



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, JULY 5, 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, July 5, 2023 at 9:00 a.m. for a Regular Meeting.

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

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Amy Miller; Kelly Wyatt; David Ryan; Perry Hale; Randy Wells; Shane Hite; Michelle Gray; Roberta Thuman; Karen Snyder; Jackie Hart; Tyree Hughes; Lynette Hite; Stephanie Kite; Jackson Hite; Butch Osborne; Kevin Zorc; Megan Lambert; Webb Fuller; Stan White; and Town Clerk Carolyn F. Morris

CALL TO ORDER

Mayor Cahoon called the meeting to order at 9 am. A moment of silent meditation was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the July 5th agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

RECOGNITION

FIVE YEARS - Fire Chief Randy Wells introduced Firefighter/EMT Tyree Hughes who was congratulated by the Board for five years of service.

PRESENTATION – Fire Chief Randy Wells presented a plaque awarding Dep Fire Chief Shane Hite the Executive Fire Officer (EFO) Certification – the highest level of expertise in his field. This designation reflects Dep Fire Chief Hite’s dedication and exceptional service. Dep Fire Chief Hite was also recognized and congratulated for twenty years of service with the Town.

Board members congratulated Dep Chief Hite on his twenty years of service and for his achievement of the distinguished Executive Fire Officer (EFO) Certification.

Mayor Cahoon pointed out that Firefighter/EMT Hughes and Dep Fire Chief Hite are who residents/visitors see every day and he appreciates how well they both represent the Town.

PUBLIC COMMENT

Attorney Leidy opened Public Comment at 9:10 a.m.

PUBLIC COMMENT – WEBB FULLER

Webb Fuller, resident and former Town Manager; he spoke concerning today's agenda item pertaining to the proposed closing of a portion of Old Nags Head Woods Road; he is in support of the revised request by Stan White and Louisa Farr and the map noted is what he is in favor of; he appreciates staff's response to his questions. Mr. Fuller requested that the Town survey the 10' easement that goes from this portion to the north portion of the Ralph Buxton Subdivision; this easement was granted by the property owners and so he would appreciate knowing exactly where it crosses his and Mr. Buxton's property.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Budget Amendment #1 to FY 23/24 Budget

Consideration of Tax Adjustment Report

Consideration of Order to Collect Taxes

Consideration of Business License and Registration Fee debt release

Approval of minutes

Consideration of resolution authorizing the exchange of equipment between the Town's Fire Dept and the Roanoke Island Volunteer Fire Dept

Consideration of resolution authorizing higher federal micro-purchase thresholds

Request for Public Hearing to consider application for NC Division of Coastal Management (DCM) Public Beach and Waterfront Access and Grant Program

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

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

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

The Order to Collect Taxes for FY 23/24, as approved, read in part as follows:

"State of North Carolina / Town of Nags Head
To the Tax Collector of the Town of Nags Head:

'You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the office of the Tax Collector and in the tax receipts herewith delivered to you, in the amounts

and from the taxpayers likewise therein set forth for the tax year 2023 plus all delinquent taxes from tax years 2014 to 2022. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the Town of Nags Head, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law."

The Business License and Registration Fee debt release agenda summary sheet, as approved, read in part as follows:

"Attached please find a list of businesses for license/registration fee release as well as a memo from Tax Collector Linda Bittner. This report is provided for the Board's information and is in accordance with Town Code Sec. 12-33 Releases (below).

'Sec. 12-33 - Releases. If it is determined that upon the issuance date of a renewal license or registration the business has been discontinued, the finance director may release a tax of less than \$100.00. The tax collector shall annually report to the board of commissioners releases made pursuant to this section and the tax collector's annual report shall be recorded in the minutes of the board of commissioners. This report will be included with the annual request to the board to write off uncollectible accounts pursuant to section 12-32."

The Resolution re: authorization of the exchange between the Town of Nags Head Fire Dept and the Dare County Roanoke Island Volunteer Fire Dept for equipment, as adopted, read in part as follows:

"WHEREAS, The Town of Nags Head owns Amkus Extrication equipment at a value of \$2,000; AND

'WHEREAS, The Roanoke Island Fire Department in Dare County owns physical fitness equipment valued at \$2,000; AND

'WHEREAS, the Roanoke Island Fire Department and the Town of Nags Head Fire Department wish to make an even exchange of the described pieces of equipment; AND

'WHEREAS, North Carolina General Statute § 160A-271 authorizes the Town to make such an exchange if authorized by the Board of Commissioners by a resolution adopted at a regular meeting of the Board upon at least 10 days public notice; AND

'WHEREAS, the Town of Nags Head has given the required public notice, and the Board is convened in a regular meeting.

