary Official Statement and the final Official Statement in connection with the offering and sale of the Bonds is hereby in all respects authorized, approved and confirmed. The Authorized Officers are hereby authorized and directed

to deliver, on behalf of the Town, the Official Statement in substantially such form, with such changes, insertions and omissions as they may approve.

*'Authorization to Execute the Contract.* The Town hereby approves the financing in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the Town in accordance with its terms. The form and content of the Contract are hereby in all respects authorized, approved and confirmed, and the Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Contract, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as they deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the Town's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Contract presented to the Board. From and after the execution and delivery of the Contract, the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as executed.

*'Authorization to Execute the Deed of Trust.* The Town approves the form and content of the Deed of Trust, and the Deed of Trust is in all respects authorized, approved and confirmed. The Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Deed of Trust, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as they deem necessary, desirable or appropriate. Execution by the Authorized Officers constitutes conclusive evidence of the Town's approval of any and all such changes, modifications, additions or deletions therein from the form and content of the Deed of Trust presented to the Board, and from and after the execution and delivery of the Deed of Trust, the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Deed of Trust as executed.

*'Authorization to Execute the Purchase Contract and Letter of Representation.* The form and content of the Purchase Contract are hereby approved in all respects. The Mayor, the Town Manager and the Finance Director are authorized to execute the Letter of Representation for the purposes stated therein, including necessary counterparts, in substantially the form and content of the Letter of Representation presented to the Board, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the Town's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Letter of Representation presented to the Board. From and after the execution and delivery of the Letter of Representation, the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Letter of Representation as executed.

*'Town Representative.* The Authorized Officers are each hereby designated as the Town's representative to act on behalf of the Town in connection with the transactions contemplated by the Instruments and the Official Statement, and the Authorized Officers are authorized to proceed with the financing in accordance with the Instruments and to seek opinions as a matter of law from the Town Attorney, which the Town Attorney is authorized to furnish on behalf of the Town, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The Town's representative and/or designee or designees are in all respects authorized on behalf of the Town to supply all information pertaining to the Town for use in the Official Statement and the transactions contemplated by the Instruments or the Official Statement. The Town's representatives or their respective designees are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate to consummate the transactions contemplated by the Instruments or the Official Statement or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution and the on-going administration of the Instruments. Any provision in this Resolution that authorizes more than one officer of the Town to take certain actions shall be read to

permit such officers to take the authorized actions either individually or collectively and any action authorized may be taken by anyone designated to act on their behalf.

*'Severability.* If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

*'Repealer.* All motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

*'Effective Date.* This Resolution is effective on the date of its adoption."

## **NEW BUSINESS**

### Consideration of appointments to the Septic Health Advisory Committee

Environmental Planner Conner Twiddy summarized the agenda summary sheet which read in part as follows:

"At their December 7<sup>th</sup>, 2022 meeting the Board of Commissioners made a motion to approve shifting the focus of the then Voluntary Septic Subscription Service Committee to the Septic Health Advisory Committee (SHAC). This committee will meet quarterly to discuss the successes and challenges of the Septic Health Initiative program and provide input as staff begins to implement the recommendations set forth in the updated Decentralized Wastewater Treatment Plan (DWMP). The Septic Health Advisory Committee currently consists of:

'Kevin Brinkley, Board of Commissioners  
Megan Lambert, Planning Board Member  
Bob Muller, Town Resident  
Conner Twiddy, Environmental Planner  
Kate Jones, Deputy Planning Director  
Kelly Wyatt, Planning Director

'In addition to approving the requested committee name change and charge, the Board of Commissioners suggested that staff seek additional volunteers for the Septic Health Advisory Committee from the S. Nags Head Area. As part of a targeted mailer sent to property owners in South Nags Head, as it is an area identified in the DWMP as being at higher risk of septic failure due to groundwater rise, staff requested that citizens interested in serving on the SHAC complete the online application. The application was also made available online for anyone within the Town interested in serving on the committee. From this call for volunteers, we received applications from four (4) interested Nags Head citizens: Wayne Varilek, Tim Julian, Robert Edwards and Dave Hermann."

**MOTION:** Comr. Brinkley made a motion to nominate and appoint all four of the applicants requesting to serve on the Septic Health Advisory Committee: Wayne Varilek, Tim Julian, Robert Edwards, and Dave Hermann. The motion was seconded by Mayor Pro Tem Siers.

Mayor Cahoon thanked the committee and he thanked those who applied to serve.

**CONTINUATION OF MOTION:** The motion passed 4 – 0 (Comr. Renée Cahoon was excused.).

### Discussion of Old Nags Head Place Drainage Re-bid results

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

"In November 2022, the Town of Nags Head advertised a request for proposals for a drainage restoration construction plan for the Old Nags Head Place subdivision. No proposals were received for the initial bid date of December 15, 2022. A second advertisement for bid was issued on December 16, 2022 with two bids received on January 17, 2023. Hatchell Concrete, Inc. of Manteo, NC submitted the lowest responsive, responsible bid in the amount of \$509,519.00

'Project funding is a composite of Town funds in the amount of \$255,000 and an approximate contribution of \$100,000 from the Old Nags Head Place Property Owners Association for a total amount of \$355,000. The project bid exceeds the available funds by approximately \$155,000.

