



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
WEDNESDAY, MAY 1, 2019**

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, May 1, 2019 at 9:00 a.m.

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

Board members Absent: None

Others present: Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; Phil Webster; Perry Hale; Shane Hite; Amy Miller; Brie Floyd; Roberta Thuman; David Ryan; Holly White; Mike Norris; Michael Zehner; Kelly Wyatt; Charlie Bliven; Peter Woickelman; Lily Nieberding; Todd Krafft; Billy Jack DePietro; Ellen Heatwole; Jim Heatwole; Tony Maskello; Barbara Maskello; Nanette Griesi; Carolyn Brooker; Robert Muller; and Town Clerk Carolyn Morris

**CALL TO ORDER/PLEDGE OF ALLEGIANCE**

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

**ADOPTION OF AGENDA**

**MOTION:** Comr. Fuller made a motion to approve the May 1<sup>st</sup> agenda as presented. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

**RECOGNITION**

NEW EMPLOYEE - Finance Officer Amy Miller introduced new Customer Service Representative/Cashier Shannon Krzyzanowski who was welcomed by the Board to Town employment.

FIVE YEARS – Fleet Mechanic Supervisor Charlie Bliven introduced Fleet Mechanic Peter Woickelman who was recognized by the Board for five years of service.

FIFTEEN YEARS – Planning Director Michael Zehner introduced Permitting Coordinator Lily Nieberding who was recognized by the Board for 15 years of service.

TWENTY YEARS – Planning Director Michael Zehner introduced Water Quality Coordinator Todd Krafft who was recognized by the Board for 20 years of service.

PROCLAMATION – NATIONAL POLICE WEEK – Police Chief Phil Webster summarized National Police Week which was recognized as May 12 – 18, 2019 and Mayor Cahoon read the Proclamation as follows:

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

‘Whereas, the members of the Nags Head Police Department play an essential role in safeguarding the rights and freedoms of the residents and visitors of the Town of Nags Head; and

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

‘Whereas, the men and women of the Nags Head Police Department unceasingly provide a vital public service.

‘Now, Therefore, the Nags Head Board of Commissioners calls upon all citizens of the Town of Nags Head and upon all patriotic, civic, and educational organizations to observe the week of May 12 - 18, 2019 as Police Week with appropriate ceremonies and observances in which all our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

‘Therefore, we do hereby proclaim the week of May 12 - 18, 2019, as Police Week and call upon all citizens of Nags Head to observe the 15<sup>th</sup> day of May 2019, as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.”

**MOTION:** Comr. Renée Cahoon made a motion to adopt the Proclamation naming National Police Week as May 12 – 18, 2019. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

SGT. EARL MURRAY, JR. - Dep Police Chief Perry Hale recognized May 15, 2019 as the ten-year anniversary of Sgt. Earl Murray's death in the line of duty; Dep Police Chief Hale summarized the incident of May 15, 2009 and explained how important Sgt. Murray was to many and how much he is still missed today.

Mayor Cahoon stated that he keeps the Murray family and friends in his thoughts and he thanked Dep Chief Hale for bringing this forward on today's agenda.

## **PUBLIC COMMENT**

### PUBLIC COMMENT – NANETTE GRIESI

Nanette Griesi, Seagull Drive property owner; Ms. Griesi read a letter from her husband Jim which requested a call for action by the Board of Commissioners to remove the Cherry structure from the oceanfront beach. Mr. Griesi's letter indicates that he is concerned about the upcoming beach nourishment project in which the structure will cause a "weak link" in the nourishment of the beach causing the beach in this area to erode more quickly which is what occurred in 2011 for the first project; he feels that this would not be an issue anywhere else because a sound government would not allow it; Mr. Griesi asked in his letter that the cost of removing the obstruction should be part of the beach nourishment project expenses.

### PUBLIC COMMENT – BOB MULLER

Bob Muller, Nags Head resident; he congratulated the Town on another Beach Nourishment Project; the Beach Nourishment Project, Stormwater Projects, and Dowdy Park – where a government spends its money indicates where its priorities are; he spoke against Accessory Dwelling Units (ADU's) and stated that until the Town wants to invest in the solution it will have no success in ADUs; the Town needs to research other options as there are other housing opportunities besides ADU's.

### PUBLIC COMMENT – ELLEN HEATWOLE

Ellen Heatwole, Seagull Drive property owner; she was in support of the letter read by Ms. Griesi in opposition to the structures still sitting on the oceanfront beach; the houses will adversely impact beach nourishment and since she does pay more for the project she would like the project to be done right; she encouraged the Board to take a trip to the Seagull area and realize what needs to be done.

### PUBLIC COMMENT – BARBARA MASKELLO

Barbara Maskello; Altoona Drive property owner; spoke in support of the letter read by Ms. Griesi; the Toloczko house also sits on the oceanfront and will impede the upcoming project - this structure was moved from Seagull Drive to Altoona which is a private street so the structure is now their responsibility; another item of concern is a dredge person said there will be a 12-foot dune because of the area's vulnerability – she questions if the Toloczko renters will be utilizing the dune/berm area for parking and if four-wheel drive will be permitted for parking; she is concerned that because her street is private it would have been nice to be informed ahead of time – she feels this was not fair to the Altoona Street homeowners.

Pictures shown on screen during Public Comment re: Seagull Drive oceanfront structures are attached to and made a part of these minutes as shown in Addendum "A".

There being no one else present who wished to speak, Attorney Leidy closed Public Comment at 9:35 a.m.

Mayor Cahoon asked the Town Attorney and staff to update the Board on the issues raised today during Public Comment as soon as possible.

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #11 to FY 18/19 Budget

Consideration of Tax Adjustment Report

Approval of minutes

Consideration of Amendment No. 1 to Dark Fiber License Agreement with MCNC connectivity

Request for Public Hearing - citizen comment on the Town Manager's proposed operating budget for July 1, 2019 – June 30, 2020; proposed CIP requests for FY 19/20 - FY 23/24, and updated Fee Schedule

Request for Public Hearing - conditional use/site plan amendment request by Tale of the Whale Restaurant for extension of their existing pier to accommodate a docking facility with four (4) transient boat slips

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

Budget Adjustment #11, as approved, is attached to and made a part of these minutes as shown in Addendum "B".

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

The summary page to Amendment No. 1 to the Dark Fiber License Agreement with MCNC connectivity read in part as follows:

"Attached for Board review and approval is Amendment No. 1 to the License Agreement the Town has with MCNC which provides dark fiber connectivity for internet access by the Public Works fleet office to the second floor server room at Town Hall.