'THEREFORE, the Board of Commissioners of the Town of Nags Head resolves that:

1. The exchange of equipment described above is authorized.
2. The appropriate Town of Nags Head and Roanoke Island Fire Department officials are directed to execute the appropriate instruments necessary to carry out the exchange."

The Resolution re: authorization of higher micro-purchase thresholds, as adopted, read in part as follows:

"WHEREAS, from time to time, the Town of Nags Head purchases goods and services using federal funding subject to the procurement standards in 2 C.F.R. Part 200, Subpart D; and

‘WHEREAS, the Town of Nags Head’s procurement of such goods and services is subject to the Town of Nags Head’s purchasing and bid requirements policy, as most recently amended on April 28, 2020; and

‘WHEREAS, the Town of Nags Head is a non-Federal entity under the definition set forth in 2 C.F.R. § 200.1; and

‘WHEREAS, pursuant to 2 C.F.R. § 200.320(a)(1)(ii), a non-Federal entity may award micro-purchases without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents that the non-Federal entity files accordingly; and

‘WHEREAS, pursuant to 2 C.F.R. § 200.320(a)(1)(iii), a non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures; and

‘WHEREAS, pursuant to 2 C.F.R. § 200.320(a)(1)(iv), a non-Federal entity may self-certify on an annual basis a micro-purchase threshold not to exceed \$50,000 and maintain documentation to be made available to a Federal awarding agency and auditors in accordance with 2 C.F.R. § 200.334; and

‘WHEREAS, pursuant to 2 C.F.R. § 200.320(a)(1)(iv), such self-certification must include (1) a justification for the threshold, (2) a clear identification of the threshold, and (3) supporting documentation, which, for public institutions, may be a “higher threshold consistent with State law”; and

‘WHEREAS, G.S. 143-129(a) and G.S. 143-131(a) require the Town of Nags Head to conduct a competitive bidding process for the purchase of (1) “apparatus, supplies, materials, or equipment” where the cost of such purchase is equal to or greater than \$30,000, and (2) “construction or repair work” where the cost of such purchase is greater than or equal to \$30,000; and

‘WHEREAS, North Carolina law does not require a unit of local government to competitively bid for purchase of services other than services subject to the qualifications-based selection process set forth in Article 3D of Chapter 143 of the North Carolina General Statutes (the “Mini-Brooks Act”); and

‘WHEREAS, G.S. 143-64.32 permits units of local government to exercise, in writing, an exemption to the qualifications-based selection process for services subject to the Mini-Brooks Act for particular projects where the aggregate cost of such services do not exceed \$50,000; and

‘WHEREAS, pursuant to 2 C.F.R. § 200.320(a)(1)(iv), the Board of Commissioners of the Town of Nags Head now desires to adopt higher micro-purchase thresholds than those identified in 48 C.F.R. § 2.101.

‘NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD:

‘1. In accordance with 2 C.F.R. § 200.320(a)(1)(iv) and the applicable provisions of North Carolina law, the Town of Nags Head hereby self-certifies the following micro-purchase thresholds, each of which is a “higher threshold consistent with State law” under 2 C.F.R. § 200.320(a)(1)(iv)(C) for the reasons set forth in the recitals to this resolution:

- A. \$30,000, for the purchase of “apparatus, supplies, materials, or equipment”; and
- B. \$30,000, for the purchase of “construction or repair work”; and
- C. \$50,000, for the purchase of services not subject to competitive bidding under North Carolina law; and

D. \$50,000, for the purchase of services subject to the qualifications-based selection process in the Mini-Brooks Act; provided that such threshold shall apply to a contract only if the Unit has exercised an exemption to the Mini-Brooks Act, in writing, for a particular project pursuant to G.S. 143-64.32. If the exemption is not authorized, the micro-purchase threshold shall be \$0.

'2. The self-certification made herein shall be effective as of the date hereof and shall be applicable until June 30, 2024, but shall not be applicable to Federal financial assistance awards issued prior to November 12, 2020, including financial assistance awards issued prior to that date under the Coronavirus Aid, Relief, and Economic Support (CARES) Act of 2020 (Pub. L. 116-136).

'3. In the event that the Town of Nags Head receives funding from a federal grantor agency that adopts a threshold more restrictive than those contained herein, the Unit shall comply with the more restrictive threshold when expending such funds

'4. The Unit shall maintain documentation to be made available to a Federal awarding agency, any pass-through entity, and auditors in accordance with 2 C.F.R. § 200.334.

'5. The Town Manager, or in absence designee, of the Town of Nags Head is hereby authorized, individually and collectively, to revise the Purchasing Policy of the Unit to reflect the increased micro-purchase thresholds specified herein, and to take all such actions, individually and collectively, to carry into effect the purpose and intent of the foregoing resolution."

