



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
RECESSED MEETING (COVID-19)  
WEDNESDAY, MAY 20, 2020**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, May 20, 2020 at 9:00 a.m. The following instructions were provided to the public for meeting participation – in response to the COVID-19 pandemic:

*In order to view and listen to the Board meeting remotely, please register here:*  
[https://nagsheadnc.zoom.us/webinar/register/WN\\_jlicFozNRWGf7jWCx87jkw](https://nagsheadnc.zoom.us/webinar/register/WN_jlicFozNRWGf7jWCx87jkw)

*Please email your comments for the Public Comment portion here:*  
[publiccomment052020@nagsheadnc.gov](mailto:publiccomment052020@nagsheadnc.gov)  
*(Emailed comments will also be accepted during the Board meeting until the end of the Public Comment portion of the meeting)*

*Comments should include your name and address and  
Should be limited to five minutes when read aloud.*

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley (all present in the Board Room)

Board members Absent: None

Others present: Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; and Karen Snyder Planning Director Michael Zehner (all present in the Board Room)

Present Electronically: NPS Outer Banks Superintendent Dave Hallac; Dep Planning Director Kelly Wyatt Town Clerk Carolyn F. Morris; Registered attendee list provided as Addendum "A"

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9:00 a.m. This meeting was recessed from the May 6<sup>th</sup> Board of Commissioners meeting.

**ADOPTION OF AGENDA**

**MOTION:** Comr. Fuller made a motion to adopt the May 20<sup>th</sup> agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

## **NATIONAL PARK SERVICE YEAR IN REVIEW**

National Park Service, Outer Banks Group, Superintendent Dave Hallac presented an update of the past year via the Zoom platform and a powerpoint presentation. His presentation is attached to and made a part of these minutes as shown in Addendum "B".

Some highlights from Superintendent Hallac's presentation:

- Visitor level is up at Wright Brothers Memorial they feel because of the renovated exhibits
- Increase in visitor level at Wright Brothers Memorial from 2014 and 2019 of almost half million visitors

Next year:

- Continue with Hurricane Dorian recovery efforts
- Staff Housing improvements
- Ground modernization at campground

Superintendent Hallac described the a phased reopening plan similar to other national parks and under the State of North Carolina phased guidelines due to COVID-19.

Board members thanked Superintendent Hallac for his presentation.

## **PUBLIC COMMENT**

Mayor Cahoon read the emails (total of 36 were received) that had been forwarded to Commissioners re: recycling during the Public Comment period. All emails forwarded are attached to and made a part of these minutes as shown in Addendum "C".

Town Manager Ogburn read one email received during the Public Comment period re: restaurant dining during the pandemic which is also attached to and made a part of these minutes as shown in Addendum "D".

## **OLD BUSINESS**

From May 6<sup>th</sup> Board meeting – Report from Planning Dept re: plans for restaurant outdoor dining/food trucks for the Phase II re-opening of the State's Stay at Home Order; Request for public hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

Planning Director Michael Zehner was present in the Board Room and presented this item to the Board. The agenda summary sheet read in part as follows:

"In response to communication from the Outer Banks Restaurant Association, as well as discussion with other businesses, Planning Staff has prepared the proposed text amendment intending to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies.

**Planning Board/Staff Recommendation**

Planning Staff recommends adoption of the amendments as proposed, but welcomes and will take into consideration questions and feedback from the boards.

“The Planning Board is reviewing the proposed text amendment on May 19, 2020.”

Director Zehner summarized his memo to the Planning Board which read in part as follows:

“The proposed text amendment is intended to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies. As the Board may be aware, Dan Lewis, President of the Outer Banks Restaurant Association, had emailed the mayors of the towns of Nags Head, Duck, Kill Devil Hills, Kitty Hawk, Manteo, and Southern Shores (attached) requesting the towns’ consideration of regulatory changes that would allow for flexibility in restaurant operations in response to the COVID-19 Pandemic. This proposed text amendment is in response to that request, but has also been informed by further discussions between Staff and Mr. Lewis, Mark Ballog (owner of Lucky 12), and John Harris (owner of Kitty Hawk Kites); additionally, while in response to this immediate emergency, Staff believes that this provision will have application during other emergencies.

“In short, this text amendment would allow for the issuance of a Temporary Use Permit only during an emergency declared by the Mayor (pursuant to Town and State laws) or due to impacts associated with a declared emergency. In these instances, Temporary Use Permits would be authorized to be issued jointly by the Town Manager and UDO Administrator for temporary uses or the temporary modification of uses; the drafted provisions allow for broad latitude in their application, however, there are limitations on eligible uses and modifications, and ultimately, a Permit could be rejected for any activity or accommodation, in the opinion of the Town Manager and UDO Administrator, that would be contrary to the purposes of the emergency declaration and/or the interests of the public health, safety, and welfare.

