



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS (VIRTUAL)  
REGULAR MEETING (COVID-19)  
WEDNESDAY, MARCH 3, 2021**

The Nags Head Board of Commissioners met remotely via the Zoom Platform on Wednesday, March 3, 2021 at 9:00 a.m. for a Regular Meeting.

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

Board members Absent: None

Others present: Interim Town Manager Greg L. Sparks; Attorney John Leidy; Andy Garman; Karen Snyder; Amy Miller; Michael Zehner; Phil Webster; Randy Wells; Roberta Thuman; Terry Haugen; Mike Norris; Matthew Swain; Christopher Braddy; and Town Clerk Carolyn F. Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9 am.

**ADOPTION OF AGENDA**

MOTION: Comr. Renée Cahoon made a motion to approve the March 3<sup>rd</sup> agenda with the removal of Consent Agenda item #5 re: FY 2020/2021 Audit Contract. The motion was seconded by Comr. Brinkley. The Town Clerk polled each Board member and the motion passed unanimously.

**RECOGNITION**

Police Chief Phil Webster introduced Police Sergeant Christopher Braddy who was recognized by the Board for 15 years of service.

Fire Chief Randy Wells introduced Fire Captain Matthew Swain who was recognized by the Board for 10 years of service.

**PUBLIC COMMENT**

Mayor Cahoon confirmed with the Town Clerk that no public comments had been received for today's meeting.

Mayor Cahoon also mentioned an email received from former Mayor Bob Muller re: a recent Outer Banks Visitors Bureau meeting about proposed development at the Soundside Event Site. Mayor Cahoon said that he will bring this forward for discussion under his agenda later in the Board meeting; he made former Mayor Muller's email a part of today's record which is attached to and made a part of these minutes as shown in Addendum "A".

## **CONSENT AGENDA**

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #12 to FY 20/21 Budget  
Consideration of Tax Adjustment Report  
Report of Preliminary Tax Delinquent List  
Approval of minutes  
Consideration of FY 2021/2022 Audit Contract  
Consideration of extension of Emergency Paid Sick Leave (EPSL) Policy  
Request for Public Hearing re: UDO text amendments pertaining to outdoor lighting / lighting for signage

**MOTION:** Comr. Renée Cahoon made a motion to approve the Consent Agenda - with the removal of item #5 re: Consideration of FY 2021/2022 Audit Contract for separate discussion. The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled each Board member and the motion passed unanimously.

Budget Adjustment #12 to the FY 20/21 Budget, as approved, is attached to and made a part of these minutes as shown in Addendum "B".

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

The Tax Delinquent Listing summary sheet, as approved, read in part as follows:

"At the February 3<sup>rd</sup> Board of Commissioners meeting, Board approval was received to advertise tax liens in the newspaper on March 10, 2021 in accordance with NCGS 105-369.

'Attached please find the preliminary tax delinquent listing as of February 25, 2021.

'(Property owners have up to Monday, March 8, 2021 to pay and be removed from the tax delinquent listing before the advertisement is posted.)"

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

The Extension of Emergency Paid Sick Leave Policy memo, as approved, read in part as follows:

"The Town of Nags Head is taking proactive steps to protect our employees due to the failure of the United States Congress to extend the Families First Coronavirus Response Act (FFCRA) which expired on December 31, 2020. It is the Town's goal to continue to operate effectively and ensure that all essential services are continuously provided and that employees are safe within the workplace. As such, EPSL had been extended until March 31, 2021. However, with the current vaccination phases, an additional sixty (60) day conditional extension of the EPSL policy is warranted to ensure employees are protected until they can be vaccinated if they so choose.

`The Town of Nags Head will not require employees to receive the vaccination, but highly encourage them to follow CDC guidelines and the direction of healthcare professionals.

`The Town of Nags Head is committed to providing accurate information about the nature and spread of infectious diseases, including symptoms and signs to watch for, as well as required steps to be taken in the event of an illness or outbreak.

`The Town of Nags Head will provide eligible employees with temporary emergency paid sick leave under certain conditions. This policy will become null and void should Congress extend or adopt an Emergency PaidSick Leave Act prior to the expiration date of this policy.

`The Town of Nags Head Emergency Paid Sick Leave Policy

`The Town of Nags Head Emergency Paid Sick Leave (EPSL) is separate from and independent of Family and Medical Leave (FMLA) and is independent of any existing sick leave policies that the Town grants employees in the normal course of business.