The agenda summary sheet for the Request for Public Hearing, as approved, read in part as follows:

"Staff is requesting to apply for an NC Division of Coastal Management Beach & Waterfront Access Grant in the amount of \$89,313. The grant funds will go towards the Governor Street public beach access improvements, with a local cash match of \$28,460 included in the adopted FY 23/24 budget and Capital Improvement Program. This public hearing will satisfy the grant requirements for Board approval."

PUBLIC HEARINGS

Public Hearing to consider text amendments to Section 11.10 of the Unified Development Ordinance as it pertains to dewatering activities such as the installation of inground pools

Attorney John Leidy introduced the Public Hearing to consider an ordinance amending the UDO pertaining to dewatering activities such as the installation of inground pools at 9:15 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, June 21, 2023 and on Wednesday, June 28, 2023, as required by law.

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

"Dewatering typically involves sloping areas of work to drain water away, pumping surface water to another location, or drilling well-points into the ground around the area of work and pumping ground water to another location in order to artificially lower the water table while work is occurring.

'A recent development project within the Town, involving the need to de-water/pump ground water out and away from the area being excavated for the installation of an in-ground pool within an area of elevated

ground water has highlighted the need for staff to revisit the existing ordinance language of Section 11.10 of the Unified Development Ordinance to determine if any revisions are necessary to ensure the intent of this section of the UDO is being met. Section 11.10 of the UDO is provided below in its entirety for the Planning Board's review.

'Section 11.10 - Discharge of Stormwater, Pool Water, Hot Tub Water, and De-Watering Effluent.

11.10.1. *It shall be prohibited to discharge or direct water onto adjoining properties without appropriate easements or agreements from any source under the control of the owner of the premise, to include retained stormwater runoff, swimming pools, hot tubs, heating and air conditioning systems, or groundwater from de-watering activities.*

11.10.2. *Discharge of retained stormwater or water from other sources into the Town right-of-way is allowable only with the written permission of the Town Manager, Public Works Director or Town Engineer.*

11.10.3. *Temporary discharge of retained stormwater or water from other sources into the NCDOT right-of-way is allowable only with permission of NCDOT and a properly executed NCDOT encroachment agreement.*

11.10.4. *Upon a determination that this section is being violated, the Stormwater Administrator may immediately issue a notice of violation and civil citation without need for a warning citation under [Section 1.10](#), Violation of UDO Regulations or Town Code [1-6](#). Upon receipt of the notice of violation, the violator shall immediately cease and desist the activity which is in violation of this section. In the event that a violation imminently affects public safety, health or welfare, the Town may take action to abate the violation in a manner which appropriately balances the need for public safety with the need for due process of law.*

'This Section of the Unified Development Ordinance is most often used after a storm event to help alleviate flooding and standing water on private properties. However, within the Planning Department we have seen an uptick in the need to reference this section of the code in two scenarios:

'Draining and refilling of existing pools and hot tubs. We often times get a complaint from a neighboring property owner when the draining water crosses property lines and causes saturation or ponding offsite.

'As of recent, as part of excavation for the installation of in-ground pools in areas with elevated ground water. In low areas with elevated ground water, we are noticing more often that property owners/contractors need to de-water/pump the ground water that is filling in the excavated area away from the work site.

'In the most recent scenario where de-watering occurred, the contractor was given permission from a nearby commercial property owner to pump the ground water into the approved stormwater basin designed to manage the stormwater generated from the commercial development during a rainfall event. When this basin filled up, the contractor began pumping the ground water onto an adjoining vacant property which very quickly became saturated and began running onto adjoining properties where property owners had not given express permission for this activity to occur. When given the option of a stop work order or maintaining the dewatered groundwater entirely onsite, the contractor then had to bring in large pump trucks to accept the groundwater and haul it to offsite location in order to complete the installation of the pool.

'The updated 2022 Decentralized Wastewater Management Plan (DWMP) suggests that groundwater levels in Dare County are rising at a similar or faster rate than sea level rise (0.433 inches/year). There are multiple factors affecting this, including water use, seasonal dynamics of precipitation inputs, evapotranspiration, and ocean and estuary water levels.

'Groundwater levels tend to be highest during the winter months, due to lower plant water use and cooler temperatures that result in less evapotranspiration. During summer months when evapotranspiration is at a maximum the groundwater levels tend to be the lowest. However, shorter term fluctuations of groundwater levels can occur due to wet weather periods, or extreme storm events which can cause the groundwater levels to rise several feet.

'Groundwater may take weeks to months to recede, depending on the elevation, type of soil and the size and intensity of the event.

