

**Town of Nags Head
Planning Board
March 15, 2022
-DRAFT-**

The Planning Board of the Town of Nags Head met on Tuesday, March 15, 2022, in the Board Room at the Nags Head Municipal Complex.

Planning Chair Megan Vaughan called the meeting to order at 9:10 a.m. as a quorum was present.

Members Present

Megan Vaughan, Kristi Wright, Molly Harrison, Meade Gwinn, David Elder, Gary Ferguson, Megan Lambert

Members Absent

None

Others Present

Kelly Wyatt, Holly White, Lily Nieberding, Andy Garman, Kylie Shephard

Approval of Agenda

David Elder moved to approve the agenda. Meade Gwinn seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the February 15, 2021, meeting. David Elder moved to approve the minutes as presented; Kristi Wright seconded, and the motion passed unanimously.

Action Items

None

Report on Board of Commissioners Actions – March 2, 2022

Planning Director Kelly Wyatt gave an update on the Board of Commissioner Actions, of note: Events Coordinator Paige Griffin gave an update from the Arts & Culture Committee and summarized the past year's success with the Dowdy Park Farmers Markets. Ms. Wyatt noted that they had recently opened the application process for the Market and had already received 170 applications. Ms. Wyatt confirmed that the Arts & Culture Committee are looking into developing a Sponsorship Program for upcoming events. On the Consent Agenda was the Request for Public Hearing to consider rezoning the property located at 2110 S Pond Avenue (Nags Head Water Plant) from SED-80, Special

Environmental District, to C-3, Commercial Services in advance of the design process for the Public Services Master Plan. A Public Hearing was held to consider a text amendment to the Flood Damage Prevention Ordinance to address an inconsistency in the application of the Regulatory Flood Protection Elevation (RFPE) based upon a property's location east or west of NC 12 in the vicinity south of the Nags Head Village Beach Club where NC 12 shifts westward - the Board passed a motion to adopt the text amendment and the consistency statement as presented. Ms. Wyatt presented an update of the Planning and Development Department activities for the past month – Ms. Wyatt noted that Dominion Power installed different types of Amber LED lights at several Public Beach Accesses for the Town to choose from. The locations of these turtle sensitive lights are to be broadcast so that citizens can view the installed lighting and pick their favorite fixture. The Board passed a motion to approve the Epstein Street Public Access Bath House site plan as presented. The Board received a Presentation of the Decentralized Wastewater Management Plan; they will have the month of March to review and make comments. Finally, Kate Jones led a discussion of a possible expansion of the Vegetative Sprigging Grant Program to address wind-blown sand - Board members spoke in favor of the program; they would like to see sand fencing and bales of hay incorporated as well.

Town Updates

None

Discussion Items

Presentation of Whalebone Park Conceptual Designs

Senior Environmental Planner Kate Jones presented. Staff has been working on Whalebone Park redevelopment plans for the purposes of submitting a grant application to the North Carolina Parks and Recreation Trust Fund (PARTF) for funding; that deadline is May 2nd. Ms. Jones included a timeline in her staff memorandum.

At the February 2022 Board of Commissioners meeting, Town planning staff presented an interactive session giving board members the opportunity to discuss and evaluate various park elements that could be incorporated into conceptual renovation plans for Whalebone Park.

On March 3rd, staff held a public meeting to engage members of the wider community about the renovation of Whalebone Park. Through an interactive session, members of the public voted on their preferred park elements.

Staff also put out an online survey for those unable to attend the public meeting in person. To date, there have been 41 responses; the survey is still active, and Ms. Jones encouraged the Planning Board members to participate.

Ms. Jones then reviewed the results of these sessions for the Board noting that the preferred park elements included spray play, shade, restroom facilities, and other elements that focus on younger children such as replacement of aging playground equipment with ADA accessible equipment, as possible.

Ms. Jones noted that there is a conceptual plan with a layout of what the park could look like and would like to receive feedback from the Planning Board on the park elements as well as the layout of these items in the conceptual park plan.

Ms. Jones noted that this project will be primarily grant funded, so they need to be strategic on what they do replace; the conceptual plan leaves certain elements in place.

Ms. Lambert suggested the idea of sponsorship for the playground equipment similar to the ability of purchasing fish plaques at Jennette's Pier.

Mr. Elder suggested adding some decorative pieces to go with the Whalebone theme to make the park more visually appealing.

Ms. Jones then gave a more in-depth overview of Spray and Play and the two types that exist: recirculation and pass-through.

Ms. Jones confirmed for Mr. Ferguson that both types would require Health Department approval not unlike a swimming pool.