`The EPSL allows an eligible employee to qualify for emergency paid sick leave as follows:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by their healthcare provider to self-quarantine because they are infected with or have been exposed to COVID-19 or because they are at high risk of complications from COVID-19.
3. The employee is showing symptoms of COVID-19 and is actively seeking but has not yet received a medical diagnosis;
4. The employee is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by their healthcare provider to self-quarantine for COVID-19 related reasons;
5. The employee is caring for his or her son or daughter because the child's school or childcare facility has been closed or the childcare provider is no longer available because of COVID-19 related reasons;
6. The employee is experiencing substantially similar conditions as specified by the Federal Secretary of Health or Human Services, in consultation with the Federal Secretaries of Labor and Treasury.

`Eligibility

An eligible employee must meet the below criteria:

- Worked for the Town of Nags Head for at least 30 days
- Received the vaccination or is on the list to receive the vaccination
- Received certification from a medical professional stating the employee should not receive the vaccination due to medical reasons and provided certification to Human Resources

`\*Employees who receive the vaccination will be granted 4 hours of vacation time per shot per calendar year.

`\*An employee is ineligible for EPSL and the additional 4 hours of vacation time if he/she verbally declined or has signed a declination form.

\*An employee who has received certification from a medical professional, stating the employee should not receive the vaccination due to medical reasons is eligible for EPSL

#### Duration/Compensation

Employees are eligible for, on a one-time basis, the following:

- Full-Time employees: 80 hours of pay at their regular hourly rate of pay. However, when caring for a family member, for reasons 4, 5 and 6 above, EPSL is paid at two-thirds the employee's regular hourly rate of pay.

- Part-Time employees: The number of hours the employee worked, on average, over the most immediate prior full pay period. However, when caring for a family member, for reasons 4, 5 and 6 above, EPSL is paid at two-thirds the employee's regular hourly rate or pay.

Paid leave under this policy is limited to \$511 per day (or \$5,110 in total) where leave is taken for reasons 1,2, and 3 described above (generally, an employee's own illness or quarantine); and \$200 per day (\$2,000 in total) where leave is taken for reasons 4, 5, or 6 (generally care for others or school closures).

#### General EPSL Rules

- Employees may elect to use EPSL prior to utilizing any accrued paid sick leave under the Town's sick leave policy.

- No leave provided by the Town under any governmental act prior to January 1, 2021, may be credited against the EPSL eligibility.

- Employees are responsible for immediately notifying Human Resources of their intent to utilize this policy, so that the appropriate application paperwork may be given to the employee in a timely manner.

- Employees must successfully complete the necessary application paperwork and return it to Human Resources in a timely manner in order to receive compensation under this policy. Failure to return application paperwork and required supporting documentation in a timely manner may result in a delay in receiving compensation under this policy.

- Employees seeking compensation under this policy found solely to be taking this leave to defraud the Town will be subject to disciplinary action up to and including termination of employment.

- The Town will not retaliate against any employee who requests to take EPSL in accordance with this policy.

- This policy expires on May 31, 2021.

#### Definitions

##### Child Care Provider Defined for the Purposes of EPSL

For the purpose of this policy, the term "childcare provider" is defined as one who provides childcare services on a regular basis and receives compensation for those services, including an 'eligible childcare provider' as defined in Section 658P of the Child Care & Development Block Grant Act of 1990 (42 USC 9858n).

##### School Defined for Purposes of EPSL

The term "school" means an 'elementary school' or 'secondary school' as such terms are defined in Section 8101 of the Elementary & Secondary Education Act of 1965 (20 USC 7801)."

#### The Request for Public Hearing, as approved, read in part as follows:

"The proposed text amendments focus on immediate lighting issues and concerns raised by the Board of Commissioners. Following Staff's presentation on February 3, 2021 of a final report on the review of the Town's lighting regulations, the Board of Commissioners directed Staff to prepare amendments addressing

deficiencies in current regulations with respect to adequate limits on commercial site and signage lighting. Staff has developed amendments pertaining to the lighting of wall signs, the lighting of roof signs, specifications associated with the external illumination of signs, and technical limits on LED lights and parking lot lights; a document comparing existing and proposed code language for applicable sections of the UDO is attached.

'Staff Recommendation/Planning Board Recommendation  
Planning staff recommends that the public hearing be scheduled.

'At their February 16, 2021 meeting the Planning Board voted 6-0 to recommend approval of the proposed text amendments as presented. The Board indicated an interest in exploring additional changes further."