'In general, in Dare County, there is an inverse relationship between land surface elevation and groundwater levels; higher elevation sites tend to have deeper water tables and lower elevation sites tend to have shallower water tables. As the DWMP points out, conventional septic systems can be compromised if the soil beneath the drain lines does not contain adequate dry "separation space" to treat effluent and therefore keep harmful nutrients and bacteria out of our waterways.

'As such, and at the direction of the Septic Health Advisory Committee, we want to take a proactive approach to address any future potential issues associated with dewatering for the purpose of development, which is most often seen in the installation of in-ground pools.

'Section 11.10 has generally served the towns needs well with regard to discharging stormwater after rainfall events, however, staff believes additional amendments are necessary with regard to the discharge of pool and hot tub water as well as de-watering activities. Draft amendments to this section would eliminate the ability to discharge or dewater of any kind onto an adjoining property, including any approved residential or commercial stormwater management measure. The DWMP and associated data sets are a valuable resource for guiding staff and assisting in evaluation of permitting conditions.

'In addition to the proposed amendments to the Unified Development Ordinance, staff has drafted a set of internal protocols for future permitting of in-ground pools or any development requiring excavation in areas of elevated ground water levels. The DWMP and associated data sets are a valuable resource for guiding staff and assisting in evaluation of permitting conditions.

'Staff will be available at the Board of Commissioners July 5th, 2023 meeting for further discussion.

'Planning Board Recommendation

At their May 16, 2023 meeting, the Planning Board voted unanimously to recommend adoption of the proposed text amendment as presented.

'If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements (attached)."

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 9:23 a.m.

MOTION: Comr. Brinkley made a motion to adopt the ordinance amending the Unified Development Ordinance pertaining to dewatering activities such as the installation of inground pools, as presented. The motion was seconded by Comr. Renée Cahoon.

AMENDMENT TO MOTION: Comr. Brinkley amended his motion to include adoption of the Statement of Consistency. The motion to amend was seconded by Comr. Renée Cahoon.

CONTINUATION OF MOTION: The motion, as amended, passed unanimously.

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

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 July 5th, 2023.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for May 2023*. 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:

- Thursday, June 1st – CRS Users Group Meeting
- Tuesday, June 6th – Technical Review Committee Meeting
- Wednesday, June 7th - Board of Commissioners Meeting
- Thursday, June 8th – Board of Adjustment Meeting (no hearings scheduled)
- Tuesday, June 13th – Planning Department Staff Meeting
- Wednesday, June 14th – Committee for Art and Culture Meeting
- Tuesday, June 20th – Planning Board Meeting
- Wednesday, June 21st – Board of Commissioners Mid-Month Meeting
- Tuesday, June 27th – Planning Department Staff Meeting
- Dowdy Park Farmers Market – Thursdays, June 15th, 22nd, & 29th
- Dowdy Park Summer Concerts – Wednesdays, June 14th, June 21st, & June 28th.

'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, June 20, 2023, and included review and discussion of draft questions for the townwide community survey and discussion of integrating the "multi-family development" use into the Unified Development Ordinance. The Planning Board primarily focused on proposed amendments that would address several inconsistencies with the ordinance as it relates to multi-family dwelling and townhouse uses. Once the Planning Board has developed a basic outline, they would like to request consideration be given to a joint workshop between the Planning Board and Board of Commissioners.

'The Planning Board's next meeting is scheduled for July 18th, 2023. At this time, the agenda is expected to include 1) consideration of text amendments to the UDO to include the use "Restaurant, Drive-Through" as a permissible use within commercial mixed-use developments, 2) consideration of a Special Use Permit/Site Plan Review submitted by Timmons Group on behalf of Outlets Nags Head for the construction of a Starbucks drive-through restaurant/café at 7100 S. Croatan, and 3) continued discussion on the multi-family dwelling use.

'Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in June 2023. The Board of Adjustment is scheduled

to meet on Thursday, July 13th to hear a variance request by property owner, David Treharne, regarding the setback requirements of the Unified Development Ordinance as it relates to a newly constructed deck. The property is zoned R-2, Medium Density Residential and is located at 8723 S. Old Oregon Inlet Road.