"MCNC offers dark fiber connectivity from the Nags Head Elementary School to the Town that includes broadband service for internet. The attached lease agreement amendment is provided for Board review and approval, and seeks approval for the Town Manager to execute the contract. Board approval is required (1) for lease agreements beyond one year and (2) for pre-audit approval for future years that do not have an adopted budget. This contract locks in the same price and service the Town currently has, and this request is to extend this service through March 31, 2022 at \$3,240 annually."

The lease agreement, as approved, has been executed and is on file in the Town Clerk's Office.

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

"Request that a Public Hearing be scheduled for the June 5<sup>th</sup> Board of Commissioners meeting to consider citizen comment on the following:

- Town Manager's proposed operating budget for fiscal year July 1, 2019 – June 30, 2020,
- Proposed Capital Improvement Program (CIP) requests for FY 19/20 through FY 23/24, and
- Updated Consolidated Fee Schedule"

The second Request for Public Hearing summary, as approved, read in part as follows:

"Tale of the Whale Restaurant has submitted a Conditional Use/Site Plan Amendment request for extension of the existing pier, approximately 72 feet and construction of four (4) transient boat slips. The subject property is zoned C-2, General Commercial, is included within the Commercial Outdoor Recreation Overlay District and is located at 7575 S. Virginia Dare Trail, Nags Head.

'Planning Board/Staff Recommendation - Planning Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies, based on the findings associated with the issued CAMA Major Permit 10-19.

'At their April 16, 2019 meeting the Planning Board voted unanimously to recommend approval of the Conditional Use/Site Plan Amendment as presented."

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

### Project Update - FOCUS Technical Committee – UDO

Planner Holly White summarized the agenda summary sheet which read in part as follows:

"The Town conducted a Community Meeting on April 11, 2019 to share and present the draft UDO to the public for further discussion and feedback. There were no additional comments made at the meeting. The presentation from that meeting is available here: <http://www.focusnagshead.com/338/Unified-Development-Ordinance-UDO-Projec>. The Town will continue to receive public comment until May 3, 2019. All comments can be emailed to [holly.white@nagsheadnc.gov](mailto:holly.white@nagsheadnc.gov). An update was provided to the Planning Board at their meeting on April 16th. Staff will provide copies of the completed draft UDO to the Technical Committee, Planning Board, and Board of Commissioners on May 3rd. Attached please find staff memo with additional details."

The attached staff memo presented to the Board read in part as follows:

"The Town conducted a Community Meeting on April 11, 2019 to share and present the draft UDO to the public for further discussion and feedback. There were no additional comments made at the meeting. The presentation from that meeting is available here:

<http://www.focusnagshead.com/338/Unified-Development-Ordinance-UDO-Projec>. The Town will continue to receive public comment until May 3, 2019. All comments can be emailed to [holly.white@nagsheadnc.gov](mailto:holly.white@nagsheadnc.gov).

'An update was provided to the Planning Board at their meeting on April 16<sup>th</sup>. Staff discussed the option of an effective date for the UDO with the Planning Board and there was no opposition. Planning Staff believes that establishing an effective date may be preferred, thereby allowing applicants and property owners to appropriately plan for a transition into new processes (namely the Sketch Plan process for Site Plan Review), and allow staff the opportunity to finalize the Development Manual and checklists, as well as conduct educational outreach to specific stakeholder groups.

'Staff will provide copies of the completed draft UDO to the Technical Committee, Planning Board, and Board of Commissioners on May 3rd. Staff is awaiting any final comments from the attorney Staff and will complete a final review of the document before publishing for distribution.

'Attached is a suggested schedule for completion of the remaining tasks and adoption.

Task	Date
Effective Date***	September 3
Public Hearing and Adoption - Board of Commissioners	July 3
Board of Commissioners Workshop	TBD
Planning Board Recommendation	June 18
Planning Board Review	May 21
Distribution of Final Draft to Planning Board and Commissioners	May 3
Community Meeting	April 11
Conduct final review and make final changes. <ul style="list-style-type: none"> <li>• <i>Incorporate Technical Committee, Planning Board, and Board of Commissioners feedback.</i></li> <li>• <i>Incorporate all recent text amendments</i></li> <li>• <i>Finalize and insert diagrams</i></li> </ul>	Ongoing

Ms. White reported that

this Friday, May 3, 2019 the draft copy of the UDO would be distributed to Board members.

In response to Comr. Renée Cahoon, Ms. White stated that by the end of May 2019, DEQ comments will be addressed in order to enter the 90-day review period required by the State.

Project Update - Stormwater Projects

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

“Staff will provide an update of the construction progress for Project Area #1 - upstream replacement of the “Red Drum” ocean outfall, Project Area #2 – groundwater lowering system for Nags Head Acres/Vista Colony Subdivision, and Project Area #3 – infiltration trench installation in the Village @ Nags Head along S. Virginia Dare Trail. Project Construction Updates for each are attached.”

Mayor Cahoon asked about if the stone was permanent at the Red Drum ocean outfall project; Engineer Ryan stated that it has been removed as it was for sedimentation control.

In response to Comr. Siers’ inquiry about the impact on trees in the survey line in Nags Head Acres, Mr. Ryan said that the impact will be minimized by placing the piping beside the trees so they do not expect to have to remove any trees.

Town Engineer Ryan reported that after the CIP Workshop, two of the projects – the S Nags Head stormwater projects – were discussed with NCDOT who has agreed to cost-share with the Town an amount up to \$100,000.

Comr. Renée Cahoon asked Mr. Ryan to only have the stormwater consultant work on solutions that can actually be done and not work on solutions that are in violation of our ordinances and can’t be done.

Consideration of amendment to the site plan by Gemcap Development to include addition of concrete bulkhead along the northern side of the parking area of the Sherwin-Williams 6,000 square foot retail structure located at 6813 S Croatan Highway

Dep Planning Director Kelly Wyatt summarized the staff report which read in part as follows:

"GENERAL INFORMATION

Applicant: Gemcap Development.

Application Request: Site Plan Amendment.

'Purpose: Reconsideration of site plan following a major change, installation of a two (2) foot concrete bulkhead/retaining wall on the north side of the parking area.

'Property Location: 6813 S. Croatan Highway, Nags Head.

Existing Land Use: Retail Store (Sherwin Williams & vacant space).

Zoning Classification of Property: C2, General Commercial District.