#### Consideration of FY 2021/2022 Audit Contract - removed from Consent Agenda

The agenda summary sheet read in part as follows:

"At the March 3<sup>rd</sup> Board of Commissioners meeting, staff is requesting Board authorization to execute the attached contract with the Town's auditor, Johnson, Mizelle, Straub, & Murphy, LLP for FY 2020/2021. The auditor was approved by the Board for a three-year-period at its February 5, 2020 meeting.

'The engagement letter and audit contract are attached."

Comr. Renée Cahoon pointed out that during last year's audit process some tasks were not completed by the auditor that she felt were required by the contract. She thanked Finance Director Amy Miller for the extra work she had to do in order to get the audit report to Board members.

**MOTION:** Comr. Renée Cahoon made a motion to approve the Audit Contract with a modification to the first sentence of item #12 to read as follows:

"After completing the audit, the Auditor shall submit to the Governing Board a written report of audit "no later than six days before the audit presentation". The motion was seconded by Comr. Brinkley. The Town Clerk polled each Board member and the motion passed unanimously.

#### **PUBLIC HEARINGS**

#### Continued from Feb 3<sup>rd</sup> Board meeting - Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers

The agenda summary sheet read in part as follows:

"A public hearing on the proposed text amendments was held as part of the Board of Commissioners' meeting on February 3, 2021. Following presentation of information, public comments, and discussion, the Board agreed by motion to continue the public hearing to their meeting scheduled for March 3, 2021, and to refer the proposed amendments back to the Planning Board, requesting that the Planning Board consider establishing dimensional requirements more consistent with those formerly applicable in the CR district, as opposed to those applicable in the C-2 district, as well as specific additional findings applicable to these types of conditional use permits. Modifications consistent with the Commissioners' request were presented to the Planning Board at their meeting on February 16, 2021 (please refer to the attached

memorandum to the Planning Board; along with the most recent memorandum provided to the Board of Commissioners), upon which the Board voted to make a recommendation to the Board of Commissioners.

'Separately, and subsequent to the Planning Board's consideration on February 16, the Board of Commissioners discussed nonconforming hotels in the CR zoning district at their meeting on February 17, 2021, directing the initiation of an alternative text amendment to consider allowing hotels within the CR zoning district and scheduling a public hearing for the Board's April 7 meeting; in doing so, the Board indicated the intent to continue the subject hearing to also be held on April 7.

'Staff Recommendation/Planning Board Recommendation

Planning staff recommends that the public hearing be continued to the Board of Commissioners' meeting on April 7, 2021."

MOTION: Comr. Fuller made a motion to continue the Public Hearing - pertaining to UDO text amendments concerning nonconforming hotels and accessory uses in association with preexisting fishing piers - to the April 7<sup>th</sup> Board of Commissioners meeting at 9 am. The motion was seconded by Comr. Brinkley. The Town Clerk polled each Board member and the motion passed unanimously.

## **REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE PLANNING AND DEVELOPMENT DIRECTOR**

### Update from Planning Director

Planning Director Michael Zehner highlighted a few items from his monthly update. His memo 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 3, 2021.

### 'Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for January 2021*. 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:

- Monday, January 4 - Planning & Development Department Staff Meeting
- Tuesday, January 5 - Technical Review Committee Meeting
- Wednesday, January 6 - Board of Commissioners Meeting
- Thursday, January 7 - Town Seasonal Employee Housing Staff Meeting
- Wednesday, January 13 - Arts & Culture Committee Meeting
- Thursday, January 14 - Dare County CRS Group Meeting
- Tuesday, January 19 - Planning Board Meeting
- Wednesday, January 20 - Board of Commissioners Meeting
- Monday, January 25 - Jockey's Ridge Soundside Access Working Group Mtg.
- Wednesday, January 27 - Board of Commissioners Workshop
- Friday, January 29 - APA-NC Legislative Committee Annual Meeting (M. Zehner)

### 'Community Rating System Recertification

Recently the Town underwent a verification and review of its Community Rating System (CRS) program.

The Town voluntarily participates in CRS, which is a program that works in conjunction with the National Flood Insurance Program (NFIP). Participation in NFIP is necessary to provide federally backed flood insurance, grants, loans, and disaster assistance, while CRS is an incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the National Flood Insurance Program (NFIP). In exchange for a community's proactive efforts to reduce flood risk, policyholders in Nags Head receive reduced flood insurance premiums for insured buildings.

