



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, MARCH 1, 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, March 1, 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; Kate Jones; David Ryan; Perry Hale; Nancy Carawan; Randy Wells; Shane Hite; Karen Snyder; Roberta Thuman; Vince Hopson; Paige Griffin; Rick Arthur; Barbara Arthur; Steve Smiley; Clara Smiley; Charles Kalan; Susan Kalan; Chess Harris; Karen Harris; Basil Belsches; Thomas DiLaura; Sharon DiLaura; Randy Royal; Susan White; Patricia Pavlak; Jeff Pavlak; Sam Walker; Bob Edwards; Vanessa Foreman; Scott Shields; Melissa Shields; Will Shields; Brendan McConnell; Deb McConnell; Janet Cambria; Rocco Cambria; Brenda Mottley; Albert Mottley; Shelly Blackstone; Carolyn Brooker; Ellen Heatwole; Beaman Hines; Elliot Katherman; David Bragg; Courtney Gallop; Cindy Brightbill; Bobby Harrell; Mike Mishou; Linda Madison; Eddie Goodrich; Frank Campanale; Donna Creef; James Jackson; John Harris; Sandra Allen; 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. Mayor Cahoon thanked everyone in attendance for taking the time attend today's meeting.

ADOPTION OF AGENDA

MOTION: Mayor Pro Tem Siers made a motion to adopt the March 1st agenda with the addition of a Closed Session re: the possible acquisition of real property. The motion was seconded by Comr. Brinkley which passed unanimously.

RECOGNITION

TEN YEARS – Town Manager Andy Garman introduced Town Engineer David Ryan who was congratulated by the Board for ten years of service.

FIFTEEN YEARS – Police Chief Perry Hale introduced Police Sergeant Vince Hopson who was congratulated by the Board for 15 years of service.

PRESENTATION – Arts & Culture Committee

Events Coordinator Paige Griffin presented a summary of the past year events in the Town which was well received by the Board; Board members spoke in favor of the Farmers Markets. The report from the Arts & Culture Committee read in part as follows:

“Planning Staff and members of the Nags Head Committee for Arts and Culture will be providing a brief presentation to the Board of Commissioners at their March 1, 2023, meeting. The intent of the presentation is to highlight efforts by the Committee during the 2022/2023 Season, and to provide information on what the Committee would like to achieve during the upcoming 2023/2024 Season.

2022 Season

The 2022 Farmers Market season was another successful one. With the summer market application process going entirely virtual through online submissions, we were able to track and manage the number of applications received. Anticipating keeping the online application open for seven days, we had to close it after only three when approximately 130 applications were received. In an effort to keep parking manageable and concerns and conflicts to a minimum, it was determined that the Committee for Arts and Culture would only select 60 vendors for participation in the 2022 Summer Market. Of those approximately 60 vendors, 27 of those were given preference because they specialized in consumables (fresh fruit, vegetables, cheeses, baked goods, fermented foods, sauces, etc.). Of those 27 producers/consumables, three (3) of them were new to the market including Gutsy Grains, Donna’s Delights, and Charis Coffee Shop.

‘While many of our vendors were local it is important to note that many came from as far as Currituck, Swan Quarter, Columbia, Hertford, Edenton, and Elizabeth City. Their participation in the market is vital to its success and we feel fortunate to have them there.

‘In addition to the vendors, there were several community partners present at each of the markets, including Endless Possibilities, NEST, Beach Food Pantry, CSI, SPCA, Outer Banks Hospital and the Saving Lives Taskforce.

‘The market’s visitation peaked in the month of July with upwards of 600 visitors, however all of the markets were very well attended this year, averaging approximately 550 visitors at each market. As always, the Town’s Event Coordinator, Paige Griffin made notable efforts to interact and connect with as many visitors as possible. She noted that in addition to locals and day trippers from Elizabeth City, Sunbury, Edenton, Hertford, and Virginia, many of the out of state visitors were from Delaware, Pennsylvania, New York, New Jersey, Michigan, Indiana, Tennessee, and Florida.

‘While Covid-19 restrictions have eased over time, staff continued to put the safety of our vendors and visitors first by putting up hand-washing stations and providing hand sanitizer for the safety and convenience of those in attendance.

‘The 2022 Summer Concert Series was also very successful with 8 bands performing.

‘We held four (4) Holiday Markets this season. Three of these markets were held on Saturday mornings and one was held on a Thursday evening. These markets had approximately 75 vendors participating with visitation of over 350 people per market. The number of vendors participating increased from the previous season. Due to the dates and times of the Holiday Markets, we did not encounter parking conflicts with Nags Head Elementary School so we made an effort to accommodate applicants who were unable to participate in the summer markets. Of the 75 vendors participating in the Holiday Markets, 26 of those offered

consumables and we had several new vendors in attendance, including Zebi Candles, Too Jam Good, Beans and Beats, Abbi's Teas & Things and Modern Coastal Cookery. As in previous years, the Town received many compliments from both visitors, locals, and vendors on the festive atmosphere, holiday music, and holiday lights.

'This season, three family friendly movies were shown at Dowdy Park, the Croods, Raya and the Last Dragon, and the Book of Life. We were able to provide free popcorn for everyone in attendance.

'We held the 2nd Annual Tree Lighting Ceremony on Saturday, November 26th. This event was very successful, with many return visitors from the previous year. We were also very fortunate again this year to have Santa Claus fit us into his schedule and visit with each of the children in attendance. The Fire Department was integral in making sure he arrived safe and sound. Enough cannot be said about the town departmental collaboration to make this event both safe and successful. The Public Works Department decorating the park in Christmas lights thoughtfully and beautifully, prepping areas to host a fire pit, the Fire Department taking great care of Santa, seeing to it that the fire pits were lit, maintained, and extinguished safely, and Planning Department staff serving hot chocolate, hot apple cider and cookies to keep everyone warm throughout the evening. This is an event that we would love to continue and expand upon if possible.

'We were fortunate to hold a new event this season. On December 20th we held the first Flashlight Candy Cane Hunt at Dowdy Park. Event Coordinator Paige Griffin and volunteers from the Committee for Arts and Culture gathered at Dowdy Park earlier that day and "hid" upwards of 350 candy canes in and around the east side of the park. Not knowing what to expect from this first-time event, it was wonderful to see how many families turned out to participate and we were able to receive feedback on opportunities for improvement in the coming years. Advertisement was kept to a minimum for the 2022 Markets, Tree Lighting and Candy Cane Hunt with the use of Facebook and Instagram only. Social media response continues to be positive and encouraging.

'2023 Season

The Committee for Arts and Culture has already been discussing the upcoming 2023 Dowdy Park Farmers Market Season. With the last day of school at Nags Head Elementary School being on June 9th and beginning on August 29th, the committee would like to hold the market each Thursday during this timeframe, beginning on Thursday, June 15th and running through August 17th for a total of ten (10) markets. Previous seasons have accommodated approximately 16 markets. However, once Nags Head Elementary School resumes in late August, we will be unable to hold markets during the week. We intend to keep the total number of vendors to 50 this season, including the vendors participating in the young entrepreneur program.

'The 2023 Summer Concert Series is anticipated to kick off June 14th through August 16th with a performance each Wednesday evening from 6:30 – 8:00pm. Event Coordinator, Paige Griffin is putting together a wonderful line-up of bands with a variety of genres.