'Zoning Classification of Surrounding Properties: All properties surrounding the site are zoned C-2, General Commercial; however, the properties to the east are developed residentially.

'Flood Hazard Zone of Property: AE 9, lowest horizontal structural member of lowest floor shall be no lower than 10 ft. msl. First floor elevation proposed at 10.2 ft. msl.

'Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as General Commercial. This property is located within the Whalebone Character Area. The proposal is consistent with land use policies.

'SPECIFIC INFORMATION

Gemcap Development is seeking approval of a major change to the April 4, 2018 Board of Commissioners approved Site Plan for construction of a 6,000 square foot retail structure (Sherwin Williams). On April 1, 2019, while various departments were conducting final inspections, it was noted that a significant deviation from the approved plan had occurred in that a two (2) foot tall concrete bulkhead/retaining wall had been constructed along the north side of the parking lot. This concrete bulkhead/retaining wall was not shown on the Planning Board reviewed, and Board of Commissioners approved site plan. Furthermore, the need for the change was not brought to staff's attention for review and approval prior to the installation. Once aware of the change, the Director of Planning & Development determined the addition of the wall to be a major change, requiring approval by the Planning Board and Board of Commissioners.

'It is important to note that the use of bulkheads/retaining walls on commercial property are not regulated within Chapter 34, Stormwater, Fill and Runoff Management. Town Code Section 34-6(b)(10) provides that the construction and use of bulkheads, walls and other structural controls to retain the placement of fill on property shall be permitted where a wall is necessary to achieve a 5-foot setback of fill and cannot retain more than two (2) feet of fill and shall not exceed two (2) feet in maximum height from the final grade for residential and duplex development. This provision is not listed in Town Code Section 34-7, General standards for commercial development, therefore there is no regulation of the use of bulkheads/retaining walls for this development.

'Below is a brief timeline of events related to the approval and development of the property.

- April 4, 2018 - Board of Commissioners reviewed and approved the Site Plan request.
- June 21, 2018 - Building and Zoning Permits were issued.
- December 28, 2018 - Temporary Certificate of Compliance was issued for 30 days.
- January 17, 2019 - Temporary Certificate of Compliance was extended for 30 days.
- February 28, 2019 - Temporary Certificate of Compliance was extended for 30 days.
- March 1, 2019 - BJ DiPietro of IB Builders, Inc. the licensed contractor for this project met with the Deputy Town Manager, Director of Planning & Development, Chief Building Inspector, and Town Engineer to discuss outstanding items requiring completion prior to March 31, 2019.
- April 1, 2019 - Final inspections were conducted, and the deviation was discovered.

- April 3, 2019 - The Director of Planning & Development and Chief Building Inspector provided a letter to the developer, Gemcap Development, outlining the outstanding items to be addressed prior the issuance of Certificate of Compliance (attached).

'It was the Director of Planning & Development's determination, based upon Town Code Section 48-524(b)(5), that the deviation from the approved plan with the addition of the concrete bulkhead constituted a major change to the originally approved plans. Upon being notified of this, Mr. Brian Moore with Gemcap Development, submitted his request to pursue the site plan amendment as is being presented for your review and consideration. Based upon conversations between the Town Engineer and the General Contractor, Staff understands that the General Contractor determined that it was necessary to install the wall due to an underground utility conflict necessitating the relocation of the storm drainpipe and resulting in its exposure above grade without adjustment of the slope in this area and installation of the wall.

'Staff recommended that the developer have their site engineer, Coastal Engineering & Surveying, Inc., provide a seal for the bulkhead installation. That has been submitted and accepted by the Town Engineer (attached).

'While there are some additional minor items that need to be addressed onsite prior to the issuance of the Certificate of Compliance and then Certificate of Occupancy, there are no other deviations from lot coverage, height, architectural design, parking, buffering, stormwater management or traffic circulation that necessitate board review.

#### 'STAFF RECOMMENDATION

Staff recommends approval of the Site Plan Amendment to address the major change/deviation from the April 4, 2018 Board of Commissioners approved plan with regard to the installation of a two (2) foot tall concrete bulkhead/retaining wall the north side of the parking area.

#### 'PLANNING BOARD RECOMMENDATION

At their April 16, 2019 meeting the Planning Board voted unanimously to recommend approval of the Site Plan Amendment as proposed."

Comr. Renée Cahoon asked why a Stop Work Order wasn't issued; Ms. Wyatt explained that it was not known when the retaining wall went in - the first indication was April 1<sup>st</sup>. Comr. Renée Cahoon also noted that the rock underneath their building is eroding/sinking – she doesn't know how the Town would allow one site to direct their stormwater drainage onto the next property as there is no swale to hold their stormwater.

Comr. Siers confirmed with Planning Director Zehner that this issue by Sherwin-Williams is one of several amendments the contractor has made without notification to the Town.

Mayor Pro Tem Walters said that there has been concern about this project even when foundation was being installed; a high amount of fill was placed on the site - when stormwater drainage is one of the biggest issues the Town has, the site is significantly higher than the neighboring properties.

Comr. Fuller confirmed with Ms. Wyatt that their site plan landscaping has not been altered; he also questioned why a Certificate of Occupancy (CO) was issued; Director Zehner explained that technically a CO has not been issued but a temporary Certificate of Compliance has been.

In response to Comr. Fuller, Planning Director Zehner said that the current temporary Certificate of Compliance expires the end of May.

**MOTION:** Comr. Renée Cahoon made a motion to table this item to give staff time to make sure erosion/sedimentation controls have been met. The motion was seconded by Comr. Fuller.



Comr. Renée Cahoon and Comr. Fuller both confirmed that the motion includes that staff is to verify the solution is properly installed with no negative affect on the neighboring properties.

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

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

From April 3<sup>rd</sup> Board meeting – Presentation of proposed zoning ordinance text amendment pertaining to Accessory Dwelling Units (ADU’s) within the Town

Planning Director Michael Zehner summarized the staff report re: accessory dwelling units which read in part as follows:

“Overview

At the April 3, 2019 meeting of the Board of Commissioners, Staff presented the Board with draft provisions for Accessory Dwelling Units (“ADU’s”) as contained in the draft Unified Development Ordinance (“UDO”), as well as considerations informed by the Board of Commissioners, UDO Technical Review Committee, and Staff related to minimum lot size, maximum unit size, height limits, location of units on lots, adequacy of septic, utility service, parking requirements, allowable locations, length of stay, and density. The Commissioners discussed their perspectives on the draft provisions and considerations, ultimately voting 3-2 in favor of a motion directing Staff to prepare an Ordinance amending the Zoning Ordinance to allow ADUs, to be reviewed by the Planning Board at the April meeting and Commissioners at the May meeting.

