

A. March 2019 Agenda - Revised

Documents:

[MARCH 2019 AGENDA_REVISIED.PDF](#)

B. Planning Board Packet

Documents:

[MARCH 2019 PB AGENDA PACKET.PDF](#)



AGENDA
Town of Nags Head Planning Board
Nags Head Municipal Complex – POLICE TRAINING ROOM
Tuesday, March 19th, 2019; 9:00 a.m.

A. Call To Order

B. Approval of Agenda

C. Public Comment/Audience Response

D. Approval of Minutes – February 19, 2019

E. Planning Board Training Workshop (Town Attorney)

F. Action Items – No Action Items.

G. Report on Board of Commissioners Actions from March 6, 2019

1. Scheduled the Public Hearing for consideration of Town Code revisions pertaining to the regulation of short-term rentals within the Town via a registration process for the April 3, 2019 regularly scheduled meeting.
2. Update Planning Board on recent discussions by the FOCUS Nags Head Technical Committee and the Board of Commissioners pertaining to Accessory Dwelling Units (ADU's).

H. Town Updates- as requested

1. Update on Hazard Mitigation Plan Update.
2. Other Updates as requested.

I. Discussion Items

1. Discussion and presentation of site plan review process based on the FOCUS Nags Head Draft Unified Development Ordinance.
2. Continued discussion of the short term rental registration process.

J. Planning Board Members' Agenda

K. Planning Board Chairman's Agenda

L. Adjournment



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**Town of Nags Head
Planning Board
February 19, 2019**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, February 19, 2019 in the Board Room at the Nags Head Municipal Complex.

Chair Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Kristi Wright, Mark Ballog, Mike Reilly, Meade Gwinn, Megan Lambert, David Elder

Members Absent

None

Others Present

Andy Garman, Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

Mr. Garman requested that the agenda be revised to have the Discussion Item first as Planner Holly White has another meeting to attend. The Board consented, and Meade Gwinn moved that it be approved as revised. Kristi Wright seconded the motion and it passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

There being no changes, David Elder moved that the minutes from the January meeting be approved as presented. Kristi Wright seconded the motion and it passed by unanimous vote.

Discussion Items

Discussion of draft Unified Development Ordinance (UDO) and comments.

Principal Planner Holly White discussed the FOCUS Nags Head Draft UDO.

A draft of the UDO was made available to the Technical Committee, Planning Board, and Board of Commissioners on December 18, 2018. The Technical Committee met on Monday, January 14th to discuss comments associated with the review of the draft UDO. On Tuesday, January 15th, a detailed presentation was made to the Planning Board. Additionally, the UDO was discussed at the board retreat in late January.

Ms. White stated that a revised schedule along with a detailed list of comments along with staff responses were shared with the Planning Board as part of their agenda packet. The list represents comments made by the Technical Committee, Planning Board, and Board of Commissioners.

The Technical Committee will meet again on Thursday, January 21st to discuss final suggested changes needed to draft UDO.

Ms. White noted that initially, a Joint Workshop between the Planning Board and Board of Commissioners was suggested to review the document. Staff feels that based on the feedback received at the retreat, staff has the necessary feedback from the Board of Commissioners to move forward in creation of a final draft without the Joint Meeting. Staff can address most concerns and will consult with the Technical Committee to provide recommendations on alternatives for issues needing additional discussion for board consideration. The Planning Board and Board of Commissioners will continue to be updated throughout the process and will have the opportunity for input and further suggestions as revisions are made. By moving forward in this way, the UDO can be considered for adoption in May - a month earlier than anticipated if a joint workshop was needed. Staff presented this recommended schedule to the Board at its February meeting and the Board concurred with this approach.

While the draft UDO has been distributed for an initial review, there is still work to be completed in order to develop a final version of the draft. Staff will continue to revise the document and/or respond to comments as feedback is received from the Technical Committee, Planning Board, and Board of Commissioners.

Items that will be ongoing include:

- Diagrams/graphics/flow charts- additional diagrams, graphics, and flow charts are still needed in order to help visually explain the regulations.
- A complete editorial review process will need to be completed for cross referencing, grammar, and punctuation prior to the final draft.
- Development of the Town's Reference Manual for Development Permit Applications. This document is envisioned as a "How to Guide" for all types of permitting for applicants. Utilizing this type of reference document will centralize the process and submittal requirements for applicants and make it easier for staff to update and maintain these requirements.

Staff would encourage the Planning Board to continue to review the draft document and provide any suggestions in writing to staff. Ms. White stated that she would be happy to meet individually with members of the Planning Board to review any concerns or comments.

Mr. Garman stated that the March meeting will include a mock application which will allow the Planning Board and staff to review it against the UDO. This way Staff can walk the Planning Board through the application, referencing different sections of the UDO as it applies to the application in terms of height, setbacks, lot coverage, use and the design standards as they apply to that use.