Please find attached a letter informing the Town of the results of the cycle review, along with a copy of the draft verification report. Based on these results, the Town's CRS rating (on a scale of 1 to 10, with being the lowest) will improve from a Class 6 to a Class 5. Under the Class 6 rating, property owners received a 20% discount on flood insurance; under the new Class 5 rating, property owners will receive a 25% discount on flood insurance. Staff understands that the rating and rate reduction will go into effect on April 1, 2022. Once effective, the change will result in a total annual savings of approximately \$112,000 on premiums for policies in Nags Head.

#### 'Level 2 Charger

As directed at the Commissioners January 20 meeting, Staff is working to pursue a potential arrangement to allow for the location of a charger for electric vehicles on Town property. Staff is considering procurement requirements and will plan to return to the Board with updates when additional information is available. It is important to note that Staff has determined that modifications to applicable UDO regulations will be necessary; further, Staff has recently been contacted by a private party with an interest in locating an accessory charger on a commercial site, which may require similar modifications to the regulations. It may be helpful for the Town to initiate this text amendment so that it may be considered more holistically.

#### 'Planning Board - Pending Applications and Discussions

The February 16, 2021 meeting of the Planning Board (held remotely) included consideration of text amendments to update the UDO for N.C.G.S. 160D, text amendments to address outdoor lighting and lighting of signage, further consideration of text amendments pertaining to nonconforming hotels and preexisting fishing piers, and discussion of the status of the Planning & Development Departments Work Plan.

'The Board's next meeting is scheduled for March 16, 2021. At this time, the agenda is expected to include consideration of a text amendment to allow hotels in the CR zoning district, a text amendment to allow religious facilities as part of mixed-use developments, a text amendment to update references to the *Low Impact Development and Stormwater Reference Manual*, to replace the *Low Impact Development Solutions to Reduce Stormwater Runoff Manual*, consideration of a preliminary plat for a 2-lot subdivision at 468 W. Villa Dunes Drive, further consideration of text amendments to update the UDO for N.C.G.S. 160D, and further review of the Planning & Development Department's Work Plan (current FY status, and plans for FY21-22). Additionally, there are active pending conditional use permit applications for the property at 205 E. Baltic Street (a.k.a. the Dream Center) and The Soundside Event Site and associated properties; continuances were requested from the February meeting to the March meeting, however, further continuance requests are not unanticipated.

#### 'Additional Updates

- CAMA Land Use Plan Update - Staff participated in a virtual meeting with DCM staff on January 13, 2021 to review the comments returned as part of the State review. DCM staff requested that Town Staff provide a response indicating how we intended to address the comments prior to proceeding to local adoption of the Plan. Staff has a follow-up meeting scheduled with DCM staff for February 25 at 4:00 pm. Staff anticipates being able to bring the Plan forward for local adoption at the Board of Commissioners' April meeting.

- Outdoor Lighting - As included on the Commissioners' consent agenda, Staff has developed lighting amendments as requested by the Board, the result of Staff's presentation of a report on the Town's outdoor lighting regulations at the Commissioners' February 3 meeting. It should be noted, in their review of the amendments, the Planning Board did indicate an interest in wanting to consider additional changes in the future.

Related to these considerations, Town Staff was recently contacted by Dominion Energy regarding plans to convert the Town's streetlights to LED. An initial meeting has been held and follow-up is expected before any broad effort is initiated.

- Town Workforce Housing Study & Plan/RFI - Assigned Town Staff met on January 7, 2021 to discuss further actions related to this item. Initially, Staff anticipated presenting a draft RFI and additional options at the Commissioners' March meeting, but these materials are now expected to be presented at the April meeting.
- Nonconforming Hotels and Fishing Piers - Legacy Establishments/ Structures - This matter is on the Commissioners' March 3, 2021 agenda for public hearing, with a continuance to the Commissioners' April 7 meeting expected to allow for the consideration of an alternative related text amendment at the same time.
- Review of Residential Stormwater Regulations - Staff is awaiting further direction from the Board of Commissioners as to whether the Board wishes to discuss the Town's Residential Stormwater Regulations at a workshop, potentially with the Planning Board.

Staff is proceeding with a text amendment to update the ordinance to reference the recently updated *Low Impact Development and Stormwater Reference Manual*, to replace the *Low Impact Development Solutions to Reduce Stormwater Runoff Manual*.