Ms. Jones confirmed for Chair Vaughan that they will be requesting a PARTF grant as well as a grant from the Outer Banks Visitor's Bureau, so they are looking at a budget of \$400,000 to \$500,000.

The recirculation system is more environmentally friendly but also more expensive. However, Ms. Jones noted that if they were to install a pass-through system the Town could look into reusing the gray water in some way such as for drip irrigation.

Mr. Elder reminded the Board that the Pier is already doing something like that and suggested that Staff speak with the State.

Ms. Lambert encouraged Staff to ensure that whichever option the Town chooses that they are cognizant and pre-emptive to avoid any Stormwater issues.

Ms. Jones and the Board discussed maintenance of the two types and finding someone or training staff on the upkeep.

Ms. Lambert suggested reaching out to the water park to explore partnering opportunities as a way to off-set costs.

Mr. Ferguson discussed safety and accessibility of the site. Ms. Jones noted that Public Works Director Eric Claussen has been working on making that area safer and more accessible/visible.

Discussion of Current Unified Development Ordinance (UDO) regulations pertaining to tree removal and preservation

Planning Director Kelly Wyatt explained that members of the Planning Board had expressed an interest in both better understanding and perhaps considering Unified Development Ordinance (UDO) amendments to enhance the Town's current tree protection and preservation ordinances. As a first step to begin the discussion, staff felt it would be beneficial to provide an analysis of the existing tree removal, tree protection and tree preservation ordinances within the Town Code and the Unified Development Ordinance.

Ms. Wyatt noted that regulation related to trees are scattered all over the ordinance and proceeded to review for the Board the Town's current ordinances in place pertaining to trees:

Live Oak as the Town Tree - Town wide:

- Section 26-9 of the Town Code establishes the Live Oak as the "Official Town Tree". No live oak with a height of 3 feet or 1-inch in diameter measured ½ foot above grade shall be removed in ANY zoning district. Live oaks may only be removed within the footprint of the principal building, required accessways, parking areas, utility installation sites, active septic repair areas and accessory buildings. Pursuant to Section 1-6(b)(7) violations of this provision shall be a misdemeanor and punishable as provided by General Statute 14-4.

Special Zoning Districts:

- SED-80, Special Environmental District. Section 8.4.3.4, Special Development Standards, regulates the removal of any tree greater than 4-inches in caliper measured at one foot above the ground. The removal of any tree with caliper of 16-inches or greater is prohibited without special approval from the Board of Commissioners. Staff should be involved as early as possible in any tree removal within this district as it is the most sensitive, ecologically relevant area within the Town and tree removal is greatly restricted. For any tree removal within this district, staff will first need to determine how to regulate the removal based upon the location of the tree and the caliper of the tree.

- SPD-20, Special Planning Development District. Section 8.4.2.2, Site Design Standards, regulates the removal of any tree greater than 4-inches in caliper measured at one foot above the ground. Trees greater than 4-inches in caliper shall only be removed if within the proposed building footprint, including decks and a 10-foot perimeter around the principal building and its accessory buildings, within vehicular accessways, within the septic drain field, and in areas where land disturbing has created slopes in excess of 3:1 in an effort to minimize erosion. As in the SED-80 District, for any tree removal within this district, staff will first need to determine how to regulate the removal based upon the location of the tree and caliper of the tree.

Note that in both the SED-80, Special Environmental Zoning District and SPD-20, Special Planned Development District, the Planning Department may approve the removal of any tree which:

- o Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruptions of public service;
- o Poses a safety hazard to a building; or
- o Is diseased or weakened by age, so as to pose a safety hazard (Ms. Wyatt noted that Environmental Planner generally requests an arborist report).

- Section 4.9, Development Permitting Requirements, Purpose and Intent states that when developing one- and two- family dwellings removal of trees greater than 6-inches in caliper shall require a permit. Staff had previously identified this Section of the UDO as one that did need additional clarification. This regulation was originally developed in 2015 and was specific that no tree 6-inches in caliper or greater should be removed from a vacant lot without first acquiring site plan approval. This language was adopted as a means to address the clear cutting of lots that did not have yet have site plan approval. While that can be extrapolated from the existing language, staff does want to revise this language soon, to ensure there is no ambiguity with the original intent. The 2015 amendment is included in this report for informational purposes

Large Residential Dwellings, Open Space Preservation/Landscaping Requirements

- When a single- or two- family dwelling is constructed with a habitable area greater than 3,500 square feet certain criteria must be met in terms of minimum lot area, architectural design and open space preservation and landscaping requirements. In these instances, a homeowner must meet one of two criteria:

- o Preservation of a minimum of 10% of the lots total area with existing natural vegetation and/or dune elevations. These areas shall contain significant examples of native vegetation and be identified and maintained in accordance with the UDO.
- o Planting of a minimum of 15% of the lots total area. A minimum of 50% of the required landscaping must be locally adapted live evergreen tree species that are a minimum height of 3 feet and one inch in diameter measured at ½ foot above grade when planted. The remainder can be live forbs and shrubs.