Mr. Garman confirmed for Mr. Reilly that from a residential project review standpoint, contractors should not see a cost change, one way or the other with the UDO in comparison to what is being required now since the majority of the residential standards will not change. For commercial projects, the sketch plan review will add time to the process but should improve the process for staff and the applicant as it is designed to reduce delays associated with having to change plans for which significant time and investment have been made.

Prior to moving on to the next item, Mr. Garman took the opportunity to introduce new Planning Director, Michael Zehner to the Board.

Action Items

Discussion/recommendation of short-term rental registration ordinance and associated zoning amendments.

Deputy Town Manager Andy Garman explained that the Planning Board has been working with Planning Staff for several months to develop a recommendation to manage short-term rentals. As part of this process, a community engagement survey was completed.

Based upon the input received, at their December 18, 2018 meeting, it was the consensus of the Planning Board to move forward with the following recommendations: 1) allow short-term rentals town-wide via a registration process, 2) consider some type of mechanism to seek Homeowner Association approval of the rental, 3) require proof of insurance, and 4) require a local host operator to be registered with the Town that can be readily accessible to address any concerns.

Staff drafted an ordinance based on the recommendations made by the Planning Board and this draft ordinance was shared with the Planning Board at their January meeting and with the Board of Commissioners at their January retreat. Staff made some changes to the proposed ordinance based on the input that was received.

Mr. Garman stated that Staff also consulted with the Town Attorney on whether they have the authority to require HOA approval or proof of insurance as part of the registration requirement. It was the attorney's opinion that the Town does not have the regulatory authority to enforce private covenants or condition approval based upon review by an HOA.

Mr. Garman confirmed for Mr. Gwinn that the Town does not distinguish between HOAs (Home Owners Associations) and POAs (Property Owner Associations).

Mr. Garman confirmed for Chair Vaughan that the registration information would be public record so an HOA could request to see which properties have registered as short-term rentals.

Mr. Garman noted that staff discussed with the attorney the fact that property owners could use the registration as a marketing tool by advertising that they are officially registered with the Town.

Mr. Garman noted that while the Commissioners were in general agreement on the approach and ordinance as drafted, concerns were expressed regarding how the registration process would be administered, including the specific questions that would be asked on the form and whether the process could be handled electronically. Staff will be working out the logistics of the registration process prior to review of the ordinance by the Board of Commissioners. Staff will be reviewing options to initiate the registration program which could include hiring a vendor to provide information to staff or manage the process.

Mr. Garman noted that Staff found companies that can assist with this process and confirmed for Mr. Elder that the cost can vary from \$15,000 to \$50,000.

As a reminder, the proposed ordinance includes the following provisions:

- As part of the registration, the property owner will be requested to verify that a host operator is located within a 20-mile radius of the property. If a host operator is not located within this area, the property will be asked to provide a contact person within this area that could respond to complaints if necessary.
- Whole house rentals will not be required to provide any additional parking beyond what is required for single-family dwellings.
- Partial house rentals will be required to have one (1) additional parking space beyond what is required for single-family dwellings.
- Whole house short-term rentals managed by a real estate broker will not be required to register.
- The definition of bed and breakfast will now only apply to single-family dwellings where more than two rooms are being rented on a daily or weekly basis.
- The registration process will provide an opportunity to educate hosts on state and local requirements.

Mr. Garman confirmed for Mr. Gwinn that on-street parking would typically not be approved as part of a private property's parking requirements. A registrant would have to show via a site plan for example that they have the necessary parking spaces.

Mr. Garman confirmed for Chair Vaughan that the way the Ordinance is written registration would be mandatory.

Chair Vaughan noted that if it is mandatory then enforcement comes into play and they need to begin thinking about how that is going to be handled.

Mr. Garman also discussed the idea of providing proof of insurance. The Town Attorney was tentative about requiring the applicant to provide actual insurance documentation along with the registration form. It was suggested that the registrant be given information as to what type of insurance is necessary but not make it a requirement of the registration process.

Mr. Garman confirmed for Ms. Lambert that checking "No" to that question would not prevent someone from registering but it would become part of the public record.

Mr. Garman will bring the forms for review at the March Planning Board meeting.

Mr. Elder and Mr. Gwinn both noted that they were in agreement with the proposed ordinance.

David Elder moved to recommend approval of the proposed ordinance as written. Kristi Wright seconded the motion. The motion carried by unanimous vote.

Report of Board of Commissioners Actions

Chair Vaughan reviewed recent Board Actions:

Public Hearing to consider a zoning ordinance text amendment submitted by Brian Rubino of Quible and Associates, P.C. on behalf of Miller's Waterfront Restaurant and Tale of the Whale Restaurant to allow a new use, docking facilities with transient boats slips, in the C-2, General Commercial Zoning District and in the Commercial-Outdoor Recreational Uses Overlay Zoning District. The Board of

Commissioners approved the request with a limitation of four slips per facility and including additional condition to address public safety, land use compatibility, and environmental quality.