- Provisions for the Registration of Events Held at Residential Properties - When it is appropriate, Staff would request feedback from the Board of Commissioners as to whether they would like to consider for adoption provisions requiring the registration of events held at residential properties. As noted in the memorandum to the Planning board ([LINK](#)), a more comprehensive review and amendment of Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial-Outdoor Recreational Uses*, may be necessary given issues that have arisen; provisions addressing events at residential properties could be addressed separately now, or be incorporated into this more comprehensive review and amendment.
- Skate Park Renovation - Phase 1 - As previously reported, Staff finalized submission of an application for the National Endowment for the Arts Our Town Grant on August 18, 2020, seeking funds to design and develop plans for a future renovation of the Skate Park; awards under this grant are not expected to be announced until April 2021, with funds available July 1. Additionally, the Town was awarded \$30,000 in grant funds from the Tourism Board.
- Art Masts - As previously noted, the Art Mast project, coordinated with the Arts & Culture Committee, has resulted in four completed art panels. The Arts & Culture Committee continues to discuss the locations for the new Art Masts, and is considering installations beginning at Bonnet Street and ending in the Gallery Row District. Staff is moving forward, with support from the Arts & Culture Committee, with the reproduction of the original artwork on material that is more weather resistance to avoid the damage or destruction to the original pieces. Based on this, it should be possible to install completed panels this spring.



- Decentralized Wastewater Management Plan - With the recent execution of the contract, this project has been initiated. The consultant team held an initial kickoff meeting with Town Staff, and an initial kickoff meeting with the Steering Committee is in the process of being scheduled.
- Dowdy Park Farmer's Market - Staff has begun preparing for the 2021 Season, and will plan to present a recap of the 2020 Season and plans for 2021 at an upcoming Board meeting.
- Estuarine Shoreline Management Plan - The grant award from the NFWF has been finalized. CSI will be pursuing a separate grant costs associated with their anticipated work on the project. Staff will begin developing a scope for the project, to present to the Board at a future meeting, with an RFQ seeking consultant services to follow.
- Grants and Assistance
  - Staff had submitted a request under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan. Staff learned that funding under that event was no longer being considered, but that the request may be considered under funding decisions related to Hurricane Dorian.
  - Staff submitted a Letter of Interest ("LOI") under the Hazard Mitigation Grant Program related to Hurricane Dorian for the acquisition of property, and assisted Fire Chief Wells in the submission of an LOI for replacement of a generator; we have been notified that the generator request has been selected for further consideration. Additionally, Staff has had recent discussions with relevant State staff who are reviewing the request for funds for property acquisition and expects to receive updates on this request in the near future.
  - As noted, Staff submitted a final application for the National Endowment for the Arts Our Town Grant on August 18, 2020 seeking funds to prepare designs for the renovation of the Town's Skate Park; awards under this grant are not expected to be announced until April 2021, with funds available July 1. Additionally, the Town was awarded \$30,000 in grant funds from the Tourism Board.
  - As previously reported, the Town had submitted a letter of support to participate in a joint grant to fund additional tide gauges to be located in Town, as well as other locations in Dare County. The Town was notified on January 3, 2021 that the collaborative request was selected for funding. Town Staff is working with partners to identify suitable and preferred locations; one gauge is expected to be located on Jennette's Pier, with another located along the Sound (likely in the Village at Nags Head or on Little Bridge).
  - As previously noted, the Town was notified that it was successfully awarded \$2,500 in cost share assistance from the Dare Soil and Water Conservation District through the Community Conservation Assistance Program for the development of a rain garden at Town Hall to improve local water quality and serve as a Low Impact Development demonstration and education project. Once this award is finalized, Staff will begin working to refine the plan for this improvement.
  - Staff recently applied for assistance under the Energy Transitions Initiative Partnership Project (ETIPP) Community Technical Assistance Program offered by the U.S. Department of Energy and the National Renewable Energy Laboratory (NREL) for assistance in addressing electric utility resilience for the Town and the Outer Banks, with a focus on renewable energy sources. Related, Staff is also working to submit for a technical assistance opportunity from the North Carolina Chapter of the American Institute of Architects to develop best practices for building design related to renewable energy and energy and water efficiency."

Level 2 Chargers - Mayor Cahoon confirmed that it was Board consensus that staff proceed with plans to discuss text amendments with the Planning Board at their March meeting that would allow the Level 2 Chargers to be deployed at more locations in the community than currently permitted.

Decentralized Wastewater Management/CRS - Mayor Cahoon thanked staff for pursuing the grant opportunity for Decentralized Wastewater Management. In addition, he thanked Director Zehner and his staff for working on the CRS Flood rating - although it is sometimes difficult for citizens to understand, enforcement of these regulations can increase the ratings for residents.