'In addition to continuing the four (4) Holiday Markets, we would like to consider offering two other market opportunities. The first, a small (25 vendor maximum) Tuesday night market geared towards family friendly activities, incorporating children's crafts and educational opportunities, a pet market with SPCA, a second-hand clothes market, book exchange market, Master Gardener/what to plant/when and where market, etc. The ideas are still flowing, and we are open to suggestions. The frequency of these potential smaller markets is still under consideration and input from the Board of Commissioners would be most welcome. The second market opportunity would be to host a once-a-month Winter/Off-Season Market on the second Saturday during the months of January, February, March, and April. This market would be for producers, consumables only, and would provide our vendors and visitors with continuous opportunity to sell and purchase fresh meat, eggs, produce, prepared foods.

'The committee would like to continue offering fitness opportunities, showing family friendly movies, organizing Kids Day at the Park, and growing next year's Tree Lighting Ceremony, Flashlight Candy Cane Hunt, and Holiday Decorating Contest. The committee has been discussing the possibility of new projects and events including the creation of Dowdy Park Farmers Market T-Shirts, initiating a public art and pedestrian safety project to paint an intersection within the Town and to host a story-telling event within the Town.

'Interest in these community events continues to grow and gain momentum and as such the committee is continuing to explore sponsorship opportunities.

'Planning Staff, Event Coordinator Paige Griffin, and members of the Committee for Arts and Culture will be available for questions and to seek input from the Board of Commissioners following the presentation."

PROCLAMATION – Safety Week Proclamation – March 6-10, 2023

Dep Fire Chief Shane Hite summarized upcoming events for next week's Safety Week. Mayor Cahoon read the proclamation as follows:

"WHEREAS, the Town of Nags Head Board of Commissioners, employees and citizens are committed to the maintenance of a safe and healthful workplace; AND

'WHEREAS, the Town has assumed an active role in the promotion of a safe and healthful work environment by a program of regular occupational worksite evaluations and employee safety education; AND

'WHEREAS, the Town strives to stimulate and maintain the interest in loss control and accident prevention and recognizes past and future services to the employees and citizens of Nags Head; AND

'WHEREAS, the Town seeks to guide and encourage the adoption and institution of safe work practices by all employers and employees in Nags Head.

'NOW, THEREFORE, the Town of Nags Head Board of Commissioners does hereby proclaim March 6 - 10, 2023 as SAFETY WEEK in the Town of Nags Head, and commends this observance to our citizens.

'FURTHERMORE, in recognition of this proclamation, I invite all Nags Head employees to attend the annual Nags Head Safety Luncheon/Chili Cook-Off on Friday, March 10, 2023 from 12:00 Noon to 2:00 p.m. at the Douglas A. Remaley Fire Station #16."

MOTION: Comr. Brinkley made a motion to adopt the Safety Week Proclamation as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

PUBLIC COMMENT

Attorney Leidy invited those present to speak during Public Comment.

PUBLIC COMMENT – ELLEN HEATWOLE

Ellen Heatwole, resident of E Eagle Drive in S Nags Head; there was a push last year to get the dilapidated Cherry, Inc. house off the beach in S Nags Head; there is neighborhood support to get Mr. Goldner to sell/demolish his house which is an eyesore as well as a safety hazard; nothing has been done since last year

and she implored the Town to keep this issue in the forefront; on a different note, she understands the reason for but feels there are too many "No Dumping" signs which makes the area look trashy; she also spoke in favor of the painting of artwork on the roadways.

There being no one else present who wished to speak, Attorney Leidy closed Public Comment.

CONSENT AGENDA

The Consent Agenda consisted of the following items :

Consideration of Budget Amendment #11 to FY 22/23 Budget
Consideration of Tax Delinquent List to be advertised
Approval of minutes

Consideration of change order to Oakley Collier contract for construction administration services for Public Services Project

Consideration of modification to Consolidated Fee Schedule re: events

Consideration of Capital Project Ordinances

- Consideration of Beach Nourishment Capital Project Ordinance, amendment #9, Closeout of Hurricane Matthew
- Consideration of Capital Project Ordinance, amendment #2, for Public Services Complex Project
- Consideration of Water Capital Project Ordinance for Public Services Complex and Advanced Metering Infrastructure Projects

Consideration of resolution to authorize application to NC DEQ for a stormwater planning grant

Request for Public Hearing to consider a text amendment to the Unified Development Ordinance as it pertains to the definition of "Habitable Building Area"

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

Budget Amendment #11 to the FY 22/23 Budget, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

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

Oakley Collier contract change order - The summary sheet re: the change order to Oakley Collier contract for construction administration services for Public Services Project, as approved, read in part as follows:

"To date, the design team of Oakley Collier has completed the design phase, construction documentation and bidding phases in support of the Public Services Complex redevelopment project. Now that the financing for the project is in place, we can proceed to the construction phase.

A level of construction administration will be required by the design team to coordinate construction activities with the selected contractor. Oakley Collier has submitted a change order in the amount of \$220,000 for this effort. A not to exceed amount for reimbursable expenses is also provided with the change order for a total

amount of \$242,000. The professional service fees are consistent with the overall fee schedule submitted with the initial programming of the project.

'Staff requests Board of Commissioners authorization for the Town Manager to execute Amendment to Professional Services Agreement #3 with Oakley Collier Architects, PA.'

Modification to Consolidated Fee Schedule – the agenda summary sheet re: modification to the Consolidated Fee Schedule concerning Events, as approved, read in part as follows:

'At the March 1st Board of Commissioners meeting, staff is requesting that the below modifications to Consolidated Fee Schedule regarding events be approved.

1. For the Board's consideration, the Police Department (memo attached) is requesting to modify the Consolidated Fee Schedule to include a fee for staff to move/remove/locate/relocate message board(s) and/or light tower(s) to alert/caution vehicular or pedestrian traffic of an event in the immediate area.

In past events, the Police Department had to assist Event Organizers with placement of these items for the public safety of a scheduled event.

The Event Organizers would be required to sign a hold harmless agreement holding the Town and Police Department not liable for damages or injury.

2. Electrical and tent inspections are performed as necessary in accordance with a Crowd Gathering Permit for an event. Staff is requesting to modify the fee amounts for these inspections from \$50 to \$75 to be consistent with the current fee schedule with other electrical inspections performed by the Planning Department. Pages of the fee schedule associated with these requests are attached."

The agenda summary sheet re: request for adoption of Capital Project Ordinances, as approved, read in part as follows:

'At the March 1st Board of Commissioners meeting, staff is requesting Board consideration of the following Capital Project Ordinances:

'- Consideration of Beach Nourishment Capital Project Ordinance (Hurricane Matthew), amendment #9, and project closeout.

'- Consideration of Capital Project Ordinance, amendment #2, for Public Services Complex Project. This ordinance falls within the not-to-exceed amount the Board approved. The Board approved the contract with AR Chesson. This is 80% of the total project cost, split with the Water Fund Capital Project Ordinance.

'- Consideration of Water Capital Project Ordinance for Public Services Complex and Advanced Metering Infrastructure Projects. This ordinance falls within the not-to-exceed amount the Board approved. The Board approved the contracts with AR Chesson and Consolidated Pipe. The Public Services Complex project cost is split 20% with the Governmental Capital Project Ordinance (80%). The cost of the AMI meters is fully funded in the Water Capital Project Fund."

The following Capital Project Ordinances, as adopted, are attached to and made a part of these minutes as shown in Addendum "C":

- A - Beach Nourishment Capital Project Ordinance, amendment #9, Closeout of Hurricane Matthew
- B - Capital Project Ordinance, amendment #2, for Public Services Complex Project

C - Water Capital Project Ordinance for Public Services Complex and Advanced Metering
Infrastructure Projects

Grant Resolution - The resolution authorizing application to NCDEQ for a stormwater planning grant, as adopted, read in part as follows:

"WHEREAS, The Town of Nags Head has need for and intends to conduct stormwater master planning in order to help determine the best solutions for stormwater quality and quantity issues and to engineer and permit the solutions; and

'WHEREAS, The Town of Nags Head intends to request State grant assistance for the project.