Mr. Garman discussed the possibility of setting a No-Wake Zone for that area.

Town Updates

None

Planning Board Members' Agenda

Mr. Elder requested an update on the Dowdy Park project. Mr. Garman stated that they are looking at an April completion date, with landscaping to be done in May. Mr. Garman confirmed that the building that is being constructed near the bypass will be public restrooms and there will also be a small storage shed.

Planning Board Chair's Agenda

Chair Vaughan discussed having a Board Workshop in March which will be led by the Town Attorney to provide Planning Board training to members. Mr. Garman confirmed that this has been added to the March agenda.

Adjournment

There being no further business to discuss, a motion to adjourn was made by David Elder. The time was 9:43 AM.

Respectfully submitted,

Lily Campos Nieberding



MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board
From: Michael Zehner, Director of Planning & Development
Date: March 13, 2019
Subject: Report on Board of Commissioners Actions from March 6, 2019

The following is a brief overview of actions pertaining to the Planning Board that were taken by the Board of Commissioners at their meeting on March 6, 2019:

- **Scheduled the Public Hearing for consideration of Town Code revisions pertaining to the regulation of short-term rentals within the Town via a registration process for the April 3, 2019 regularly scheduled meeting**

As previously considered and favorably recommended by the Planning Board, the Board of Commissioners scheduled a public hearing on proposed amendments to the Town Code to address short-term rentals. The proposed registration process would only apply to those rentals not managed by a real estate broker.

- **Update Planning Board on recent discussions by the FOCUS Nags Head Technical Committee and the Board of Commissioners pertaining to Accessory Dwelling Units (ADU's)**

Referencing discussion that took place at the Board of Commissioner's Retreat in January, it was suggested that the Commissioners have the opportunity to provide Planning Staff with guidance related to how ADUs were to be addressed in the pending Unified Development Ordinance ("UDO"). For the April 3 meeting, Staff will provide the Commissioners with a copy of the applicable section of the draft Unified Development Ordinance and a memo offering Staff and Technical Committee insight on the allowance and regulation of ADU's with respect to the size of units, the location of units on lots, minimum required lot size, septic capacity, adequacy of parking, limits on length of stay, and other matters; information provided will also address the appropriateness of ADUs within the Town's various zoning districts.



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board
From: Holly B. White, Principal Planner
Michael Zehner, Director of Planning & Development
Date: March 14, 2019
Subject: Hazard Mitigation Plan Update

Dare County and Currituck County have joined efforts on updating the Hazard Mitigation Plan. The Towns of Manteo, Nags Head, Kitty Hawk, Kill Devil Hills, Southern Shores and Duck will also be part of the 2020 Hazard Mitigation Plan Update. The Town's current Hazard Mitigation Plan is part of the Albemarle Regional Hazard Mitigation Plan ("Albemarle RHMP") that expires in June 2020 and can be viewed at www.nagsheadnc.gov/DocumentCenter/View/2097/Albemarle-Regional-Hazard-Mitigation-Plan. Local governments are required to prepare and update hazard mitigation plans in order to be eligible for FEMA disaster relief assistance and mitigation grants.

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

While Dare County will act as the lead on this Hazard Mitigation Plan Update process, Planning Staff will be responsible for reviewing and providing feedback on the draft Plan, as well as vetting any information that is needed specifically for the Town. Public Involvement is an important part of this planning process. A planning team has been developed to assist in gaining community feedback and participation as well as meet the criteria of the CRS program for Hazard Mitigation Plans. The Dare County Team includes representatives from the County, each of the towns, and representatives of the public from each community. Nags Head's team members include staff members Shane Hite, Interim Fire Chief; Michael Zehner, Director of Planning & Development, and Holly White, Principal Planner, as well as two citizen representatives, Meade Gwinn and Megan Lambert. In addition to the planning team, Nags Head has offered the Board Meeting Room as a location for a community meeting. As the planning team makes progress, updates will be provided to the Planning Board.

On March 5th the Dare County planning team met to review the planning process, discuss specific hazard vulnerabilities for Dare County, and next steps. Staff will be meeting with our citizen representatives next week to discuss and complete the Capability Assessment. In addition, staff will be reviewing our current actions contained in the

Albemarle RHMP in preparation for the next Dare County planning team meeting sometime in late April.

A citizen survey is now available on hazard risk and mitigation options that will assist in forming action steps for the plan. Citizen input is a critical part of the plan update process. Staff encourages everyone to visit the website to complete the Public Survey at www.obx-hmp.com/Survey and share this with others.