'Town Engineer, David Ryan, P.E. will review the project design and potential "value engineering items" to reduce project costs."

Engineer Ryan stated that the cost estimates were done over two years ago and are not now accurate; he wanted to note that during this process, they have reached out to Dare County and the Community Conservation Assistance Program and a grant was applied for but was not successful. Staff is looking for an estimated \$200,000 to make up the shortfall – or reduce the scope of the project work.

It was Board consensus to look for additional funding for the Old Nags Head Place drainage project and report back to the Board, hopefully before the end of the upcoming budget process.

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

### Attorney Leidy – Lauren Arizaga-Womble has joined Hornthal, Riley, Ellis, and Maland

Attorney Leidy reported that Lauren Arizaga-Womble has joined his firm of Hornthal, Riley, Ellis, and Maland; he noted that she has done a lot of local government work.

### Attorney Leidy – Update on Blackburn litigation

Attorney Leidy provided an update on the NC Court of Appeals decision on the Blackburn case - the challenge was to the closure of the bridge during the COVID-19 epidemic. The Court's judgement was in favor of Dare County that no taking had occurred.

### Attorney Leidy – Request for additional Closed Session

Attorney Leidy requested an additional Closed Session to discuss attorney/client privilege matter re: the Budlong Beach Nourishment Project easement condemnation.

### Attorney Leidy – Occupancy tax at campgrounds

In response to Mayor Cahoon's question, Attorney Leidy stated that the county had been working on the redistribution of the funds collected for the occupancy tax charged at campgrounds – after that, the county will be seeking reimbursement from the towns.

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

### Town Manager Garman - Updates from the Town Manager

The agenda summary sheet read in part as follows:

"At the February 1<sup>st</sup> Board of Commissioners meeting, the following updates will be provided by Town Manager Garman:



- Resolution re: legislation prohibiting beach holes – attached for Board consideration is a resolution requesting the State to enact a law creating a criminal penalty for leaving unattended hazardous beach holes.
- On Monday, December 5, 2022, staff met with several beach concierge services to discuss the prior season. The group suggested revisions to our current ordinance that may assist the town and the vendors with compliance. We will provide a brief update on this at the upcoming meeting. It is our intent to circulate a draft to vendors and bring this forward to the board in March.
- We will ask the Board to modify the budget calendar. The town plans to sell the bonds for the Public Services financing on February 15th. We would ask that the first budget workshop be moved to March 1st, after the board’s regular meeting.”

Resolution re: legislation prohibiting beach hole abandonment

Attorney Leidy presented the proposed resolution which includes specific dimensions of a beach hole to be prohibited from being abandoned. The resolution then requests State Legislature enact a law determining such actions to be a significant criminal penalty.

It was Board consensus to take the resolution back to those who provided the original input to prepare cleaner, more detailed dimensions for consideration at the March 1<sup>st</sup> meeting.

Discussion of beach concierge service regulations

Beach concierge services vendors met with Town staff and some modifications were made to the beach concierge regulations to be brought back for consideration at the March 1<sup>st</sup> Board meeting. Comr. Brinkley suggested distributing the proposed regulation changes to all vendors, not just those that attended the meeting with Town staff and to change the verbiage to indicate that permits WILL be revoked if regulations are not adhered to.

Discussion of Budget Calendar modifications

The Budget Calendar adopted in December 2022 scheduled the first Budget Workshop to follow the February 15<sup>th</sup> Recessed Session. Manager Garman would like to change this date to March 1<sup>st</sup> as this would allow time to obtain additional information re: the Public Works Complex bond rate and provide a more accurate cost of the construction. It was Board consensus to agree with Manager Garman and move the Budget Workshop date from February 15<sup>th</sup> to March 1<sup>st</sup> – to follow the Board’s regular meeting.

**CLOSED SESSIONS**

Request for Closed Sessions

MOTION: Mayor Pro Tem Siers made a motion to enter Closed Session pursuant to GS 143-318.11(a)(6) in order to discuss a confidential personnel matter as well as pursuant to GS 143-318.11(a)(3) to discuss matters within attorney/client privilege and to preserve that privilege including the Budlong Beach Nourishment Project litigation. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Renée Cahoon was excused.). The time was 12:21 p.m.

**OPEN SESSION**

The Board re-entered Open Session at 12:58 p.m.

Attorney Leidy reported that during Closed Session the Board consulted with the attorney concerning attorney/client privilege matters as well as personnel matters and some action was taken but nothing to be disclosed at this time.

**ADJOURNMENT**

MOTION: Comr. Brinkley made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Renée Cahoon was excused.). The time was 12:58 p.m.

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

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

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