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

'1. That the Town of Nags Head, the Applicant, will arrange financing for all remaining costs of the project, if approved for a State grant award.

'2. That the Town of Nags Head will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the plan.

'3. That the Town of Nags Head will provide for efficient operation and maintenance of the planned projects on completion of construction thereof.

'4. The Town Manager, or in absence designee, of the Town of Nags Head is hereby authorized, individually and collectively, to execute and file an application on behalf of the Town of Nags Head with the State of North Carolina for a grant to aid in the stormwater master plan.

'5. That the Town Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

'6. That the Town of Nags Head has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants pertaining thereto."

Request for Public Hearing - The summary sheet re: a request for Public Hearing to consider a text amendment to the Unified Development Ordinance as it pertains to the definition of "Habitable Building Area", as approved, read in part as follows:

"At their February 21, 2023 meeting the Planning Board voted unanimously to initiate and recommend adoption of text amendments to the Unified Development Ordinance (UDO) to amend the definition of "Habitable Building Area" and "Habitable Living Space" and to add a definition of "Finished Space". The proposed amendment is being requested to not only provide clarity but also ensure continued consistency in the application of the Unified Development Ordinance.

'Habitable building area and Habitable Living Space means a finished and/or conditioned space in an enclosed portion of the building.

'Finished Space means an area with enclosed walls, floors, or ceilings that are finished with materials generally accepted for interior residential or commercial construction. This shall include any of the following: drywall/sheet rock, insulated walls, carpet, wood or laminate flooring, or duct work. Additionally, any portion of a building that is conditioned shall be considered finished space."

PUBLIC HEARINGS

Public Hearing to consider the adoption of Unified Development Ordinance (UDO) and Zoning Map amendments as it pertains to the Historic Character Area and the moratorium adopted October 19, 2022. Specifically, the Board of Commissioners will be considering the following:

- Text amendments establishing a new zoning district, the C-5 Historic Character Commercial Zoning District, development regulations and standards for C-5, permitted uses for C-5, and
- Zoning map amendment/rezoning of the area from Danube Street north to Hollowell Street, between US Highway 158 and NC 12, and
- An amendment to the Table of Uses for C-5

Attorney John Leidy introduced the Public Hearing to consider the adoption of UDO and Zoning Map amendments as it pertains to the Historic Character Area and the moratorium adopted October 19, 2022; the time was 9:31 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wed, February 22, 2023 and on Wed, February 29, 2023, as required by law.

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

"In response to the Board of Commissioners adopted moratorium of October 19, 2022, prohibiting all non-residential developments located within the C-2, General Commercial Zoning District applicable to the areas from Danube Street north to Hollowell Avenue, between US Highway 158 and NC12, Planning staff and the Planning Board have been working together to draft a set proposed regulatory mechanisms to ensure that the Town's vision is maintained and any future development within the Historic Character Area preserves and compliments the integrity of the area.

'As outlined in the adopted moratorium, the Planning Board had three opportunities to discuss potential outcomes within the Historic Character Area. At their first meeting on November 10, 2022, the Planning Board's primary focus and discussion centered around the current/existing zoning regulations, possible incompatible land uses, and what would result to any nonconforming situations created as a result of any possible rezoning. The Planning Board also expressed interest in having more information on what protections could be in place for Historic Cottage Row. It was noted that while there may be a zoning district designation better suited for this area, the zoning district alone would not offer any architectural protections for residential structures. In 2015 restrictions on local residential standards were adopted. S.L. 2015-86 became effective law in North Carolina on June 19, 2015, and prohibits the regulation of "building design elements". This prohibition covers exterior building color, type or style of exterior cladding material, style or materials of roofs or porches, exterior nonstructural architectural ornamentation, location of architectural styling of windows and doors, including garage doors, location of rooms, and interior layout of rooms. These limits have been codified as NCGS 160D-702(b).

'At their December 13th, 2022, meeting, planning staff summarized for the Planning Board what had been expressed to them from property owners within the Historic Cottage Row area, as well as within Old Nags Head Place. Property owners within Historic Cottage Row conveyed strong support for having their properties rezoned from a commercial designation to a residential designation and property owners within the Old Nags Head Place Subdivision requested that consideration be given to rezoning their properties and the

neighboring properties from a commercial designation to a residential designation. Specifically, they were interested in the R-3, High Density Residential Zoning District, given that the area has been developed to the R-3 dimensional standards, despite it being zoned a mixture of R-3, High Density Residential, CR Commercial Residential and C-2, Commercial Services.

'Also at the December 13th meeting, staff presented to the Planning Board a series of three (3) maps for their consideration. The first was the area of the moratorium mapped with the current zoning designations, the second map depicted the moratorium area with a C-1, Neighborhood Commercial zoning designation and the third map depicted the moratorium area with a combination of R-3, High Density Residential zoning and C-1, Neighborhood Commercial zoning designation. Staff noted that lots west of NC 12, adjacent to Historic Cottage Row had dimensional standards more aligned with that of the R-3, High Density Residential Zoning designation, thus the recommended R-3 zoning. After discussion on the proposed mapping, the consensus of the Planning Board was they preferred the option depicting the area of the moratorium with a combination of the C-1, Neighborhood Commercial zoning designation and R-3, High Density Residential zoning designation.

'Planning staff and the Planning Board discussed possible text amendments that would be necessary to ensure that Section 6.6, Table of Uses and Activities, would reflect the intent of the Historic Character Area as stated within the Town's Comprehensive Land Use Plan.

'Noting the extent of text amendments that would be necessary, staff introduced the idea that the Planning Board could also consider establishing a new zoning district, leaving the C-1, Neighborhood Commercial zoning district intact. The Planning Board expressed interest in this option.

'At their January 17th, 2023 meeting, staff prepared and presented draft ordinance amendments for the establishment of the C-5, Historic Character Commercial Zoning District. At the conclusion of their discussion, the Planning Board voted unanimously to recommend adoption of the proposed text amendments to the Unified Development Ordinance to create the C-5, Historic Character Commercial Zoning District including amendments to the table of uses and activities, dimensional standards, and special commercial building design criteria.

'The Planning Board also voted unanimously to recommend adoption of a zoning map amendment to rezone the moratorium area to a combination of the R-3, High Density Residential Zoning District and the C-5, Historic Character Commercial Zoning District.

'The draft ordinance reviewed by the Planning Board and included for the Board of Commissioners consideration contains the following amendments:

- Section 6.2.2, Zoning Districts Established, to include the proposed C-5, Historic Character Commercial District.
- Section 6.2.4, Commercial Districts, to include the C-5, Historic Character Commercial District and create a draft intent narrative, outlining the district's purpose.
- Section 6.6, Table of Uses and Activities to include the C-5, Historic Character Commercial District to propose which uses should be allowed within the proposed C-5 District. Note that due to the significant historical character of this area, staff has proposed that all commercial uses be reviewed via the Special Use Permit process so as to allow both the Planning Board and Board of Commissioners the ability review each application. Additionally, you will note that there are far fewer uses permitted in the proposed C-5 District than within the CR, C-1 and C-2 Districts.
- Section 8.2, Development Standards – Primary Districts, to establish dimensional requirements for the proposed C-5, Historic Character Commercial District. Note that the proposed lot coverage allowance is 40% of the lot area, however it may be increased to 50% with the use of permeable paving materials. This proposed reduction in the lot coverage allowance is a result of discussion by

the Planning Board. The Planning Board cited a desire for lower intensity of development in the C-5 than what is currently permitted within the C-2, General Commercial. They also cited flooding concerns in this area during rainfall events and wanted to encourage, promote and in some cases require, more utilization of permeable surfaces.