‘The attached draft Ordinance was reviewed by the Planning Board at the meeting on April 16, with the Planning Board unanimously voting to defer issuance of a recommendation pending further consideration. A memo from Bob Muller, dated April 12, 2019, and provided to the Planning Board prior to the April 16 meeting, is attached for the Board’s review; Mr. Muller noted in his comments to the Planning Board that the memo was prepared based on the memorandum prepared for the April 3 Board of Commissioner’s meeting, as opposed to the memorandum and draft Ordinance presented at the April 16 Planning Board meeting.

‘Draft Ordinance

With regard to the issues noted above, please consider the following:

- Minimum Lot Size: A minimum lot size requirement has not been discussed by the Technical Committee or Staff, and has not been included in the draft Ordinance. Members of the Board of Commissioners did refer to a potential prohibition on ADUs on lots less than 16,000 sq. ft. in area or on lots not meeting the minimum lot size of the applicable district, and the Planning Board discussed that there may be merit to such a requirement.

The following tables provide an overview, based on the districts in which ADU’s would either be allowed by-right or with a Conditional Use Permit, of the number of conforming and nonconforming lots and the number of lots less than 16,000 sq. ft. in area or equal to or greater than 16,000 sq. ft. in area. Restricting to either conforming lots or to those equal to or greater than 16,000 sq. ft. in area may be overly limiting on the potential development of ADU’s.

<b>Nonconforming Lots (Area Only) by Zoning District</b>			
<b>Zone</b>	<b>Nonconforming</b>	<b>Conforming</b>	<b>Grand Total</b>
<b>C2</b>	516	113	629
<b>C3</b>	1	1	2

<b>C4</b>	3	5	8
<b>CR</b>	205	147	352
<b>R1</b>	71	39	110
<b>R2</b>	1,971	322	2,293
<b>R3</b>	432	85	517
<b>SED80</b>	2	17	19
<b>SPD20</b>	171	46	217
<b>Grand Total</b>	<b>3,372</b>	<b>775</b>	<b>4,147</b>

<b>Lots Greater than or Equal to 16,000</b>			
<b>Zone</b>	<b>&lt;16000</b>	<b>&gt;=16000</b>	<b>Grand Total</b>
<b>C2</b>	561	68	629
<b>C3</b>	0	2	2
<b>C4</b>	3	5	8
<b>CR</b>	250	102	352
<b>R1</b>	55	55	110
<b>R2</b>	1,828	465	2,293
<b>R3</b>	510	7	517
<b>SED80</b>	1	18	19
<b>SPD20</b>	137	80	217
<b>Grand Total</b>	<b>3,345</b>	<b>802</b>	<b>4,147</b>

- **Maximum Unit Size:** The draft Ordinance limits the size of ADU's to "50% of the size of the principal dwelling or 800 square feet, whichever is less." Additionally, the cumulative area of the ADU and principal dwelling are proposed to be capped and subject to the same threshold for compliance with large residential dwelling standards. The Technical Committee has suggested limiting the size of ADUs to a maximum of 600 square feet, while members of the Board of Commissioners indicated their support for a limit of 800 square feet. Members of the Planning Board did note their support for limiting such units to a maximum of 600 square feet.
- **Height Limits:** Staff and the Technical Committee have suggested limiting the height of ADUs (this would only apply to detached ADUs) to not exceed one and one-half (1 ½) stories. The draft Ordinance contains the following provision:

*If the accessory dwelling is located in a detached structure, separate from the principal dwelling, the height of the detached structure shall not exceed one and one-half (1 ½) stories.*

- **Location of Units on Lots:** The draft Ordinance proposes to increase the setback for accessory structures containing ADUs from five (5) feet to ten (10) feet, and further require such structures to meet principal structure setbacks if they are located forward of the midpoint of the principal structure. The Technical Committee has suggested that all detached structures with ADUs comply with setbacks that would apply to the principal structure. In Staff's opinion, providing for a reduced setback for accessory structures incorporating an ADU may allow for greater flexibility in locating an ADU on a lot given the potential for conflicts with the septic systems and other utilities.

- Adequacy of Septic: Staff and the Technical Committee have suggested a provision ensuring septic capacity is sufficient, and the draft Ordinance contains the following provision:

*The owner must obtain a permit from the county environmental health department indicating that the septic system has sufficient capacity for the increased occupancy. Total occupants residing on the property shall not exceed the number specified by the septic improvement permit.*

- Utility Service: Staff and the Technical Committee have suggested that properties with ADUs only be served by a single electrical and water service, and the draft Ordinance contains the following provision:

*The accessory dwelling shall share the same electrical and water meter as the principal dwelling.*

- Parking Requirements: Staff and the Technical Committee have suggested that an ADU require one additional parking space beyond what would normally be required for a single-family dwelling of the same size. The language of this provision has been clarified in the draft Ordinance as the Town Attorney and members of the Board of Commissioners raised questions as to whether the wording allowed for a reduction of required parking spaces.
- Allowable Locations: The Technical Committee deferred to the Board of Commissioners on this aspect of the Ordinance. The Board of Commissioners requested Staff's recommendation with respect to the zoning districts within which ADU's would be allowed. The draft Ordinance permits ADU's in the R-3, C-2, and C-4 zoning districts, and also allows ADU's in the R-1, R-2, CR, C-1, SPD-20, and SED-80 zoning districts with a conditional use permit. For conditional use permits, the following specific findings (in addition to those under Section 48-525) have been included:

*(1) The exterior design of the accessory dwelling is compatible with the existing single-family dwelling on the lot through architectural use of building forms, scale, and construction materials;*

*(2) The accessory dwelling will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties; and*

*(3) The accessory dwelling will not result in excessive noise, traffic, or parking congestion.*

- Length of Stay: Staff and the Technical Committee have discussed prohibiting ADUs from being rented/leased for less than 30 days to avoid units being constructed or created for the sole purpose of being used as short-term rentals. Likewise, members of the Board of Commissioners seemed supportive of such a restriction. The draft Ordinance includes the following provision:

*Accessory dwellings shall not be used for occupancy of less than 30 days.*

- Density: Members of a Board of Commissioners have expressed a concern that ADU's constitute an increase in density, particularly in those districts reserved for low-density residential development. Density can be considered in several ways, whether it be the density of building mass or area, population density, or density of housing units. With regard to building mass, similar to the consideration regarding minimum lot size, Staff is of the opinion that this is not a concern because the

draft Ordinance provisions would not allow additional building area to be constructed for an ADU beyond that which is allowed for a single-family dwelling.