Lighting - Mayor Cahoon would like to see lighting that has been changed to LED lighting and what it can do visually; he asked staff to share some of the locations with this lighting. Comr. Renée Cahoon stated that the light at the end of her driveway was replaced with LED lights if anyone is interested in viewing.

Community Rating Service (CRS) - Comr. Renée Cahoon asked about CRS Activity 340 - Hazard Disclosures. She questioned what disclosures are involved; Planning Director Zehner stated that he would look into this and forward the Board a response.

## **OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS**

From Feb 3<sup>rd</sup> Board meeting - Discussion of Fresh Pond/Area of Environmental Concern (AEC)

Dep Town Manager Andy Garman summarized his memo which read in part as follows:

"At the February 3, 2021 Board of Commissioners meeting/Budget Planning Workshop the Board discussed the Public Works Master Planning effort and the ability to redevelop the town's properties adjacent to the Fresh Pond. As the board is aware, the Fresh Pond is surrounded by a State-designated Area of Environmental Concern (AEC) which was established to protect the Fresh Pond Water Supply watershed. The Fresh Pond AEC regulations control the density of wastewater systems located within 1,200 feet of the Fresh Pond. Since the Towns of Nags Head and Kill Devil Hills no longer utilize Fresh Pond as a drinking water supply, the AEC exists only to preserve the future use of the Fresh Pond as a drinking water supply.

'Staff has collected information on the process to remove or modify the Fresh Pond AEC, including coordinating with Kill Devil Hills, should the board be inclined to explore this as an alternative. Staff is also prepared to review how the existing AEC and other state and local regulations would affect the development or redevelopment of the town's properties as part of the Public Works Master Planning effort.

'Attached is a copy of email correspondence with DCM staff as well as the Fresh Pond AEC regulations from the North Carolina Administrative Code."

Board members agreed with Mr. Garman's approach and felt that what was outlined made a lot of sense.

It was Board consensus to agree with staff's approach to continue to work toward redevelopment of the Town Public Works properties adjacent to Fresh Pond (in accordance with Public Works Master Plan efforts) and to go through the major CAMA process as necessary.

## **NEW BUSINESS**

### Committee Reports

#### Mayor Pro Tem Siers - Jockey's Ridge/Soundside Road Committee

Mayor Pro Tem Siers noted that the Jockey's Ridge/Soundside Road Committee would be meeting soon and a report is to be provided after that time.

### Curb Side Recycling

- Consideration of amendments to Town Code Chapter 30 Solid Waste Management
- Consideration of Franchise ordinance
- Consideration of Trash/Recycle pick-up schedule

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

"At the March 3<sup>rd</sup> Board of Commissioners meeting, staff has prepared two ordinance amendments that are necessary for the establishment of the town's subscription curbside residential recycling program. The first ordinance revises the requirements for trash and recycling carts. The ordinance has been amended to no longer require recycling carts since this would be a voluntary program. The number of required trash carts has been amended to a minimum of two trash carts per bedroom for seasonal rentals. For non-seasonal rentals, the requirement is one trash cart per dwelling unit. One last amendment removes the minimum timeframe that carts can be placed out for service prior to collection. The ordinance would still maintain a requirement that carts are rolled back the day of collection. This ordinance was written this way in prior years recognizing that Saturday is turnover day when carts are rolled out and the earliest they can be collected is Monday.

'The second ordinance amendment, Chapter 30, Article II, establishes a franchise with Tidewater Fibre Corporation (TFC) for the subscription recycling program.

'Staff would ask the board to consider adoption of both of these ordinances.

'Staff will also propose a collection schedule for trash and recycling for board consideration. This would involve providing two days of trash collection town-wide, year-round. The schedule would not change from summer to winter and would be based on two collection routes (see attached map). Staff is proposing Monday/Thursday – Blue Route; Tuesday/Friday – Green Route; Recycling – Monday, town-wide.

'Finally, staff is proposing to collect the existing blue recycling carts and reissue them to property owners at no charge if they participate in the subscription program. Staff will suggest a process to collect the carts accounting for factors to include: logistics, public notification, manpower, and fees paid by property owners for additional recycling carts.

'There will be a separate franchise agreement after Board adoption of the franchise ordinance. A change was sent to Board yesterday after discussion with TFC Recycling - other than that everything else is spelled out in the ordinance."

*Franchise Ordinance*

MOTION: Comr. Brinkley made a motion to adopt the ordinance granting an exclusive franchise to Tidewater Fibre Corp., d/b/a TFC Recycling for the collection and processing of recycling materials from residential units in the Town of Nags Head as presented today. The motion was seconded by Mayor Pro Tem Siers.