- Section 7.15, Supplemental Regulations for Pet Shop/Grooming Shops. The Planning Board felt as though grooming only would be an acceptable use to allow within the proposed C-5 District.
- Section 8.3, Special Development Standards, to add Section 8.3.2 which sets forth special commercial building design criteria for both new and existing commercial structures within the proposed C-5, Historic Commercial District. Additionally, this section recommends applying a maximum habitable building area based upon the lot's frontage on either NC 12 or US Highway 158.
- Section 8.6.6.4, Special Requirements for the C-3 District and C-5 District, to set forth lot coverage allowances within the C-3 and C-5 District, noting that the C-5 District contains a special allowance for increased coverage with the use of permeable materials.
- Section 10.82, Applicability of Commercial Design Standards to add the proposed C-5 District to those districts to which the design standards apply.
- Sections 10.24, 7.78, 7.45, 7.23 and Appendix A, Definitions to be updated with the C-5, Historic Character Commercial District.

'Also included for the Board of Commissioners consideration are the various attachments presented to the Planning Board for discussion purposes. These include:

Attachment A – Various draft text amendments within the Unified Development Ordinance and Town Code establishing the C-5, Historic Character Commercial District.

Attachment A continued – Various draft amendments outside of the UDO, within the Town Code generally, update for C-5 District.

Attachment B – Map of the Historic Character Area with the existing zoning and existing land uses shown as well as the proposed map amendment with the C-5 and R-3 District designations. This also includes a Draft of the Official Zoning Map with the proposed amendments shown.

Attachment C – Chart compiled by staff listing commercial businesses located within the Historic Character Area and whether the use would be permitted within the C-5, Historic Character Commercial District as currently proposed. With the proposal to limit habitable building area to 3,500 square feet on lots adjacent to NC 12 and 10,000 square feet adjacent to US Highway 158, we have also noted whether the existing building conforms to the area limitations.

Attachment D – Article 5 of the Unified Development Ordinance, Nonconformities.

'Staff Recommendation/Planning Board Recommendation

At their January 17th, 2023, meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendments to the Unified Development Ordinance to create the C-5, Historic Character Commercial Zoning District including amendments to the table of uses and activities, dimensional standards, and special commercial building design criteria. The Planning Board also voted unanimously to recommend adoption of a zoning map amendment to rezone the moratorium area to a combination of the R-3, High Density Residential Zoning District and the C-5, Historic Character Commercial Zoning District.

'Planning Staff recommends adoption of the proposed UDO and Map Amendments as presented; however, staff does acknowledge that additional text amendments may be necessary to ensure that the intent of the Historic Character Area amendments has been captured.

"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 Plan requirements (attached)."

Ms. Wyatt reviewed the required public notices for today's Public Hearing.

Comr. Sanders asked how many businesses would be made nonconforming with the proposal. Ms. Wyatt explained that two shopping centers (Jockey's Ridge Crossing and Surf Side Plaza), and two gasoline fueling stations (7-11 and Duck Thru) would be use nonconformities. Ms. Wyatt also stated that she has prepared a draft ordinance that would exclude these uses as non-conformities along with some other changes.

Comr. Brinkley requested to see the other proposed amendments that Ms. Wyatt had prepared. Displayed on screen was a slide entitled: *Historic Character Commercial Text & Map Amendment Possible Revisions*, which was reviewed with Board members. Comr. Brinkley thanked Ms. Wyatt for the report and agreed with adding some things back into the proposal in order to reduce the nonconformities.

Mayor Cahoon questioned Sec. 8.3.22 of the ordinance amending the UDO concerning building design that would reflect the heritage of "Old Nags Head" and how an applicant would accomplish this. Ms. Wyatt stated that the architecture design manual with associated points would apply. Town Manager Garman also pointed out that if not a special use, the Board can't make the required findings of fact.

Attorney Leidy invited those present who wished to speak to come forward:

Bob Edwards, former Nags Head Mayor and resident; this issue began with workforce housing; the district has been zoned C-2 since 1969 – it was offered to the Town when he was mayor; there are no C-1 zones in the Town currently; in the Comprehensive Plan, which is a good plan and which had a tremendous amount of citizen input, he spoke of the character area as defined; the historic character area has been a problem for quite a while; the Town tried years ago get it designated as a National Register area but property owners did not want that; in his opinion the present ordinance is too restrictive especially for businesses; another issue is R-3 along US 158 which needs to be addressed as this is not an appropriate use along US 158 especially interspersed in the commercial area; he is asking the Board to slow down and make sure this is done right; he spoke of the issue concerning cottage courts some years ago which are now conforming.

Basil Belsches; Nags Head resident; thanked staff and the former Mayor for being here; he has kept track of all related comments - 72% are in favor of the proposed amendments starting with the October 2022 Board meeting; Old Nags Head Place residents stood up in support; he understands some amendments may be coming but he is in favor of the proposed ordinance and urged the Board to approve the amendments today.

John Harris; Kitty Hawk Kites business owner; his business will be celebrating its 50th year in March 2023; he thanked staff for the UDO preparation; Nags Head Comprehensive Plan included verbiage that the Town is committed to sustaining the local community that supports residents and visitors - he feels that the proposed amendments as written do not do this; this creates an unfair playing field with businesses in the other areas; he asked the Board to vote against the proposal for several reasons: There is no protection of small businesses between Danube and Hollowell if they need to be rebuilt, making these businesses less valuable than other businesses in the Town such as with the proposed lot coverage; lot coverage should be the same throughout the Town; conditional use permit requirements – other businesses do not have that requirement; if R-3 is extended why shouldn't C-5 be extended as there are a number of old businesses in that area and should fall under the same guidelines.

Sandra Allen, Southern Shores resident and Kitty Hawk Kites business owner; she agrees with what her husband John Harris has said; she asked that the Board vote against the proposal today; she would like

direction given to staff and the Planning Board to resolve some issues before adopting anything – she doesn't want to see additional issues created with the businesses in the Town.

James Jackson, property owner at 3543 S Virginia Dare Trail; his family has owned property since 1939; he expressed his concern about density; not sure why both sides of Hollowell St are designated as high density; he asked the Board to consider the character of the area and to reconsider this designation in order to maintain the character and integrity of that area.

Mayor Cahoon explained that the R-3 District is labeled High Density but it is single family houses on smaller lots than in the R-2 District.

Shelly Blackstone, property owner in Nags Head; everyone loves the local businesses; a future 20,000 square foot building in places that are now zoned for that is not needed; we don't want more 20,000 square foot buildings.

Jeff Pavlak; he and wife Pat own on S Virginia Dare Trail; thanked the Planning Board and the Board of Commissioners for all the hard work and professionalism on this entire project; he supports the proposal as presented.

Donna Creef, Outer Banks Association of Realtors Government Affairs representative; the association is not in favor of the proposal as rezoning properties from commercial to residential impacts the real property rights of owners of vacant land in the historic district; the proposed downzoning could negatively effect the value of these vacant properties; revisions to the proposal should be considered to grant existing businesses specific rights to rebuild if damaged or destroyed by fire or natural hazards. Her comments are attached to and made a part of these minutes as shown in Addendum "D".