“Obviously, the Town of Nags Head and the other Outer Banks’ municipalities are not unique in the need to address this issue. Please find attached a blog post from the American Planning Association titled *7 Ways to Respond to Regulation Rollbacks*, intended to present perspectives and options for municipalities to address the Pandemic, while complying with applicable regulations and statutes.

**POLICY CONSIDERATIONS**

The most direct policy in the Comprehensive Plan pertaining to the proposed text amendment and the basis for the amendment is policy NR-11, as follows:

*NR-11 Ensure that the town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster event.*

“In Staff’s opinion, the proposed amendment is consistent with the intent of this policy, despite a lack of expectation for the current circumstances.

**STAFF RECOMMENDATION**

Staff intends to review the provisions in more detail with the Board at their meeting on May 19, 2020. Staff is scheduled to present the proposed amendments to the Board of Commissioners on May 20, 2020, and if the Planning Board has issued a recommendation, request that the Board of Commissioners consider the scheduling of a public hearing for June 3, 2020. Planning Staff recommends adoption of the amendments as proposed, but welcomes and will take into consideration the Planning Board’s questions and feedback.

'With regard to the Planning Board and Board of Commissioners' review and action, Staff recommends consideration of the following UDO provisions:

*3.5.3. Action by the Planning Board.*

*3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

*3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

*3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

*3.5.4. Action by the Board of Commissioners.*

*Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

*3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

*3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

*3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.*

*3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.*

*3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.*

3.5.4.5.1. *A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

3.5.4.5.2. *A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

3.5.4.5.3. *A statement approving the amendment and containing at least all of the following:*

3.5.4.5.3.1. *A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.*

3.5.4.5.3.2. *An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.*

3.5.4.5.3.3. *Why the action was reasonable and in the public interest.*

3.5.4.6. *In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

3.5.4.6.1. *The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

It was Board consensus to waive the \$75 fee for a temporary use permit and to align with the other towns to not allow issuance of a temporary use permit if reduction of required parking is greater than 25%. Board members also agreed the ordinance should be in effect for 90 days.

**MOTION:** Comr. Renée Cahoon made a motion to authorize the temporary use of food trucks and outdoor dining via the Town's Crowd Gathering Permit process, waiving the permit fee, between now and June 3<sup>rd</sup>. The motion was seconded by Comr. Brinkley which passed unanimously.

**MOTION:** Comr. Fuller made a motion to schedule the proposed ordinance concerning temporary use permits for Public Hearing at the June 3<sup>rd</sup> Board of Commissioners meeting, as presented, with the amendments discussed today re: waiving the \$75 fee and by aligning with the other towns to not allow issuance of temporary use permits if reduction of required parking is greater than 25%. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Mayor Pro Tem Siers thanked the public/citizens/business owners who worked with staff on the proposed ordinance.

## **NEW BUSINESS**

Consideration of NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017)

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

"Attached please find the latest version of the NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017) provided for Board consideration at the May 20, 2020 Board of Commissioners meeting.

"The agreement, if adopted, encourages the coordination of mutual aid between the State and local governments when appropriate – such as in an emergency/disaster situation."

Comr. Renée Cahoon asked Town Manager Ogburn to verify the correct date is on the agreement.

**MOTION:** Mayor Pro Tem Siers made a motion to approve the NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017) as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

The amendment as approved and executed is on file in the Town Clerk's office.

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

Request for Closed Session to confer with the Town Attorney regarding a matter within attorney/client privilege in accordance with GS 143-318.11(a)(3)

Mayor Cahoon confirmed with Attorney Leidy that his requested Closed Session concerning an attorney/client matter in accordance with GS 143-318.11(a)(3) is the only item under his agenda – to be addressed at the appropriate time at the end of the meeting.

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

Town Manager Ogburn - Distribution/Presentation of Recommended FY 20/21 Budget

Town Manager Ogburn presented his recommended budget for the FY 20/21 year; Finance Officer Amy Miller distributed the budget document to Board members.

Some highlights of the proposed budget as presented by Town Manager Ogburn:

- Revenue neutral budget
- No employee COLA or Merit; no change to 401K
- Budget focuses on maintenance and repair
- Public Hearing on the proposed budget scheduled for Jun 3<sup>rd</sup>
- Budget workshop scheduled for next Wed, May 27<sup>th</sup> at 9 am

Town Manager Ogburn - Discussion of parking at Little Bridge site

Town Manager Ogburn brought forward for the Board's information the parking on the east side of the Little Bridge where people fish from the rocks. He is not proposing any action at this time – this is just for the Board's information as at some point No Parking designation may need to be made.

Comr. Brinkley noted that in the past two weeks he only saw two cars parked in that area and they were well off the road.

Mayor Cahoon noted that it is an area that needs to continue to be monitored.

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

Town Manager Ogburn requested a Closed Session for a personnel matter in accordance with GS 143-318.11(a)(6) at the appropriate time at the end of the meeting.