Comr. Renée Cahoon confirmed with Dep Manager Garman that the hours of pickup listed are an appropriate amount of time in the offseason - to change from nine to six hours.

CONTINUATION OF MOTION: The Town Clerk polled each Board member and the motion passed unanimously.

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

*Ordinance Amending Chapter 30*

Dep Manager Andy Garman pointed out that one item removed from the ordinance is the requirement to roll carts out to the street no earlier than the day before pick-up.

MOTION: Comr. Brinkley made a motion to adopt the ordinance amending Chapter 30 Solid Waste Management as presented. The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled each Board member and the motion passed unanimously.

The ordinance amending Chapter 30 Solid Waste Management, as adopted, is attached to and made a part of these minutes as shown in Addendum "F".

*Trash/Recycle Pickup Schedule*

Dep Manager Andy Garman presented a proposed schedule.

Facilities Superintendent Mike Norris said that a lot of staff time was involved to come up with this schedule that he feels is the best way to get done what needs to get done.

Mayor Pro Tem Siers said that the schedule looks great and he thanked staff for their efforts. He confirmed with Dep Manager Garman that there will be a period of education for rental companies - both from TFC Recycling and the Town.

Comr. Renée Cahoon appreciated all the work done on the schedule - she noted the Blue Route moving from three to two days per week which may create more chaos for rental companies and renters; she feels that there will be a lot more trash to deal with.

Dep Manager Andy Garman agreed with Comr. Renée Cahoon and stated that there will be a lot of education and the contract service with rollback should help. Facilities Superintendent Mike Norris also noted that there are some areas that they are aware will have issues and they have contingency programs in place.

Dep Manager Andy Garman wants to move forward with routes and schedule and to start the education process so is requesting Board approval.

In response to Comr. Fuller, Facilities Superintendent Norris stated that staff is prepared to take care of individual issues.

Comr. Renée Cahoon confirmed with staff that there was no change to the commercial routes.

MOTION: Comr. Brinkley made a motion to approve the revised sanitation route schedule as presented - aware that contingency plans are in place for areas that have issues. The motion was seconded by Comr. Fuller. The Town Clerk polled each Board member and the motion passed 4 - 1 with Comr. Renée Cahoon casting the NO vote.

#### *Blue recycle carts*

Dep Town Manager Andy Garman said that he would like to be able to tell property owners that whoever purchased the blue carts separately to contact the Town for a refund.

Comr. Fuller asked about "providing" or "giving" the carts to property owners; Mayor Cahoon said that the Town is picking up the carts as the service is no longer being provided.

An associated budget amendment will be brought to the Board for consideration at an upcoming meeting.

#### *Incentive*

Dep Town Manager Andy Garman suggested as an incentive to get property owners to sign up for curbside recycling that the Board consider the Town paying for the first two months if signed up before May 1<sup>st</sup>. There are currently 210 subscribers.

Board members indicated that at this time they were not prepared to offer an incentive for property owners/residents to sign up for the recycling service.

It was Board consensus to move forward with the Curbside Recycling program and to encourage participation.

Dep Town Manager Andy Garman stated that he and staff appreciated the Board's discussion today.

Mayor Cahoon, on behalf of the Board, thanked Dep Manager Garman and staff for all the work that has been done.

#### **RECESS / RECONVENED**

The Board recessed for a 10-minute period and reconvened at 10:35 a.m.

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

Town Attorney John Leidy had nothing new to present.

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

### Interim Town Manager Greg Sparks - Beach Nourishment Project

The agenda summary sheet read in part as follows:

"At its February 3, 2021 meeting, the Board considered the establishment of proposed municipal service districts that would be utilized for future beach erosion control, hurricane protection works, and drainage projects. Four new districts were presented to the Board to include additional areas west of NC 12 and SR 1243. The Board is considering how to distribute the costs for completing these projects proportionate to the benefits received by property owners in geographically distinct areas of town. Staff presented a process and timeline for establishing these new districts. Based on the Board's direction, staff is presenting the Board with the requisite documents needed to initiate this process. Attached for Board review and discussion on March 3<sup>rd</sup> are the following documents pertaining to the creation of Municipal Service Districts:

- Report on establishment of four (4) proposed Municipal Service Districts
- Municipal Service District Timeline
- Existing MSD Map
- Proposed MSD Map
- Notice of Public Hearing on proposed MSD"