Vanessa Foreman, read a letter from her son Philip Foreman who is a business owner in Nags Head; Mr. Foreman's letter was forwarded to the Board of Commissioners in a previous email. Mr. Foreman's email is attached to and made a part of these minutes as shown in Addendum "E".

Susan and Charles Kalan, residents of Hollowell Street; they displayed a drone picture of their property; they are in support of the proposed rezoning ordinances.

Clara Smiley, Historic District property owner at 3621 S Virginia Dare Trail for over 50 years; the moratorium has provided time for all to be heard; she thanked staff and the Town Manager for their efforts; she is in support of the proposed rezoning proposal and is in support of the Town's Comprehensive Land Use Plan.

Elliott Katherman, owns the Hollowell St property across from Jockey's Ridge; the contract with Woda Cooper fell through when the moratorium was adopted; the property has been commercial for decades; all have bought and built as commercial; this is not just rezoning but is considered more eminent domain from the highest to the lowest possible use without compensation; he asked that the Board make these kind of decisions only for the highest of reasons; Hollowell is a line of demarcation of commercial to the south and residential to the north; his property is 4.7 acres; the purpose of all of this is the promotion of the historic character area; he questioned how adding single family houses along US 158 promotes/preserves the historic character area; he sees no compelling reason for the proposal to move forward.

Rick Arthur, and wife Barbara, residents of Old Nags Head Place; they support the rezoning as proposed by the Planning Board and Planning staff to protect the integrity of that area.

Frank Campanale, S Memorial property owner; appreciates all the work that has been done on the proposal; without a place that people love coming here for, a lot of things could change; he spoke in favor of the proposed ordinance.

Chess Harris, S Memorial resident; appreciates all the services provided to everyone; he fully supports the proposed amendments as presented; agrees with some of the amendments especially re: small businesses; people come here to live and for places to stay and there needs to be a balance between the two; the proposed amendments for R-3 allow for a good flow.

Beaman Hines, Nags Head business owner; wants to make sure the Board looks into it deeper and its effect on local businesses; he needs more time as he was out of Town when the required mailings came; he has a number of questions and needs to go over it more before the proposal is adopted; something this big needs more discussion than just a mailing as people's lives are also at stake.

Eddie Goodrich, property owner in Nags Head; out of the changes being recommended the biggest things are the nonconforming uses being created and can they be rebuilt; he also thinks that Mr. Katherman's property as commercial makes more sense than residential due to its proximity to Jockey's Ridge State Park; he feels it should be returned to the Planning Board.

Linda Madison, Nags Head resident; she feels it is important that the historic area homes be protected and she read in the newspaper that they were not; she feels that these homes are worth protecting since there is so little left in the Town from that time period.

Mike Mishou, S Memorial Ave resident; he and his wife Donna are in favor of the rezoning proposal as presented and the Comprehensive Plan; the spirit of the Comprehensive Plan should be followed and he feels that this is the proper action to take; from Jockey's Ridge what would people like to see; he wants to see the Historic Character area preserved and protected.

Charles Kalan, he and wife Susan live on E Hollowell Street; he appreciates staff and the Planning Board's work on this issue; is in support of the rezoning proposal but does not want to alter the historic character area nor make changes that could have significant impact on the long-term character of the district and the surrounding natural environment.

Bobby Harrell, business owner in Nags Head; appreciates the historic character of the area; firmly believes in private property rights; has invested in Nags Head for many years; many are struggling with housing and finding employees; the original proposed housing project was thought to be "low-income housing" which was not correct; the Outer Banks Hospital has 54 employees that would have been eligible for the housing; he asked the Board to give this more time and study before making a decision.

Randy Royal, property owner on S Memorial Ave; workforce housing is needed here and everywhere, his understanding of the Woda Cooper project is that most teachers make too much money to qualify for that housing; now with the C-2 text amendment the project cannot be done; the press has not done a good job in presenting the information to the public; Ms. Wyatt has explained that they can in fact build back if necessary; he feels the proposed rezoning is a good balance for this area; he feels that the businesses deserve a Town Hall type of meeting so everyone understands the details.

Cindy Brightbill, Surfside Plaza Shopping Center owner; her strip mall was the first strip center built approximately 55 years ago; she is asking that consideration be given to the existing businesses in her complex; they have worked hard to include many diverse businesses; she is asking the Board to take all this into consideration for the hard working tenants; she has enjoyed listening to everyone's comments.

Courtney Gallop, Nags Head resident and business owner; she is not pleased with the rezoning proposal; looks like a few property owners are driving the debate; she feels it is not fully thought out and creating non-conformities is hard on businesses and is very anti-American; she asked the Board to delay any decision until

all questions can be answered; she asked that a more broader look be taken on this issue; the Town has become more business-friendly and feels the proposal puts the Town back.

David Bragg, Nags Head resident; concerning the affordable housing issue, the Dare County Commissioners wanted the Board to allow the Woda Cooper project; he spoke of the Portsmouth low income housing and what it did to that neighborhood; he does not think the proposed rezoning proposal was intended to hurt or harm the businesses but agrees it should be further explained to the business owners; many workers drive to where they work – they don't necessarily live where they work; business owners can also provide some housing for its employees; he also noted that the Board may be able to get a good deal on the Hollowell St property at this time.

There being no one else present who wished to speak, Attorney Leidy concluded the Public Hearing at 11:38 a.m.

Mayor Pro Tem Siers confirmed with Ms. Wyatt that there are a significant number of special permit uses and a significant number of existing businesses in the C-2 District that have nonconformities.

Comr. Renée Cahoon questioned how many amendments proposed will need a new Public Hearing. Ms. Wyatt explained that if less stringent, it can be acted upon today. It was confirmed that zoning map changes would require a new Public Hearing.

Mayor Cahoon spoke concerning the amendment allowing businesses to be able to build back – he questioned if that language could be included for a district as opposed to Town-wide.

Attorney Leidy confirmed that the notice for both the proposed text amendments and zoning map changes, as prescribed by statute (posting, mailing, notice via newspaper and web site) were done. Attorney Leidy also explained that there was no valid reason that this would be considered spot zoning as that usually applies to land owned by one owner. He also stated that only with certain conditions could the moratorium be extended.

Attorney Leidy confirmed with Board members that there are no other questions and he concluded the Public Hearing at 12:12 p.m.

Mayor Cahoon said he would like to see some modifications to the proposal as published/presented.

Comr. Sanders stated that he would like to see the amendments Ms. Wyatt presented in place before moving forward with adoption.

Comr. Brinkley thanked all who took the time to attend today's meeting; also the Planning Board and Planning staff have done an extreme amount of work in a small amount of time. He expressed concern about the businesses and wants to put protections in place of existing businesses – torn about Mr. Katherman's property on US 158.

Mayor Cahoon thanked all those who took the time to attend today's meeting; for the most part uses are not what most complain of – it is usually the intensity of those uses; he would prefer an ordinance that leaves the uses in place and rectifies the valid concerns about intensity; if not US 158 where are many uses such as convenience stores supposed to go? He would prefer an ordinance and map which would keep the most intense uses along US158.

Comr. Renée Cahoon thanked the Planning Board and the Planning staff for their efforts and thanked those that came here today; looking at the proposal as presented she supports a lot of what staff has done but cannot support taking away someone's commercial property – R-3 is perfect for Old Nags Head Place and

Beach Road and then into C-5 and has no business being made non-conforming; she would like to see staff bring forward that would keep those businesses there and if conforming now, to not make them nonconforming – she doesn't want to make things harder for businesses; keep uses as permitted that are permitted; she would like to see a revised proposal for consideration at the mid-month meeting. She is in favor of Hollowell street property as C-5 as a fair proposal for this property – C-5 on the bypass would allow business owners to house employees.