With regard to the density of population and housing units, while it is factually accurate that the creation of an ADU effectively doubles the number of housing units on a lot, Staff is not of the opinion that this will result in an increase in population density. This opinion is based on the limitations associated with onsite wastewater system, which limits the number of bedrooms and therefore the number of occupants of a dwelling, or in this case, the combined principal dwelling and ADU.

Again, while it is true that the number of housing units would increase, the draft Ordinance would not allow building mass to increase beyond what is currently allowed for a single-family dwelling, nor would it allow the number of bedrooms or occupants to increase beyond what is currently limited by onsite wastewater systems. Additionally, Staff believes that the proposed conditional use permit requirement for certain districts and related findings works to address this concern.

#### 'Policy Considerations

The 2017 Comprehensive Plan contains several policies related to development patterns, density, and, specifically, ADU's, as follows.

- LU-1: Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by:
  - Development that blends with the landscape, preserving natural vegetation, dunes, open spaces, and environmental quality.
  - A visible and dark night sky maintained by lighting that is minimal and carefully designed.
  - Views from the ocean beach of dunes and vegetation and structures that are low in height, blend with the landscape, and don't shade the beach.
  - Buildings with a residential scale and appearance with low heights and small footprints that are designed to reflect the heritage of Nags Head.
  - Commercial development that serves the needs of residents and visitors but respects the goals of the community related to design and appearance.
  - Land uses that are compatible with the community and with adjacent properties that don't create excessive noise, light, unsafe conditions, or other nuisances.
  - A land use pattern that preserves residential neighborhoods and establishes walkable nodes of commercial development that attract patrons and strengthen business opportunity.
  - Signage that provides adequate communication but does not dominate the landscape.
  - Development of low density and intensity served primarily with on-site wastewater systems.
- LU-3: Recognize a low-density pattern of development for the oceanfront that is characterized by small scale, adaptable structures.
- LU-4: Encourage a balance of land uses along the Beach Road characterized by a diversity of accommodations and small, neighborhood serving businesses.

- LU-4c: Explore ways to create cohesiveness in commercial activity centers by limiting certain types of residential uses (single-family) or allowing single-family or residential uses only as accessory to commercial uses. This could include utilizing vertical or horizontal mixed use or detached accessory residential structures.
- LU-6: Limit destruction and clearing of the maritime forest in Nags Head Woods to maximum extent possible, allowing only the minimum clearing and land disturbance necessary to make reasonable use of property.
- LU-9: Encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community.
- LU-11: Support mixed use development or accessory residential dwellings that combine commercial and residential uses along NC 12 and in designated commercial activity centers located between US 158 and NC 12.
- LU-13: Maintain the overall regulatory scheme for residential and commercial zoning districts as a means to avoid overall increases in development intensity or density.
- LU-13a: Consider incentives that would encourage infill development in commercial activity centers and nodes in accordance with the character area development plans outlined in Section 2. Incentives could include increases in density or lot coverage or additional site design flexibility.
- LU-14: Limit the scale and mass of single family residential dwellings to support the town's vision for low density and intensity residential neighborhoods.
- LU-27: Promote and expand the types of housing and accommodations for varying income levels, aging populations, and the seasonal workforce within the town.
  - LU-27c: Research and explore other options to diversify the types of housing and accommodations available within the town. This could include creating allowances for accessory dwelling units and housing appropriate for seasonal populations within the town. The town should ensure that any regulations for accessory dwelling units are consistent with the town's size limitations for large residential dwellings.

'In addition to the above, the Comprehensive Plan includes the following discussion points, as referenced in the purpose statements of the draft Ordinance:

- The Comprehensive Plan encourages accessory dwellings in appropriate locations, noting that such units may be a means to address affordable housing and diversify available accommodations.
- The Comprehensive Plan references that accessory dwellings are commonly subordinate in size to a main dwelling and can provide housing for workers and also for family members who need care but wish to have independent living quarters; and further that maid's quarters were commonly constructed as accessory dwelling units to the cottages in the Nags Head Historic Cottage Row, and that the concept could be reestablished to address several needs including accommodations for seasonal, year-round residents, and the town's aging population.

#### 'Additional Considerations

For additional consideration, the following table highlights the ADU provisions imposed by Dare County and the towns of Duck, Kitty Hawk, and Manteo:

<b>Restriction</b>	<b>Dare County</b>	<b>Duck</b>	<b>Kitty Hawk</b>	<b>Manteo</b>
<b>Attached</b>	Y	Y	Y	Y
<b>Detached</b>	Y	Y	Y	Y
<b>Not larger than 50% of dwelling area</b>	Y	N	Y	Y
<b>Other restriction size</b>	1200, whichever is smaller	800 square feet, whichever is smaller; cannot be larger than the square footage of the principal dwelling	800 square feet, whichever is smaller	600 square feet, whichever is smaller
<b>No more than 1 accessory dwelling</b>	Y	Y	Y	Y
<b>Height</b>	Must meet standards of the district.	27 feet in height or the height of the principal dwelling whichever is lower.	28 feet in height, measured from average original grade, or the height of the principal dwelling on the property, whichever is lower.	A detached accessory dwelling unit shall be either one- or one-and-one-half story.
<b>Setbacks</b>	Must meet standards of the district.	Must meet standards of the district.	Must meet standards of the district.	Must meet standards of the district.
<b>Lot coverage</b>	Must meet 38% limit	NA	Must meet standards of the district.	Must meet standards of the district.