'Additional Updates

- DWMP/Septic Health Advisory Committee – The next quarterly meeting of the Septic Health Advisory Committee is scheduled for Friday, July 28th beginning at 10am. At this meeting, staff will provide an update on the impact of the mailers to South Nags Head and Old Nags Head Cove as well as final numbers for inspections, pump outs, and loans for fiscal year 22-23. The Septic Health Advisory Committee will plan to provide an update to the Board of Commissioners at their August 2nd, 2023, meeting.
- Estuarine Shoreline Management Plan – Staff has submitted the full grant application for the National Fish and Wildlife Foundation grant in the amount of \$750,000 to cover surveying, engineering, and design of the three prioritized sites. This application was submitted on June 28th, 2023.
- NC Resilient Coastal Communities Program –The town has applied for Phase 4 of the RCCP to fund the implementation associated with the approved stormwater project area #12 in South Nags Head.
- Electric Vehicle Action Plan – The town has been awarded a \$10,000 rebate for the installation of a Level 2 Public Charging Station at the municipal complex. Equipment will be ordered after July 1st, 2023.
- ETIPP Project/Program – No new updates at this time. Staff anticipate being able to provide the Board of Commissioners with a comprehensive update at their August or September meeting if desired.
- Whalebone Park: Phase 1 Planning – No new updates. The town intends to move forward with a simple restroom design to be constructed on site with the grant allocation from the Outer Banks Visitors Bureau. Construction will likely take place this fall.
- Governor Street Public Beach Access Grant – The town has been invited to submit a full grant application for the construction of a new ADA-accessible elevated dune crossover with associative ADA-compliant parking stalls, and a shower upfit. This application is due by August 28th, 2023.
- Dune Management Cost Share Program – This program has allocated all the available funds. Staff continue to process the required paperwork for reimbursements on many applications.
- Nags Head Dog Park – The crushed granite surfacing at the entry areas of the park will be installed June 26th – June 28th and shortly after a shade structure will be constructed to provide cover from the elements for park users and their pups. The park will be closed until Wednesday, July 5th.
- Hazard Mitigation Plan Update – As part of the Town's continued participation in the Community Rating System ("CRS") program, the Town is required to provide updates on the actions contained in the Hazard Mitigation Plan. Staff has provided a spreadsheet outlining updates to the action plan for the Board of Commissioners review. Staff is providing this to the Board of Commissioners and the community for informational purposes.
- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – The Dowdy Park Farmers Market and Summer Concert Series are in full swing, and both continue to be well attended. The first family fun night,

joined by the SPCA, held on June 27th was successful, however, it was cut short due to weather. The next family fun night is scheduled for Tuesday, July 18th and will include the Dare County Master Gardener Association.

'Upcoming Meetings and Other Dates

- Wednesday, July 5th - Board of Commissioners Meeting
- Thursday, July 6th – Technical Review Committee Meeting
- Wednesday, July 12th – Committee for Art and Culture Meeting
- Thursday, July 13th – Board of Adjustment Meeting (8723 SOOIR Variance)
- Tuesday, July 18th – Planning Board Meeting
- Wednesday, July 19th – Board of Commissioners Mid-Month Meeting
- Friday, July 28th – Septic Health Advisory Committee Meeting
- Dowdy Park Farmers Market – Thursdays, July 6th, 13th, 20th, & 27th
- Dowdy Park Summer Concerts – Wednesdays, July 5th, 12th, 19th, & 26th

Ms. Wyatt's report was well received. Board members thanked her and her staff's work on the Dowdy Park events.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From May 3rd Board meeting - Discussion of request to vacate a portion of Old Nags Head Woods Road

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

"Attached please find two letters: 1) a letter from Stan White and Louisa Farr, owners of Lots 3 and 4 of the Ralph Buxton Subdivision, requesting that the Town permanently close the portion of Old Nags Head Woods Road that crosses their properties, 2) a follow-up letter from Stan White amending his original request only pertaining to his property, which would only vacate the portion of Old Nags Head Woods Road on his property south of the 15' access easement which is roughly 130 feet north of his southern lot line (see attached map). The Town has also received two emails from the owner of Lot 2 of the Ralph Buxton subdivision, Webb Fuller. The first email was received after Mr. White placed his original request. The second email includes Mr. Fuller's position on Mr. White's revised request.

'Staff has reviewed this request and offers the following:

- 1) Staff has spoken with neighbors in this subdivision and there are no objections to the revised request.
- 2) The 10' wide access easement was granted to the town when the Ralph Buxton subdivision was created in 1986.
- 3) The easement was created to provide access to the lots in this subdivision. If the request is approved, access to all lots would remain intact. None of the lots in this subdivision rely on this portion of the easement for access. Louisa Farr, owner of Lot 4, has a driveway which directly connects to Villa Dunes Drive. The other three lots utilize the 15' wide access easement from Villa Dunes Drive and the portion of the 10' wide access easement which connects to and runs to the north of the 15' wide access easement.
- 4) Since the easement is only 10' feet wide, it does not meet any current town standards for a street right-of-way. It may be possible to construct a pedestrian path in this area. However, this was not the original purpose for which the easement was created. The southern end of Old Nags Head Woods

Road does not connect to another town street or right-of-way. Rather, it terminates in the parking lot of private property, the Villas. The town does not currently utilize this portion of the right-of-way. It is unknown whether this right-of-way would serve a viable purpose in the future.