Mayor Pro Tem Siers thanked everyone to include the community for being involved – a lot of work/time have gone into this issue; he agreed with a little of what everyone said; He does not want to see businesses nonconforming and feels we need to look to the future; he would like to see consideration of the amendments at the mid-month meeting.

Mayor Cahoon stated that direction from the Board is to incorporate the amendments to address language that would either reinsert existing uses that would have been non conforming as permitted uses or create language to allow them to remain; interested in incremental amendments that were presented by Ms. Wyatt at the beginning of the meeting. Ms. Wyatt summarized the following to be addressed:

- Lot coverage issues
- Adding back uses to the C-5 District – retail shopping center, group development, mixed-use development, and commercial with accessory residential uses.
- Adding back permitted uses in the C-5 District as currently permitted – the two shopping centers and the two gasoline service stations – to include permitted by right or permitted by special use.

Mayor Pro Tem Siers noted that the Short-Term Rental (STR) change from permitted to special uses in C-5 District is to be included on the March 21st Planning Board agenda for review.

Text Amendments

MOTION: Comr. Renée Cahoon made a motion that staff incorporate into the ordinance proposal the amendments noted in Planning Director Kelly Wyatt's white paper and to work with those definitions presented re: non-conforming and conforming uses – based on Board discussion - to be brought back for consideration at the March 15th mid-month meeting. The motion was seconded by Comr. Brinkley.

Comr. Brinkley confirmed that, if permitted in C-2, the use would be permitted in C-5, and, if a special use in C-2, it would be a special use in C-5.

CONTINUATION OF MOTION: The motion passed unanimously.

Official Zoning Map

MOTION: Comr. Renée Cahoon made a motion to send back to the Planning Board the proposed Zoning Map amendment and to obtain their input on the designations presented re: Hollowell Street from R-3 to C-5. The motion was seconded by Comr. Brinkley.

Attorney Leidy is to research/confirm that the proposal does not constitute spot zoning. Comr. Sanders also questioned the high intensity use as residential to protect those in Old Nags Head Place. Ms. Wyatt stated that for commercial high impact use, use buffer requirements.

CONTINUATION OF MOTION: The motion passed unanimously.

Attorney Leidy reported that the Board would not be taking any action today but would consider a revised ordinance with text amendments at the March 15th mid-month meeting. He reported that the zoning map amendment would go to the Planning Board at its March 21st meeting with a Public Hearing to be scheduled for the April 5th Board meeting.

RECESS TO/RECONVENE FROM LUNCH – The Board recessed for lunch at 12:45 p.m. and reconvened at 1:30 p.m.

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 March 1st, 2023.

'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for January 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:

- Wednesday, February 1st – Board of Commissioners Meeting
- Thursday, February 2nd – CRS Users Group Meeting & Planners Lunch
- Tuesday, February 7th – Technical Review Meeting
- Wednesday, February 8th – Committee for Art and Culture Meeting
- Thursday, February 9th – Board of Adjustment Meeting (no hearings scheduled)
- Tuesday, February 21st – Planning Board Meeting

'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, February 21st, 2023 and included consideration of a text amendment to the Unified Development Ordinance as it relates to definitions of "Habitable Building Area", "Habitable Living Space", and "Finished Space". The Planning Board received an update on the Energy Transitions Initiative Partnership Project (ETIPP), consistent with presentation provided to the Board of Commissioners at their February 1st meeting. Staff also provided the Planning Board with a presentation to begin discussion on potential text amendments related to the definitions of "Dwelling", "Dwelling, Single-Family", "Dwelling Two-Family", "Dwelling Unit", "Family" and "Housekeeping Unit". Staff explained how the definitions of these terms in conjunction with existing regulations and requirements for accessory uses and accessory structures lend themselves, often times, to the creation of unauthorized accessory dwelling units. In addition, staff discussed areas of the existing Unified Development Ordinance that tend to lend themselves to the development and operation of short-term rentals. Lastly, the Planning Board adopted the 2023 Submittal Calendar.

'The Planning Board's next meeting is scheduled for March 21st, 2023. At this time, the agenda is expected to include a Vested Right/Conditional Use/Site Plan Amendment submitted by Albemarle & Associates, Ltd. On behalf of Nags Head Church for the expansion of the parking lot, and continued discussion of the definitions and application of regulations concerning accessory structures and accessory uses.

'Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in February 2023 and no items have been received for the March 2023 meeting.

'Additional Updates

- DWMP/Septic Health Advisory Committee – A meeting of this committee is scheduled for March 7, 2023 to introduce the four new committee members, discuss the program and answer any questions that they may have in advance of the next quarterly meeting. Similar to the targeted mailer recently sent to property owners in South Nags Head related to high risk areas of groundwater rise, approximately 120 letters were recently sent out to property owners in Old Nags Head Cove Subdivision. Two ECU interns will start working with Environmental Planner in March and will be assisting with water quality sampling through May. They will also be developing a streamlined database system that is linked to water quality sites spatial data.
- Estuarine Shoreline Management Plan – Following the Board of Commissioners adoption of this plan at their February 1, 2023 meeting, staff has submitted a letter of interest for a National Estuary Partnership grant to fund the design and engineering of the three prioritized sites. If invited to submit a full application, it will be due April 28, 2023.
- NC Resilient Coastal Communities Program – The 50% design documents have been completed, essentially completing the original scope. These reflect the design intent and initial comments from review agencies. The additional scope of work included the installation of groundwater level monitoring and additional data collection. The installation is complete, and data has been collected, but the sensors remain in place, and we intend on collecting data one final time under this scope of work. Additional work is included in the LASII finding that was approved by SWIA on 2/21
- Electric Vehicle Action Plan – Staff have been researching various opportunities and is in the process of applying for a grant as part of NC DEQ, Phase 2 of the N.C. Volkswagen Settlement Program. While applications will be accepted through March 31st, the rebates are awarded on a first come, first-serve basis.
- ETIPP Project/Program – Deputy Planning Director, Kate Jones provided the Planning Board with an update on the current status of the ETIPP project at their February 21st meeting and Kate is currently researching grant opportunities to offset costs of solar panel installation at the Public Services facility as well as at Town Hall. There is a project meeting on March 1, 2023.
- Whalebone Park: Phase 1 Planning – No updates at this time, NC Parks will be making decisions on the Accessibility for Parks (AFP) grant on March 3, 2023.
- Dune Management Cost Share Program – Currently there are 82 property owners that have submitted applications for the dune management cost share program. \$270,000 was the total amount funded to this program, and \$269,500 has been allocated. Staff will be seeking input on additional funding for this program at the Board of Commissioners March 1, 2023 meeting.
- Nags Head Dog Park – Staff have received three quotes for the installation of artificial pet turf at the entrance of the dog park and plan to move forward with install during May 2023. Public Works will be installing six new benches within the dog park as well.
- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture –The Art and Culture Committee is looking forward to providing the Board of Commissioners with their update in March 2023 on the 2022 Season and ideas for the discussion regarding the upcoming 2023 Season.