Restriction	Dare County	Duck	Kitty Hawk	Manteo
<b>Parking</b>	2 additional	If the establishment of an accessory dwelling unit increases the maximum occupancy permitted on the wastewater permit issued by the Dare County Health Department, then necessary improvements must be completed for the property to maintain compliance with minimum parking standards; and Parking space(s) serving the accessory dwelling unit must have access unobstructed by parking spaces for principal dwelling unit.	1 additional	1 additional
<b>Other restrictions</b>	Recreational vehicles, travel trailers, and/or manufactured homes shall not be used or approved as an ADU. An ADU approved under these guidelines shall be used for long-term occupancy as defined in Section 22-2 of the zoning ordinance. An ADU shall not be subdivide or segregated in ownership from the principal dwelling	An accessory dwelling unit will count toward the maximum occupancy permitted for a property. The overall density of a property cannot exceed the maximum density standards outlined in § 156.126. Access and parking for an accessory dwelling unit must occur via the same driveway as the principal dwelling unit. A separate	The property owner shall file with the county register of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner stating that the accessory dwelling unit shall not be sold separately from the primary residence. Accessory structure must be located behind the front of	To encourage the preservation of the town's historic outbuildings, an accessory building existing at the time of the adoption of this ordinance, may be converted into an accessory dwelling unit provided percentage of lot coverage does not exceed the maximum allowable. Accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the

<b>Restriction</b>	<b>Dare County</b>	<b>Duck</b>	<b>Kitty Hawk</b>	<b>Manteo</b>
	unit. Allowed residential commercial districts. in and	driveway is not permitted. Allowed in residential districts.	the primary structure. Accessory dwelling units shall not be served by a driveway separate from that serving the principal dwelling.	primary residence. Either the primary residence or the accessory dwelling unit shall be occupied by an owner of the property.

**‘Planning Board Recommendation**

Following discussion at the meeting on April 16, 2019, the Planning Board unanimously voted to defer issuing a recommendation on the draft Ordinance until they have had the opportunity to discuss the proposal further at a future meeting.

**‘Staff Recommendation**

Staff would recommend that the Board defer any action on the draft Ordinance until the Planning Board has reviewed the matter further and provided a recommendation. Staff would suggest that the Board discuss the various considerations and the draft Ordinance, providing any feedback that may inform a future Ordinance.”

Supplemental information provided by Planning Director Zehner read in part as follows:

“At the April 16, 2019 meeting of the Planning Board, the Board requested that Staff reach out to the communities whose ADU provisions were presented for comparison (Dare County and the towns of Kitty Hawk, Duck, and Manteo) and determine, generally, how long ADU’s have been allowed, in what locations or districts, how many have been permitted and/or constructed, and what the community’s experience has been (problems, issues, successes, etc.). As of the date of this memo, Staff has received the following input (copies of relevant Zoning Ordinance provisions from the communities are attached):

**‘Dare County**

- ADUs have been allowed in the Wanchese and Manns Harbor zoning districts since those districts were adopted in 2006 and 2007. Two (2) or three (3) ADU’s have been permitted in Wanchese.
- In October 2018, ADU’s were added as permitted uses to those zoning districts that permitted duplexes; ADU’s were not added as permitted uses to any single-family districts.
- No permits for ADU’s have been issued since the amendments were adopted. Staff noted that this was “surprising” since they were well-received by the community, but perhaps 6 months has not allowed enough time.

**‘Kitty Hawk**

- The text amendment to allow ADU’s was approved in February 2018. ADU’s are permitted in any zoning district that also allows single-family residences.
- Since adoption, four (4) have been permitted (two (2) are new as part of the construction of new single-family residences with permit issued in April 2019, and two (2) were conversions of existing accessory structures with permits issued in February 2019); these units have not yet been completed.



- Staff noted that septic requirements can be limiting where there is an existing single-family residence. Dare County Health Department views these not as additional bedrooms, but rather a separate apartment, which requires a minimum daily flow rate of at least 240 gpd. Additionally, many with existing single-family residences who have inquired about ADU's have determined that it would be necessary to upgrade existing septic systems, which has turned some away from the idea.

**'Duck**

- The Town of Duck adopted its ADU ordinance on November 2, 2016.
- ADU's are permitted in all of the Town's residential zoning districts; prior to November 2016 accessory apartments were already allowed in all commercial districts.
- Since November 2016, only four (4) ADU's have been permitted; except for one expected to be completed in May, all have completed construction. Most of those created have been within the existing footprint of the residence, so the units have not had much visual impact on neighboring properties.
- While expressing hope for more units, especially to provide more year-round housing, Staff noted that the ADU concept was well-received and there has been no backlash regarding installation of units.

**'Manteo**

- The Town of Manteo has allowed ADU's since 2005. ADU's are allowed in the R-5 and B-2 districts, as well as in downtown residential districts, but are not allowed in the downtown business district.
- While units are limited to a maximum of 600 sq. ft., the Outer Banks Chamber of Commerce has suggested increasing the maximum size to 900 sq. ft.
- It has been suggested that the owner occupancy requirement be removed, but no action has been taken to change this requirement.
- There have been minimal regulatory issues associated with ADU's; there are currently 12 to 15 ADU's, with the majority having been permitted in association with a new house, and primarily within new subdivisions.
- Lot coverage seems to be a limiting factor, despite granting of additional lot coverage (5-8%) for detached ADU's."

Comr. Renée Cahoon asked about neighborhoods whose covenants do not allow ADU's; Attorney Leidy is to research.

Mayor Pro Tem Walters pointed out that the Planning Board has not made a recommendation yet; the Board did not want an ordinance allowing workforce housing but an ordinance that allows a multitude of uses. She also mentioned that Planning Board members that receive information via their personal emails concerning Town issues should forward that information to the Town to become public record.

Comr. Fuller said that the FOCUS Advisory Group spoke in favor of Beach Road workforce housing; the FOCUS Technical Group wrote the ordinance very similar to the Advisory Group's ordinance, yet the staff draft ordinance is clearly different. He asked why staff modified it from what that group wanted - he asked for a response from staff in memo form.

Comr. Fuller stated that the ordinance states that the Village was noted in the ordinance as exempt – why did staff exempt that neighborhood and not others? Director Zehner said that the Village is an entity on its own to be protected and the use is not allowed by their HOA.

Mayor Cahoon stated that the issues before the Board are: 1) To have consensus that this goes back to the Planning Board and 2) Whether a Public Hearing should be set at this point given what the Planning Board needs to do.

Comr. Renée Cahoon agreed with Comr. Siers that staff look at ADU's not just on multi-family, townhouse lots but to also look at lots of nonconforming record.

Mayor Pro Tem Walters questioned if covenants can be enforced if an HOA is not active – Attorney Leidy stated that this doesn't mean that at some point in the future that the HOA may not become more active. She also questioned subdivisions that have no HOA.

**MOTION:** Comr. Renée Cahoon made a motion to accept the Planning Staff recommendation to send the accessory dwelling unit issue back to the Planning Board to answer questions and address issues raised today by the Board and that the attorney is to research. The motion was seconded by Comr. Siers.