### **BOARD OF COMMISSIONERS AGENDA**

#### Comr. Webb Fuller – Discussion about the Town allowing for an individual subscription for recycling

Comr. Fuller asked the Board if they would be interested in facilitating a subscription service for Nags Head residents for curbside recycling – similar to a program the Town had years ago prior to its curbside recycling program. This is currently being offered in Kitty Hawk, Kill Devil Hills, Manteo and in unincorporated Dare County. Vendors will do this type of service at a cost of approximately \$15 to \$20 per month. He noted that the Town continues to offer recycling centers. He feels that the Town can coordinate better than an individual – the vendor would be looking at around 300 people to participate to make it worth their while.

Comr. Fuller also stressed that the Town is strongly in favor of recycling and that more accurate information needs to be issued to the public.

Comr. Renée Cahoon considered the recycling comments that were received today – suspending recycling was not a decision the Board made lightly and as options come up the Town will reconsider. She emphasized that it's not that the Town does not want to recycle, there's no market for recycling materials. The Board cares very much about recycling.

Comr. Brinkley agrees with Comr. Renée Cahoon's comments and he thinks it would be beneficial for the Town to put more accurate and thorough information out to the public concerning this issue.

**MOTION:** Mayor Cahoon made a motion that staff a) Look into facilitating subscriptions for a curbside recycling service for residents that are interested – equivalent to that being done in the Towns of Kitty Hawk, Kill Devil Hills, and Manteo and in mainland Dare County, b) Develop an information campaign to further describe the decision-making process and what's currently available as well as all the conditions around recycling and, c) Develop a program (or at least an outline) to encourage reduction, re-use, and recycling as well as other environmentally-friendly approaches to waste to be brought back to the Board. The motion was seconded by Comr. Fuller which passed unanimously.

### **MAYOR'S AGENDA**

#### Mayor Cahoon – Dare County Control Group

Mayor Cahoon reported that after this Friday, May 22<sup>nd</sup>, after the Governor announces the steps in the Phase II re-opening, that the Dare County Control Group will most likely stop meeting three times/week and will be meeting on an as-needed basis.

Comr. Renée Cahoon – Request that Dare County Tourism Board encourage wearing masks

Comr. Renée Cahoon asked Comr. Fuller to ask the DCTB to issue a message re: the importance of wearing face masks especially as more stores, restaurants, etc. open up as a way to be proactive and safe. Comr. Fuller said that they meet tomorrow (Thursday) and he will be glad to bring this up as the Tourist Bureau has the widest platform to get the information out.

Comr. Renée Cahoon – US Census

Comr. Renée Cahoon observed last week that US Census staff were doing their job and placing census information at houses that were unfortunately rental houses and the papers being left were being blown out into the street. It was emphasized that they should be concentrating on the west side of US 158 where most of the full-time residents live.

Town Manager Ogburn – Fund Balance figures

In response to an inquiry from Comr. Fuller, Town Manager Ogburn reported that the Town's Fund Balance Policy is 50% of expenditures less bond debt but not less than \$5 million. The Town has \$6.9 million in the Fund Balance which is 39% of the total budget.

**CLOSED SESSION**

**MOTION:** Comr. Brinkley made a motion to enter Closed Session in accordance with GS 143-318.11(a)(3) to confer with the Town Attorney concerning attorney/client privilege and to preserve that privilege, and in accordance with GS 143-318.11(a)(6) concerning a personnel matter. The motion was seconded by Comr. Fuller which passed unanimously. The time was 11:10 a.m.

**OPEN SESSION**

The Board re-entered Open Session at 11:58 a.m.

Attorney Leidy stated that the Board did discuss a confidential matter with the Town Attorney, as well as an attorney/client privilege item. He reported that the Board received and accepted the resignation of Town Manager Ogburn to be effective June 19, 2020.

**APPRECIATION OF TOWN MANAGER OGBURN**

All Board members expressed their appreciation of Town Manager Ogburn for all he has done for the Town; they wished him well in his new position as Town of Southern Shores Town Manager.

Mayor Cahoon expressed his appreciation to Town Manager Ogburn for his help when he was a newcomer to the Mayor position – he appreciated his guidance and the sharing of information on various issues. Mayor Cahoon said Town Manager Ogburn will be missed very much as he is a very caring manager – caring about Town citizens, his staff – and he wished him well in his future endeavors.



Comr. Brinkley said that while his time on the Board has been limited, as the Town's former Police Chief they did a lot of great things together and he feels Town Manager Ogburn will have the support of the Southern Shores Police Chief also. He expressed his appreciation for all Town Manager Ogburn has done for the Town and for him and he wished him well.

Comr. Renée Cahoon said she has enjoyed working with Town Manager Ogburn and wishes him well.

Mayor Pro Tem Siers wished Town Manager Ogburn well in his future endeavors.

Comr. Fuller thanked Town Manager Ogburn and felt what he has learned in Nags Head will also help him in Southern Shores.

## **ADJOURNMENT**

**MOTION:** Comr. Renée Cahoon made a motion to adjourn. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 12:02 p.m.

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Carolyn F. Morris, Town Clerk

Date Approved:     **June 3, 2020**    

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