The Town has placed information about the plan and process, both the larger plan and Nags Head specific information, on the website at <http://www.nagsheadnc.gov/986/Hazard-Mitigation-Plan-Update>. In addition, a project specific website has been set up for the joint Dare-Currituck County Project at www.obx-hmp.com that will provide in-depth details on the plan process. Any upcoming and past Hazard Mitigation Planning Committee meetings and public meetings, draft documents, and summaries of the hazards that affect the Outer Banks will be available.



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board
From: Holly White, Principal Planner
Kelly Wyatt, Deputy Planning Director
Date: March 19, 2019
Subject: Presentation of Site Plan Review Process

While in many respects the Unified Development Ordinance focuses on pulling land use codes together in a comprehensive and intuitive format, there are a handful of departures from our current processes, one of which involves the Site Plan Review process. At the Planning Board's February 2019 meeting, Staff was requested to provide a presentation at the April meeting of the current site plan review process compared to the proposed process, with an emphasis on the role that the Planning Board would now play, specifically during the pre-application and sketch plan phase.

Proposed Section 4.3, *Pre-Application Meeting and Sketch Plan*, provides that a mandatory pre-application meeting and sketch plan review with the Planning Board is required in accordance with Section 10.84.1, *Sketch Plan Review*, prior to the submission of a formal site plan. Section 4.3 and 10.84.1 indicate that a sketch plan is mandatory for all new development, other than one and two-family dwellings, in cases where new construction and/or additions have a total habitable building area that is five thousand (5,000) square feet or greater.

Staff will make a PowerPoint presentation during the meeting outlining the process and role of the Planning Board during the sketch plan phase. Staff will be available for any questions or comments.



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board
From: Michael Zehner, Director of Planning & Development
Date: March 15, 2019
Subject: Short Term Rental Registration Process

As previously relayed to the Board, Staff has been considering how the registration process for Short Term Rentals (“STRs”) would be administered. While Staff does not anticipate that the annual registration process and information required¹ of an owner will be complex, Staff does anticipate that the identification and inventorying of STRs will be time-consuming without the use of outside resources. Additionally, once existing STRs are identified, owners will need to be contacted and provided direction on the registration process; while resources exist in the Town to process registrations of this type, outside vendors do provide online registration solutions that may be more efficient for owners and Town Staff.

Initially, two potential vendors were identified by Planning Staff, Host Compliance (<https://hostcompliance.com>) and STRHelper (<https://strhelper.com>); however, Staff recently contacted STRHelper and learned that they have now merged with Host Compliance. A third vendor, Accela (<https://www.accela.com/solutions/short-term-rental/>), was recently identified; however, in speaking with their representatives it has been determined that their initial set up costs are likely prohibitive.

Staff received a presentation from Host Compliance in 2018 and is actively communicating with their representatives regarding possible options for the Town. Host Compliance offers the following services, which can be contracted *a la carte*:

- *Mobile Enabled Permitting and Registration*: Mobile/web forms and back-end systems for streamlining permitting and registration processes and capturing payments, signatures and required documents;
- *Address Identification*: Online dashboard with complete address information and screenshots of all identifiable STRs in the jurisdiction;
- *Compliance Monitoring*: Ongoing monitoring of STRs for zoning and permit compliance coupled with systematic outreach to illegal short-term rental operators;

¹ Information required includes the complete name and address of the operator and local contact if the operator does not live within 20 miles of the rental, address of each short-term residential rental property owned by the operator, proof of sufficient insurance, and signed acknowledgement that the owner is aware of all local and state laws pertaining to the operation of a short-term rental, including the North Carolina Vacation Rental Act, and the requirement to pay all sales and occupancy taxes.

- *Rental Activity Monitoring and Tax Collection Support:* Ongoing monitoring of STR listings for signs of rental activity. Enables data-informed tax compliance monitoring and other enforcement practices that require knowledge of STR activity level; and
- *Dedicated Hotline:* 24/7 staffed telephone hotline for neighbors to report non-emergency STR problems.

Host Compliance offers each of these services based on a price per number of STR listings within the Town. One complication is that rental units managed by real estate brokers, which would not require registration but may otherwise be listed on STR websites, would factor into the cost of services. While discussions are ongoing, the annual cost for a full suite of services could be as much as \$65,000 annually; however, Staff is evaluating whether some services are more essential than others, potentially resulting in a reduction of costs to the Town.

Perhaps an additional and final consideration is whether any fees should be established for the registration process, thereby reducing the financial impact to the Town. For consideration, a fee of \$25 to \$50 is estimated to result in revenue of \$7,500 to \$15,000 annually (based on an assumption of 300 STRs requiring registration), which would offset the cost of any registration program. While the renting of STR units does result in sales and occupancy taxes, it is likely that at least some of these are currently submitted; therefore, any potential increase in tax revenue that could result from the registration program is unknown.