Comr. Renée Cahoon accepted a friendly amendment to her motion to include receipt of the Planning Board recommendation within 60 days or make no recommendation, or suggest changes, or identify where they are in the process.

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

Actions items include:

Attorney Leidy agreed with Comr. Fuller that the Planning Board, as well as all Town Board/Committee members should have their own Town email address so they can communicate on Town email rather than private email.

Mayor Pro Tem Walters asked that any email from a Town Board/Committee member re: a Town issue should be forwarded to the Town.

Attorney Leidy is to research ADU permits issued to neighborhoods whose covenants do not allow them; the Board wanted an ordinance that allowed a multitude of uses – that would not be nonconforming; the ordinance presented is not the same as what the FOCUS Technical Committee drafted; The Village at Nags Head was excluded but not other neighborhoods; Primary structure can only be rented one week but ADU's can be rented over 30 days; Staff is to look at all lots for possible ADU use.

Public Comment by Seagull Drive property owner Nannette Griesi

**MOTION:** Comr. Siers made a motion to accept the letter written by Jim Griesi, read during Public Comment by Nanette Griesi concerning the Seagull Drive Cherry, Inc. oceanfront house - into today's Town record. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

The letter written by Jim Griesi, read by Ms. Griesi, is attached to and made a part of these minutes as shown in Addendum "D".

## **NEW BUSINESS**

### Committee Reports

Comr. Renée Cahoon – Coastal Resources Commission (CRC) – the CRC met last week in Manteo and unanimously adopted a resolution opposing offshore oil drilling and seismic testing.

Comr. Renée Cahoon – Dare County Board Clerk Gary Gross is retiring and he will be missed.

Comr. Fuller – Coastal Resources Commission (CRC) - He congratulated Comr. Renée Cahoon on getting the Coastal Resources Commission to adopt the resolution opposing offshore oil drilling.

Comr. Fuller – Dare County Tourism Board (DCTB) – the Tourism Board looked at the event site and then met the next day: Two discussions took place: 1) Interest in a 1,000 seat building and 2) Interest in a low profile site with water access and a dock/walkway.

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

### Town Attorney Leidy – Update on Richardson case

Attorney Leidy reported that the Town vs Richardson lawsuit has been scheduled for oral argument in the State Supreme Court on Wednesday, May 29, 2019 beginning at 9:30 a.m. The Supreme Court is celebrating its 200<sup>th</sup> anniversary and this oral argument will be conducted at the State Capital Building in Raleigh.

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

### Town Manager Ogburn - Presentation/Distribution of Manager's Recommended Budget for FY 19/20

Town Manager Ogburn presented his recommended budget for FY 19/20 via a powerpoint presentation. Public Information Officer Roberta Thuman distributed the budget books to Board members.

### Town Manager Ogburn - Update on Beach Nourishment 2019 Project

Town Engineer David Ryan provided an update on the 2019 Beach Nourishment Project; he reported that sand will begin being pumped onto the beach today. It is to start just south of Limulus Street in S Nags Head which is where the Ellis Island dredge is stationed.

Comr. Renée Cahoon confirmed with staff that the online map will be updated every day as reports are given to staff.

The Forrest and Juncos beach accesses will be closed to vehicular access but open to pedestrian traffic during the project.

### Town Manager Ogburn - Enforcement of the ordinance pertaining to tents on the beach in the upcoming summer season

Town Manager Ogburn summarized the policy for tents on the beach which was provided to Board members and which read in part as follows:

"To keep Nags Head's beach safe, clean, and enjoyable for everyone, the Town has adopted several regulations related to beach tents/canopies.

'Regulation: Beach tents/canopies shall not be left unattended (as well as other personal items) between the hours of 8 pm and 7 am daily.

'(Town Code Sec. 8-8. – Unattended and unsafe equipment, personal property and debris on the ocean beach prohibited.)

'The Town's Facilities Maintenance Division will monitor the beach from 5 am until 7 am every Monday through Friday from Monday, May 27, 2019 until Friday, September 6, 2019. Any tents and umbrellas that are found during that timeframe will be removed. The process will start with one employee beginning at Eighth Street and working south. The other employee will start at McCall Court and work north. We anticipate the trucks will meet somewhere in the middle. In past years the north end tends to be a little heavier, so we will adjust as necessary.

'Facilities Maintenance is prepared to adjust as necessary to make this program work and to continue to educate the public.

'Regulation: Beach tents, canopies, and awnings shall not be:

- a. greater than 12 feet by 12 feet in area
- b. higher than 9 feet above the surface of the ocean beach when erected
- c. separated by a minimum of 10 feet.

'(Town Code Sec. 8-8. – Unattended and unsafe equipment, personal property and debris on the ocean beach prohibited.)

'Ocean Rescue staff, as well as the beach police officer, will monitor the beach for violations of this ordinance. All observed violations will be reported to, and handled by, the on-duty beach police officer. The officer will use their judgement in determining if the beachgoer is willing to cooperate and comply with the ordinance before issuing a citation. Issuance of a citation should be for extreme issues. Violations of this section shall be subject to the penalties described in Town Code subsection 1-6(b). Additionally, violations of this section shall result in the classification of unattended equipment, personal property or debris as abandoned property, litter or unsafe property and said property may be removed by the Town.

'All staff on the beach, including Public Works, Ocean Rescue, and Police, will be equipped with an informative flyer containing the rules and regulations governing use of the beach, as well as other important Town information. If the collection crew is stopped by an owner prior to the removal of a tent, they will be given the flyer, answer any questions regarding the ordinance, and ensure that the tent is being removed.

'Hopefully, with daily exposure and education, the number of tents left out to collect will be minimal.

'We have been communicating these requirements through:

- signs at multiple beach accesses
- signs on lifeguard stands
- brochures
- clings for rental home refrigerators (like magnets, but can stick on more things)
- social media
- newspaper ads and articles
- communications to property managers on multiple occasions

'Regulation: Town Code Chapter 12 includes separate regulations for beach equipment concierge service which are to be administered through a permitting program.

'(Town Code Sec. 12-226. - Beach equipment concierge service regulations.)

'Beach equipment concierge services shall comply with the following regulations:

'Beach equipment shall not be set up before 7 a.m. and shall be removed by 6 p.m.

Beach equipment shall contain only incidental commercial signage. Specifically, individual beach canopy/umbrella signs shall not exceed 144 square inches in area. There shall not be more than two beach canopy/umbrella signs on any individual piece of equipment. Property identifiers such as initials and numbering shall be located on the interior or underside of a shade structure. Any other signage shall not be visible from the beach.