'Upcoming Meetings and Other Dates

- Wednesday, March 1st - Board of Commissioners Meeting
- Wednesday, March 1st – ETIPP Partners Meeting
- Thursday, March 2nd – CRS Users Group Meeting
- Tuesday, March 7th – Technical Review Meeting
- Tuesday, March 7th – Septic Health Advisory Committee Meeting
- Wednesday, March 8th – Committee for Arts and Culture Meeting
- Thursday, March 9th – Board of Adjustment Meeting (no hearings scheduled)
- Tuesday, March 14th – Planning Department Staff Meeting
- Tuesday, March 21st – Planning Board Meeting
- Tuesday, March 28th – Planning Department Staff Meeting”

Ms. Wyatt also reported on the improved turnaround times for building permit applications during the past month.

Consideration of request for additional funding for the Dune Management Program
- Consideration of amendment to Capital Project Ordinance

Dep Planning Director Kate Jones summarized the agenda summary sheet which read in part as follows:

“The expansion of the dune vegetation program to include sand relocation activities went into effect in October 2022. The goals of the cost share program are to improve dune management at the parcel level through increased financial assistance to oceanfront property owners resulting in better outcomes for both the property owner and the dune system town wide. The cost share program has been popular and currently has 82 participants, with a total of \$272,500 allocated.

Staff Recommendation

Staff recommends adding additional funding of \$50,000 to continue the program until the end of the sand relocation season which is April 30th.”

MOTION: Comr. Renée Cahoon made a motion to adopt the Capital Project Ordinance authorizing additional funds for the Dune Management Program as presented. The motion was seconded by Comr. Brinkley which passed unanimously

The Capital Project Ordinance authorizing the additional funding, as adopted, is attached to and made a part of these minutes as shown in Addendum “F”.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From Feb 1st Board meeting – Discussion of beach concierge ordinance changes

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

“In November of 2022, staff provided the Board with a presentation on observations and concerns pertaining to the Beach Concierge Services operating within the town. Having witnessed numerous noncompliant scenarios and received several concerns from citizens, staff recommended that the Board of Commissioners

review and discuss the current regulations pertaining to Beach Concierge Services' set-up operations, signage, beach saturation, and storage.

'On December 5, 2022, staff met with several beach concierge services to discuss this issue. The group suggested revisions to our current ordinance that may assist both the town and the vendors with compliance.

'Attached please find a revised ordinance implementing the modifications discussed. This was circulated to the group for review prior to this meeting.'

In response to Mayor Pro Tem Siers, Manager Garman said that the main item the vendors wanted was the time of day changes.

Staff is to forward information to all beach property rental companies that it is illegal to travel over private property to get their items to the beach.

MOTION: Comr. Renée Cahoon made a motion to adopt the beach concierge ordinance modifications as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

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

From Feb 1st Board meeting – Consideration of resolution re: legislation prohibiting abandoning beach holes

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

"At the February 1st Board meeting, a resolution re: legislation prohibiting beach holes was presented – the resolution requests that the State enact a new law creating a criminal penalty for leaving unattended hazardous beach holes. It was Board consensus to clarify the language and bring the item back for consideration at the March 1st meeting.

'Attached please find a revised resolution for Board consideration.'

Comr. Brinkley said that while he will support the resolution, he feels it is mostly unenforceable.

MOTION: Comr. Brinkley made a motion to adopt the resolution re: prohibiting abandoning beach holes as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

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

'WHEREAS, Coastal communities, including communities on the Outer Banks, have seen an increase in the number and size of holes being dug on the beach by recreational beach users; AND

'WHEREAS, These large holes on the beach can cause damage to vehicles and equipment, they can collapse, trapping humans and marine life and in some cases result in serious injury and death; AND

'WHEREAS, on August 3, 2022, the Town of Nags Head unanimously adopted a resolution expressing its support of state legislation which would increase its capacity to address the incredibly dangerous issue of holes on the beach; AND

'WHEREAS, The Town of Nags Head reached out to coastal communities and found interest in pursuing legislation that would prohibit abandoned or unattended holes dug on the ocean beach; AND

'WHEREAS, In addition to Nags Head, the Towns of Kill Devil Hills, Kitty Hawk, Southern Shores, and Duck adopted similar resolutions supporting the Town on this issue, as did Currituck County, the Town of Atlantic Beach, the Town of Oak Island, and the City of Surf City.

'NOW, THEREFORE, BE IT RESOLVED By the Board of Commissioners of the Town of Nags Head, North Carolina to ask the state legislature to enact a law creating a significant criminal penalty for leaving hazardous beach holes.

'BE IT FURTHER RESOLVED that the following verbiage be forwarded to State legislators for submitting to the next General Assembly session for consideration:

- (a) It shall be unlawful for a person to drill, dig, or otherwise create or cause to be drilled, dug, or otherwise created a hole, trench or depression on the "ocean beach" as that term is described in N.C.G.S. 77-20(e) that is at any point at least 18 inches deep and greater than 12 inches wide, or; at least 24 inches wide and greater than 12 inches deep, if such person then abandons the hole, trench or depression or leaves it unattended without first completely filling in the hole, trench or depression from its total depth to the surface.
- (b) A person commits a criminal offense by violating this section. An offense under this subsection is a Class 2 misdemeanor for the first offense, but a second or subsequent similar offense shall constitute a Class 1 misdemeanor."

NEW BUSINESS

Committee Reports

There were no Committee Reports provided.

Consideration of request for cost increase from TFC Recycling

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

"The attached email from Victoria Norcini, Revenue Manager of TFC Recycling, is notification to the Town requesting a price increase per the franchise agreement/contract. This amounts to a 5% increase in the monthly per unit charge for residential recycling services. Ms. Norcini indicates that the increase is being requested at this time since it requires 150 days to get a price increase approved and implemented as listed in our contract.

'The contract states that the vendor can request up to a 5% increase per year. The request can be made if there is an increase in the Consumer Price Index for Garbage and Trash (CPI-U) during the prior year. As stated in her email, the CPI-U for the prior year is 6.1%. If the request is approved, the cost per month per unit would be \$15.33. As the board will recall, the town subsidizes this cost at \$5 per unit per month. Therefore, the customer would be billed \$10.33 per unit per month. This is the last year of the agreement.

'Attached please find the email from Ms. Norcini and the franchise agreement."

MOTION: Comr. Renée Cahoon made a motion to approve the cost increase request from TFC Recycling as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

Attorney Leidy noted that the agreement with TFC Recycling expires in May 2024.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy - Fourth Circuit Court – Mid-Currituck Bridge

Attorney Leidy reported that last week the Fourth Circuit Court upheld the Trial Court decision that the Environmental Study for the proposed mid-Currituck Bridge has been properly conducted which helps pave the way for the bridge project to move forward.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman - Discussion of review of expansion/revision of Good Samaritan Law

Town Manager Garman presented the agenda summary sheet concerning a revision of the Good Samaritan Law which read in part as follows:

"Attached please find a resolution adopted by the Dare County Board of Commissioners on February 6th requesting that the General Assembly revise and expand the Good Samaritan Law GS 90-96.2 (also attached). The resolution supports revising "the Good Samaritan Law" to include a broader spectrum of substance-related threats to our citizenry as a matter of public safety". While we agree that the Good Samaritan needs to be updated to reflect current conditions, including changes to the types and quantities of substances that we encounter, we would suggest caution in these changes.

'Police Chief Perry Hale will summarize the law and provide the Board with some examples of changes that could be detrimental to law enforcement. We would suggest that the Board draft a letter outlining specifically what we would like to see addressed using guidance from law enforcement staff."

Comr. Brinkley stated that the amount of drug and death by distribution are two areas that concern him; he would caution endorsing these two items.