- 5) The Town does not maintain any utilities south of where the 15' wide access connects to Old Nags Head Woods Road.

'It appears the reasons for which the 10' easement was granted no longer exist. Given the information stated above, staff does not object to the revised request. Should the Board decide to approve the request, attached is a draft resolution and map which could be approved to vacate the right-of-way. Also, attached is the statute which governs the process to vacate the right-of-way.'

MOTION: Comr. Renée Cahoon made a motion to adopt the resolution of intent to vacate the portion of Old Nags Head Woods Road as presented and to schedule the Public Hearing for the August 2nd Board meeting. The motion was seconded by Comr. Brinkley which passed unanimously.

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

'The Board of Commissioners of the Town of Nags Head, North Carolina, does hereby adopt the following resolution:

'BE IT RESOLVED, that the Board of Commissioners of the Town of Nags Head hereby declares its intention to consider the permanent closing of that portion of Old Nags Head Woods Road described as follows:

All that portion of Old Nags Head Woods Road that crosses Lot 3 "Division for Ralph Buxton, et al" owned by Stanford M. White, south of the 15' access easement, which is approximately 130 feet north of the southern lot line and that portion of Old Nags Head Woods Road that crosses Lot 4 "Division for Ralph Buxton, et al" owned by Louisa Farr.

'WHEREAS, the portion of Old Nags Head Woods Road described hereinabove was originally designated as a 10' wide access easement granted to the Town when the Ralph Buxton Subdivision was created in 1986; AND

'WHEREAS, the portion of Old Nags Head Woods Road proposed to be permanently closed would not deprive any property owner of a reasonable means of ingress and egress to his or her property by virtue of the closing of the portion of Old Nags Head Woods Road described above.

'NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners of the Town of Nags Head hereby declares its intention to consider the permanent closing of that portion of Old Nags Head Woods Road described above and that appropriate notice of public hearing of this matter be given pursuant to Section 160A-299 of the North Carolina General Statutes, and that the public hearing be held at the Board's regular meeting at 9 am on the 2nd day of August 2023.'

NEW BUSINESS

Committee Reports

There were no committee reports presented at this time.

Consideration of appointment to Board of Adjustment

The agenda summary sheet read in part as follows:

"Appointment to the Board of Adjustment

All five (5) regular positions on the Board of Adjustment are filled; there are three (3) alternate positions vacant. Only three (3) members are available to serve on the Board of Adjustment for a case scheduled for July 13, 2023 - which would not meet the required number of four (4) for a quorum.

'Request Board appointment to an Alternate position. Currently, there are two applicants interested in serving:

- Applicant Angelina Lowe, resigned as a member of the Board of Adjustment in 2021 and has reapplied to serve as an Alternate member.
- Applicant Barbara Ayers has filed an application to serve as a member of the Board of Adjustment."

MOTION: Comr. Renée Cahoon made a motion to appoint Angelina Lowe as an Alternate member of the Board of Adjustment. The motion was seconded by Comr. Brinkley which passed unanimously.

Consideration of amendments to Traffic Control Map

- Designation of "No Thru Trucks/Buses" on Soundside Road
- Designation of "No Parking-Tow Away Zone" on Bonnett Street (adjacent to French Door)

Police Chief Perry Hale summarized his memo re: Soundside Road and its increased activity which read in part as follows:

"Soundside Road has seen an increase in traffic over the past few years, specifically traffic going to and from the Jockey's Ridge Soundside Access. Recently, there has been an increase in large groups wanting to see the popular attraction located in the residential area and arriving by tour buses. As it stands now, a portion of Soundside Road is classified by Town Code as an Environmental Street and a Sub-collector street. I am requesting an amendment to the Traffic Control Map that would prohibit access to a portion of W. Soundside Road by large commercial trucks and buses.

'This restriction would not apply to State / County maintained School or Activity buses when in use for an official school function or commercial motor vehicles used for delivery of a product to a specific address."

Police Chief Perry Hale summarized the use of the right-of-way north side of Bonnett Street adjacent to the French Door business.

Mayor Pro Tem Siers questioned extending the No Parking – Tow Away Zone to the east end of Bonnett Street – to its intersection with Wrightsville Ave. Board members discussed this and felt that this extension area, with no houses/structures, is commonly used for Dowdy Park excess parking and they wouldn't want to modify that, at this point. Chief Hale said that while he wouldn't object to the suggestion as this area has a ditch that is sometimes an issue, he would agree with Board members that the area is currently used for excess parking for Dowdy Park and he would be hesitant to modify it at this time.