'Placement of beach equipment upon the ocean beach shall not restrict or impede the flow of vehicular, pedestrian or emergency services traffic. All public access points and lifeguard stands shall be free and clear of all obstructions and rental equipment for a minimum distance of 50 feet. For beach accesses, the minimum distance shall be measured from a straight line extending from the dune walkover structure or primary foot path extending to the waters of the ocean.

'All transactions related to the operation of this service, including tips, shall occur off the beach, i.e., west of the dune, and shall not occur at a public beach access.

'Under no circumstance shall beach equipment be left on the beach or within the dunes overnight.

'At 6 p.m. each day, the area upon which beach equipment has been placed by the permittee shall be cleaned of all trash and debris.

'The town prohibits any person from leaving beach equipment on the beach overnight. Generally, no beach equipment should be placed on the beach unless it will be used that day. Beach equipment should not be placed on the beach for prospective beachgoers solely as part of a pre-ordered weekly or multi-day arrangement. Beach equipment shall only be set up upon order/request of the customer each day; beach equipment shall not be pre-set.

'Emergency services personnel have the right to move beach equipment as necessary to ensure a clear path for travel and access and a clear line of sight for safety purposes.

'Any violation of these regulations may result in any of the following actions:

- a. Removal of beach equipment (left on the beach overnight);
- b. Issuance of civil penalty pursuant to section 1-6 of this Code; or
- c. Immediate revocation of the permit.

'Town staff will issue permits and provide information to each concierge service regarding these regulations.

'All staff working on the beach will be made aware of this ordinance as well as the companies that have been permitted under the provisions of this ordinance. As Ocean Rescue staff are coming off the beach in the evening they will notify the OR Captain of any of these tents that remain on the beach that were placed by one of the permitted concierge services.

'The code enforcement officer will be informed of these tents and will contact the business owner to gain compliance. Violations will follow a progressive plan as described in item (i) above. Staff will remove rental equipment in violation of this provision as soon as time allows.'

Concerning the issuance of citations, Town Manager Ogburn said that Police will use their own discretion.

#### Town Manager Ogburn – Upcoming Bicycle Rodeo and Bike To School events

Dep Planning Director Kelly Wyatt reported on the Bicycle Rodeo at Nags Head Elementary School scheduled for May 6<sup>th</sup> from 8 am until 2 pm and will include an obstacle course and bicycle safety presentations.

Ms. Wyatt also reported that the May 8<sup>th</sup> Bike To School event will take place between 7 and 7:20 am with representatives from the Town at designated locations to get everyone to school safely.

#### Town Manager Ogburn - Request for Closed Session

The agenda summary sheet read in part as follows:

"At the May 1<sup>st</sup> Board of Commissioners meeting, Town Manager Ogburn will request a Closed Session, in accordance with GS 143-318.11(a)(5), to discuss the acquisition of property located at 115 McCall Court in S Nags Head. The property owners, John and Karen Kane, would like to deed the property to the Town as a gift."

#### CLOSED SESSION

**MOTION:** Comr. Renée Cahoon made a motion to enter Closed Session to consider the acquisition of property located at 115 McCall Court in S Nags Head and to confer with the Town Attorney to preserve attorney/client privilege – in accordance with GS 143-318.11(a)(3) and (5). The motion was seconded by Mayor Pro Tem Walters which passed unanimously. The time was 11:58 a.m.

#### OPEN SESSION

The Board re-entered Open Session at 12:33 p.m.

Attorney Leidy reported that the Board did discuss the acquisition of property located at 115 McCall Court in S Nags Head and other matters within the attorney/client privilege with action given to the Town Attorney and the Town Manager but no other actions were taken during Closed Session.

#### Acquisition of property located at 115 McCall Court in S Nags Head

**MOTION:** Mayor Pro Tem Walters made a motion to accept the conveyance of property located at 115 McCall Court in S Nags Head. The motion was seconded by Comr. Siers which passed unanimously.

## **BOARD OF COMMISSIONERS AGENDA**

### Comr. Fuller – House Bill 645 / Senate Bill 534

Comr. Fuller brought forward House Bill 645 / Senate Bill 534 concerning advertising legislation that, if adopted, will override local government zoning within municipalities for billboards. The NC League of Municipalities has asked municipalities to take action as soon as possible by sending a resolution to State legislators.

Mayor Cahoon suggested that since the League pointed out some urgency and the Mayors Listserv pointed out an even greater urgency that, if adopted, the resolution be signed and shared with State representatives today.

**MOTION:** Comr. Renée Cahoon made a motion to adopt the resolution opposing the proposed revisions to advertising legislation (House Bill 645/Senate Bill 534) as presented and to forward it to State representatives today. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

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

'WHEREAS, State House Bill 645/Senate Bill 534 titled Revisions To Outdoor Advertising Laws would allow billboards to be placed where current zoning would prohibit them, and increase costs to taxpayers when billboards are required to be removed due to road building and other construction; AND

'WHEREAS, Local control of billboards is necessary to ensure that all property owners are protected. That local control reflects the individual visions of cities and towns and their residents, which are typically tied to their local economies and how they wish to pursue economic growth and attract jobs; AND

'WHEREAS, Local officials take into account the interests of all local business owners when it comes to the location of billboards and a one-size-fits-all solution has the potential to disrupt the economic development of all cities/towns; AND

'WHEREAS, One purpose of the Town of Nags Head zoning ordinances is to eliminate structures which block and detract from the Town's scenic beauty; AND

'WHEREAS, The Town of Nags Head successfully defended its zoning ordinances in a case concerning outdoor advertising titled R. O. Givens, Inc. v. Town of Nags Head.

'NOW, THEREFORE, BE IT RESOLVED, that the Town of Nags Head Board of Commissioners does hereby oppose HB 645/SB 534 concerning revisions to outdoor advertising laws and urge State legislators to oppose these bills and protect local visions, natural resources, economic development, as well as the great quality of life enjoyed by residents."

### Comr. Renée Cahoon – Recombined lots from a Seagull Drive address to an Altoona Street address

Comr. Renée Cahoon asked about the Seagull Drive structure ending up with an Altoona Street address.

Town Manager Ogburn explained that when the Tololoczkos combined two lots, Altoona vs Seagull, the property owners went to the County Register of Deeds and the address chosen by the property owners was Altoona Street and not Seagull Drive. Mayor Cahoon noted that property owners can be assessed for any