MOTION: Mayor Cahoon made a motion that a letter be written to the legislature indicating that while the Town generally endorses the resolution supporting an update of the Good Samaritan Law adopted by other communities, we have reservations. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Town Manager Garman - Discussion of request from Deel Engineering to vacate portion of Turnstone Ave

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

"Please find attached a letter from Andy Deel of Deel Engineering requesting that the Town consider the potential abandonment of a portion of the Turnstone Avenue right-of-way at the property at 7000 S Croatan Highway. Mr. Deel explains that the property owners intend to replace the go-cart track property with two single family homes at this location. The property owners would like pier access to the Sound.

'The town has discussed plans to extend a boardwalk at some point in the future from the Soundside Event Site to the Outlet Mall. This right-of-way would be a potential location for the boardwalk. Although the town could vacate the right-of-way, which would then revert to the property owner, another option may be to retain the right-of-way and grant the property owners an easement to extend pier access to the sound.'

MOTION: Mayor Pro Tem Siers made a motion that the Town Attorney prepare an agreement for Board review authorizing an easement for a pier at the property located at 7000 S Croatan Highway. The motion was seconded by Comr. Brinkley which passed unanimously.

Town Manager Garman - Consideration of MOU between Nags Head and Kill Devil Hills re: building inspector mutual aid

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

'Please find attached a Memorandum of Understanding between the Town and the Town of Kill Devil Hills for mutual aid to be provided by building inspectors in the event a building inspector is unavailable due to vacation, illness, training, or other reasons. The Town entered into an agreement with Kill Devil Hills to provide building inspector assistance in 2018. This agreement provides mutual aid between both towns.

'The MOU automatically renews each year for up to 10 years unless 30-day notice is provided.'

MOTION: Comr. Brinkley made a motion to approve the MOU with the Town of Kill Devil Hills for building inspection services as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

The MOU, as approved, is on file in the Town Clerk's Office and will be forwarded to the Town of Kill Devil Hills for consideration.

Town Manager Garman – Construction of Gallery Row Waterline Extension

The proposed agreement and estimated cost sheet for the Gallery Row Waterline Extension was presented by Town Manager Garman. The proposed agreement entitled "Agreement for Construction of Gallery Row Waterline Extension" read in part as follows:

"THIS AGREEMENT is made and entered into this the 1st day of March 2023, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and Hansford Conner, 7803 Christina Trace, Catlett, VA 20119, (hereinafter referred to as "the OWNER"), party of the second part.

'WHEREAS, the OWNER owns the property located at 302 E. Gallery Row, Nags Head, NC 27959, and wishes to build a single-family home on said property; and

'WHEREAS, the TOWN does not currently have public water available in the block of Gallery Row between Memorial Avenue and S Virginia Dare Trail (SVDT); and

'WHEREAS, the town's Water Line Extension Policy (Adopted: October 8, 2004) requires the extension of the water distribution system across the entire "length or width of the lot or parcel to be developed"; and

'WHEREAS, the town has the funds necessary to complete the "loop" by constructing the portion of the system not required to provide service to 302 E. Gallery Row.

'NOW THEREFORE THE TOWN AND THE OWNER agree to provide the following services and bear the following costs as detailed in the engineer's Opinion of Probable Cost, and cost breakdown (copies attached):

'THE OWNER will deposit with the TOWN the sum of \$32,556.33 (Thirty-two thousand five-hundred fifty-six dollars and thirty-three cents), which will cover the following costs as required in the Water Line Extension Policy:

'Surveying, Mapping, Plan Preparation, Construction Review	\$2,450.00
NCDEQ Public Water Supply Section (PWSS) Permit fee	\$ 150.00
Construction of the 6-inch PVC waterline from S. Memorial Ave to the Eastern property line of 302 E. Gallery Row	\$27,983.73
15% Construction Contingency Allowance	<u>\$1,972.60</u>
TOTAL	\$32,556.33

'At the completion of the project, and with acceptance by the TOWN, any unused funds from the OWNER's deposit will be returned to the OWNER.

'The TOWN, upon receipt of the OWNER's deposit, will develop design of the waterline and obtain the necessary permit from NCDEQ PWSS. The OWNER will then bid the project in such a way that the actual costs for each section of the waterline (the OWNER's and the TOWN's) can be clearly determined. The TOWN will fund the portion of the waterline construction necessary to complete the "loop" between SVDT and S Memorial Avenue if the Board of Commissioners approves the funding. The Engineer's Estimate of Probable Costs for this portion of construction is \$21,252.67."

MOTION: Comr. Renée Cahoon made a motion to approve the Gallery Row Waterline Extension agreement as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

BOARD OF COMMISSIONERS AGENDA

Comr. Renée Cahoon – US 158 paving project

Comr. Renée Cahoon expressed her appreciation to the Fred Smith Company who has been doing a good job with the US 158 repaving project to include cleaning up the road shoulders as they move forward.

Comr. Renée Cahoon – Glass recycling

The possibility of grinding glass down to sand and storing in burlap bags – to be used to rebuild the estuarine shoreline - was brought forward by Comr. Renée Cahoon. She suggested it as another sources of material for reconstruction of the shoreline. Town Manager Garman indicated he would include for discussion at the next Managers Luncheon.

Comr. Renée Cahoon – Emergency Operations

Comr. Renée Cahoon asked about making sure new Board members and new employees are aware of the procedures after a storm event. Town Manager Garman agreed and added that a Request For Proposal has gone out for the updating of the Town's Emergency Operations Plan.

Comr. Kevin Brinkley – Cherry, Inc. house on the beach

Comr. Brinkley asked about Ms. Ellen Heatwole's concern during Public Comment re: the Cherry, Inc/Lance Goldner house on the beach at Seagull Drive. It was pointed out that this item is to be discussed during Closed Session. Comr. Brinkley also expressed his appreciation that the Town continues to install stop bars on the roadways.

MAYOR'S AGENDA

Mayor Cahoon – RISE Conference

Mayor Cahoon and Dep Planning Director Kate Jones recently attended the Regions Innovating for Strong Economies and Environment (RISE) Conference in Greenville. The conference was part of the NC Resilient Communities Funding Forum which introduced community leaders, policymakers and other stakeholders to federal, state and nonprofit funding opportunities for resilience-related projects. Some of the State agencies spoke of funds that were available. Town Manager Garman noted that staff is in the process of applying for a State grant for the Old Nags Head Place drainage project.

Mayor Cahoon – Building Inspectors

Mayor Cahoon has asked the League of Municipalities, local homebuilders, and College of the Albemarle re: offering classes re: building inspections. He made the Board aware of things he is doing to find a way for more building inspectors to come to this area.

CLOSED SESSIONS

MOTION: Comr. Brinkley made a motion to enter Closed Session as allowed by GS 143-318.11(a)(3) to confer with the Town Attorney re: matters within attorney/client privilege including the Town vs Cherry, Inc. and the Town vs Budlong litigation as well as pursuant to GS 143-318.11(a)(5) to discuss the potential acquisition of real property located at 2914 S Virginia Dare Trail and 100 E Hollowell Street. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 2:40 p.m.

OPEN SESSION

The Board re-entered Open Session at 3:27 p.m. Attorney Leidy reported that during Closed Session the Board did discuss the items it went into Closed Session to discuss to include real estate property and did give some instruction to the Town Attorney but nothing to be disclosed at this time.

ADJOURNMENT

MOTION: Comr. Brinkley made a motion to recess to a mid-month meeting and a Budget Workshop on Wednesday, March 15th at 9 am in the Board Room. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 3:28 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: **April 5, 2023**

Mayor: _____
Benjamin Cahoon