MOTION: Comr. Brinkley made a motion to adopt the ordinance amending the Traffic Control Map as presented – No Parking-Tow Away Zone on Bonnett Street adjacent to The French Door business and No Thru Trucks/Buses on Soundside Road – as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

Traffic Control Map – E-bikes on multi-use paths

Comr. Renée Cahoon expressed her concern about the electronic bikes (e-bikes) on the Town's multi-use paths, especially found to be a hazard on the Beach Road multi-use path. Police Chief Perry Hale stated that they are allowed on the path unless acting in a reckless manner. Comr. Renée Cahoon said she would prefer that these types of bikes not be allowed on the paths as they are sometimes out of control and a danger to others on the path. Chief Hale said that they deal with the issues involving the e-bikes when they arise. Board members spoke of differentiating between the path on the Beach Road and the path on US 158 where there are less people/bikes.

It was Board consensus that staff prepare an item for discussion for the August 2nd Board meeting pertaining to e-bikes on the multi-use paths on US 158 and on the Beach Road to include the specific concerns of each.

Consideration of disaster debris removal agreement renewal

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

"Annually, the Town enters into pre-positioned agreements for Disaster Debris Removal Services in addition to Debris Monitoring Services. A Request for Proposal was advertised last year with DRC Emergency Services being selected as the offeror providing the most advantageous to the Town, with price and other factors considered. This agreement was for an initial one-year term with the option to extend the agreement annually for up to a three-year period. Staff recommends extending this agreement for FY 23/24. A copy of the renewal agreement is attached hereto.

'An annual agreement recently expired with Tetra-Tech, the firm which the Town had an annual pre-positioned agreement for the provision of Disaster Debris Monitoring Services. This agreement recently expired facilitating a Request for Proposals for Debris Monitoring Services. Only a single proposal was received during the initial bid period resulting in a re-bid process. Proposals for this re-bid period are due on July 13, 2023. Staff will be bringing forward a recommendation to the Board at their August meeting.

'It should be noted additional outreach efforts have been conducted with other debris monitoring firms in an effort to create interest in this solicitation.

'Staff recommends renewal of the DRC Emergency Services agreement for FY 23/24. No changes in the terms of the agreement are proposed. If the Board of Commissioners is in agreement with the staff recommendation, a motion will be in order to authorize the Town Manager to execute the renewal agreement with DRC Emergency Services."

Board members expressed interest in having both debris removal and monitoring contracts effective closer to the start of hurricane season – June 1st. It was Board consensus that the bid advertising take place in the spring with the contracts to be effective July 1st.

MOTION: Comr. Brinkley made a motion to authorize the Town Manager to renew the agreement with DRC Emergency Services for FY 23/24 for debris removal services as presented. The motion was seconded by Comr. Sanders which passed unanimously.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Town Attorney Leidy – Additional Closed Session

Attorney Leidy requested a Closed Session for discussion of the 205 E Baltic Street litigation.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman - Public Services Facility update

Town Engineer David Ryan presented an update on the progress made on the construction of the new Public Services Facility to include updated diagrams and photos of the actual construction.

Mayor Cahoon confirmed with Engineer Ryan that the project is still on schedule.

Town Manager Garman - Community Survey update

Town Manager Garman summarized his agenda summary sheet which read in part as follows:

"Staff has been working with the Town's vendor, the National Research Center/Polco, to prepare a survey instrument to use as part of the upcoming community survey. A draft of the survey instrument is attached. This version incorporates staff comments as well as input from the Planning Board provided at its June 20th meeting.

'Staff requests Board review and direction on the questionnaire. Once the survey instrument is finalized, it is anticipated that the survey will be sent to a sample population of roughly 3,000 households, starting the week of July 24th. Prior to the distribution of the survey, a post card explaining the process will be mailed to these same households. The random sample will consider the geographic distribution of households as well as residency status. It is anticipated that six weeks will be provided to allow for responses. After the survey is mailed out, the town/vendor will make available an online version of the survey which may be completed by town households who were not part of the original sample. Staff is also working on a town newsletter which will go out in early July that will include an article on the community survey.

'We will also create a web page we can reference on the survey explaining the process and providing background materials which will help individuals prepare their responses."

Manager Garman said he would like to present survey results in the fall to be used in a strategic plan exercise.

It was Board consensus that the Community Survey project, as described by staff, continue to move forward.

Town Manager Garman - Cell Towers update

Dep Town Manager Amy Miller summarized her memo which read in part as follows:

“Staff is proposing to revise the process for vendors to request placing cellular infrastructure and related equipment on towers owned by the town. Currently vendors provide a structural analysis provided by a firm that they hire. Staff is recommending that requests for equipment be reviewed by Tower Engineering Professionals (TEP-Raleigh) to perform a Structural Analysis, a Mounting Analysis, and a Post Construction Inspection. This will consolidate all reviews and provide the town with an owner’s representative to assist with consideration of these requests.