These requirements may be altered due to unique or unusual physical conditions including a reduction of landscaping requirements for oceanfront properties and other lots containing significant dune features that will be preserved in equal proportion.

Commercial Design Standards, Site Design

Ms. Wyatt noted that there are several landscape buffering and vegetation preservation requirements associated with commercial development. These are primarily located within Section 10.93 of the UDO and include:

- o Parking Lot Buffers, a buffer strip of at least 10 feet in width shall be provided between the parking lot and the street right-of-way line.
- o Commercial Transitional Protective Yards when applicable, High Impact Uses.
- o Buildings adjacent to street frontage must have foundation landscaping.
- o Interior Parking Lot Landscaping
- o Vegetation Preservation/Planting Requirements

Violation of regulations contained within the Unified Development Ordinance (UDO)

Violations of the UDO shall subject the offender to a civil penalty upon the issuance of a citation for such violation. Civil penalties shall be no more than \$500.00 for each violation, and each day any single violation continues shall be a separate violation.

Additional Information

There are currently no limitations on tree removal on residentially developed lots outside the Special Zoning Districts (SED-80 and SPD-20). With incentives being given for the use of existing mature vegetation as well as newly planted vegetation for Stormwater management purposes, the Town needs to develop a mechanism to ensure these plantings are not being removed or altered.

Ms. Wyatt confirmed for Chair Vaughan that in the R2 Zoning District Pine trees are often removed without the Town's knowledge as no permit is required however some landscapers do reach out to Staff before beginning work.

Ms. Wyatt noted that Staff does intend to create educational materials in the coming months to inform citizens of the Town's values regarding tree protection and preservation, existing regulations, and the role that the town would hope all residents and visitors would take when it comes to vegetation preservation.

Mr. Elder noted that people need to be educated on proper maintenance and pruning techniques to prevent damaging trees. Education should also be on the Town's reasons for protecting trees, how fines are assessed and also how fines may be used – replanting of trees.

Mr. Gwinn emphasized education especially of out-of-town property owners and possibly offering some type of incentive program.

Ms. Wright suggested focusing the educational efforts on the tree removal companies.

Mr. Ferguson discussed subdivision provisions such as buffering requirements.

Chair Vaughan and the Board discussed raising awareness in a way that doesn't seem like the Town is imposing more rules and regulations; as well as ways to get young people involved.

Ms. Wyatt noted there are opportunities to clarify and enhance the existing language; Ms. Wyatt will revisit Subdivision requirements; she will also look at the possibility of creating an appendix that brings everything together in a more central location to make them more accessible.

Update on Resilient Coastal Communities Program

Candice Andre, Senior Project Manager with VHB, gave an update on the RCCP project via a Zoom presentation. Ms. Andre's presentation centered around the Vision & Goals of the project, introduction to the Interactive Map and discussion on Community Engagement as well as next steps.

- 1) Vision & Goals includes the development of a Resilient Strategy Vision and Goals which were well received by the Planning Board.
- 2) Demonstration of the Interactive Map – includes Critical Assets and Natural Infrastructure as well as Hazards – Mr. Ferguson noted that it was important to include the Public Beach in the list of Critical Assets. The Board was very supportive of this feature and discussed how it could be adapted for other uses such as searching Short-term rental registrations and active building permits. Ms. Andre noted that it will always be the same link, but the map itself will be constantly evolving. Senior Planner Holly White will be emailing the link to the Board.
- 3) Community Engagement includes virtual review by the community of the interactive map as well as a brief survey advertised through the Town's website and social media sites.

February 24th, 2022, Director's Report

Ms. Wyatt briefly discussed her Director's Report to the Board.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

Chair Vaughan let the Board know that she will not be here for the April meeting; Molly Harrison and Kristi Wright will be out as well.

Chair Vaughan also stated that she would really like for Staff and the Town to revisit Accessory Dwelling units, noting that she was not in favor of increasing density.

Mr. Ferguson questioned the difference between allowing duplexes but not two structures in one lot when it's really the same density.

The Board agreed that the long-term housing problem has gotten worse; and questioned if there is a way to ensure that they don't turn into short-term rentals, maybe through deed restrictions?

Adjournment

A motion to adjourn was made by David Elder. The time was 11:13 AM.

Respectfully submitted,
Lily Campos Nieberding

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