‘In addition to our smart meter (AMI) antennas, we have received one request from Verizon to upgrade their equipment at the monopole and three requests total from Verizon, AT&T, and T-Mobile to upgrade/add equipment on the south Nags Head Tower.

‘We would require any cell carrier inquiries to send their request/ construction drawings to TEP for a Structural and Mounting Analysis and if allowed on the tank, a Post Construction Inspection. The cell carriers would deal directly with TEP and pay the entire cost of their services. We would get copies of the results and TEP’s recommendations. This would be required ahead of being granted a building permit. After the work is completed, TEP would do a Post Construction Inspection to ensure the carrier installed in accordance with the construction drawings.

‘As a starting point, TEP is performing a tank mapping and structural and mounting analysis on each water tower and the monopole at Town Hall. This will let us know what we have now as far as the condition of the structures on the tank and the existing loading.

‘The only contractual obligation this would create would be for our own equipment analysis. In order for TEP to move forward with the mapping, structural and mounting analysis, the Town has exempted itself from a qualifications-based selection of the procurement of engineering services under \$50,000 (NC “Mini-Brooks”).

‘Definitions

‘Mapping – TEP has a crew visit the site to gather all of the structure and loading information. This is compiled into a PDF deliverable.

‘Structural Analysis – TEP uses information gathered in the mapping to analyze the tank for the existing loading and the proposed loading that you specify.

‘Mounting Analysis – TEP uses the information gathered in the mapping to analyze the mount for the existing loading and the proposed loading that is specified.

‘Post-Construction Inspection – TEP confirms that the equipment was installed in alignment with construction drawings.

‘FY 2022/2023 Cell Tower Revenue

Location	Carrier	Revenue
Monopole	AT&T	\$40,389
south Nags Head	AT&T	\$38,609
Monopole	Verizon	\$56,894

Monopole	T-Mobile	\$31,907
----------	----------	----------

Current Requests

Location	Carrier	Purpose
south Nags Head	AT&T	Upgrade
south Nags Head	Verizon	Add
Monopole	Verizon	Upgrade
south Nags Head	T-Mobile	Add
south Nags Head	Town of Nags Head	Smart Meter (AMI) antenna
Monopole	Town of Nags Head	Smart Meter (AMI) antenna
Eighth Street	Town of Nags Head	Smart Meter (AMI) antenna"

Dep Manager/Finance Officer Miller proposed that moving forward these requests be sent to Tower Engineering Professionals (TEP-Raleigh) for their consolidation and coordination.

It was Board consensus to concur with Dep Manager/Finance Officer Miller's proposal.

Town Manager Garman - Discussion of joint Board of Commissioners/Planning Board Workshop

Town Manager Garman explained that the Planning Board would like direct feedback from the Board before they move forward with multi-family discussion items – and other topics of mutual interest. A workshop is being suggested to take place after the regular August 2nd Board of Commissioners meeting.

Comr. Brinkley noted that he will be out of Town for the Board's August 2nd meeting.

It was Board consensus to proceed with a Board of Commissioners/Planning Board Workshop to take place after the August 2nd regular Board meeting.

BOARD OF COMMISSIONERS AGENDA

Mayor Pro Tem Siers – Thanked Staff

Mayor Pro Tem Siers thanked staff for all the work done in preparation of the successful July 4th fireworks event yesterday.

Comr. Renée Cahoon – Requested staff to contact tour bus companies

Comr. Renée Cahoon asked staff to contact Dare County tour bus companies that may use the Soundside Road access to Jockey's Ridge State Park. The list obtained from the Outer Banks Visitors Bureau would be useful in determining where some of the bus traffic comes from.

Comr. Brinkley – Thanked Staff

Comr. Brinkley thanked staff for all the work done in preparation of last night’s successful fireworks display.

Comr. Sanders – Thanked Staff

Comr. Sanders thanked staff for last night’s fireworks display and also thanked them for all the work done on the Town’s Skateboard Park.

CLOSED SESSIONS

MOTION: Comr. Brinkley made a motion to enter Closed Session to confer with the Town Attorney re: attorney/client privilege and to preserve that privilege to include the Cherry, Inc. litigation and the 205 Baltic St litigation pursuant to GS 143-318.11(a)(3). The motion was seconded by Comr. Sanders which passed unanimously. The time was 10:25 a.m.

OPEN SESSION

The Board re-entered Open Session at 10:45 a.m. Attorney Leidy reported that during Closed Session the Board did discuss attorney/client privilege items and some action was taken but there was nothing to report at this time.

ADJOURNMENT

MOTION: Comr. Brinkley made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 10:46 a.m.

Carolyn F. Morris, Town Clerk

Date Approved: August 2, 2023

Mayor: _____
Benjamin Cahoon