### *Report on proposed Municipal Service Districts*

The report on the proposed Municipal Service Districts, as presented, read in part as follows:

"Report on establishment of four (4) proposed Municipal Service Districts for beach erosion control, flood and hurricane protection works, and flood control and drainage projects  
in accordance with GS 160A-535 – 160A-544

'1) The attached map identifies four (4) proposed Municipal Service Districts

District 3 – All properties east of South Croatan Highway between Bonnett Street and Gulfstream Street/South Virginia Dare Trail

District 4 – All properties between Gulfstream Street/South Virginia Dare Trail and the southern town limits

District 5 – All properties east of South Virginia Dare Trail between Eighth Street and Bonnett Street

District 6 – All properties east of South Croatan Highway between Eighth Street and Bonnett Street

The attached map also depicts two (2) existing Municipal Service Districts

Existing Municipal Service Districts, Districts 1 and 2 as listed below, were created in 2011 to levy taxes and generate funds to pay for project expenses associated with beach erosion control efforts and flood and hurricane protection works. These two districts are described as follows:

District 1 – All properties east of South Virginia Dare Trail and South Old Oregon Inlet Road between Bonnett Street and Gulfstream Street

District 2 – All properties east of South Old Oregon Inlet Road between Gulfstream Street and the southern town limits

2) Statement indicating that services are needed in the districts to a demonstrably greater extent than the rest of the town

The Town of Nags Head has been actively engaged in the planning, design and construction of beach erosion control, flood, and hurricane protection works projects for more than 20 years. The town has successfully completed the construction of two major projects related to these purposes. The first project placed 4.6 million cubic yards of beach compatible sand over 10 miles of the town's beaches starting from Bonnett Street and ending at the southern town limits. The total cost of construction was slightly greater than \$36 million. The second project, which was a combined town and FEMA public disaster assistance project, placed 4.0 million cubic yards of sand over 10 miles of the town's beaches. The total cost of this project was \$40 million. In both projects, other expenses included engineering analysis, design, environmental permitting, surveying, monitoring/compliance with the federal Endangered Species Act, vegetative sprigging and sand fencing, extension of ocean outfalls, legal expenses associated with easement acquisition, and other incidental costs. Funds have come from a variety of sources including the Dare County beach nourishment fund, FEMA public disaster assistance funds, and town property taxes. It is anticipated in the future that the town will be required to pay a minimum of 50 percent of the cost of each project. From the 2011 to 2019 project, unit costs (cubic yards) for sand rose greater than 35 percent. The town must assume for planning purposes that most expenses associated with nourishment and other shoreline management activities will continue to rise in future years. As the town continues to plan for future beach erosion control and hurricane protection works projects, refinements to the approach and coordination with other local communities is necessary to capitalize on potential economies of scale that may offset anticipated cost increases.

To date, each project has been funded utilizing property tax revenue from a town-wide tax combined with revenue from two Municipal Service Districts (Districts 1 and 2). The town-wide tax has paid for approximately 25 percent of the town's share of project expenses. The remaining 75 percent of the cost has been borne by property owners in the two Municipal Service Districts.

These projects have been successful in demonstrating clear benefits to the town and its property owners. These benefits include the protection of oceanfront and adjacent properties from erosion and storm damage, protection of infrastructure such as roads, waterlines, septic systems, electrical systems, and beach accesses, and maintaining a recreational beach that is attractive and usable by the public, free of structures and debris. These benefits can be assigned to different parts of the community at different levels, with oceanfront properties having the greatest benefit. Properties adjacent to but not directly on the ocean also benefit from reduced overwash flooding and impacts to infrastructure, as well as increased property values due to their proximity to a well-maintained recreational beach. The entire town also receives a series of benefits, but to a lesser extent than these other areas. The taxing structure currently in place has assigned most of the benefits to the oceanfront and oceanside owners (east of South Virginia Dare Trail and South Old Oregon Inlet Road) with the remainder of the town receiving a reduced but important set of benefits. It has

however, not captured the benefits that have accrued to the areas directly west of South Virginia Dare Trail and South Old Oregon Inlet Road, as there is no current MSD in these areas. The value of these properties is also enhanced by their proximity to the beach. To illustrate, properties in the proposed districts are considered to be in an area of ocean influence by the Dare County Tax Assessor's office and are assessed a higher value due to this fact.

The goal of proposed municipal service districts would be to offset the cost of protecting these properties through future beach erosion control, flood, and hurricane protection works projects. The basis for creating these new districts would be to tie the cost of these project activities at a proportionate and reasonable share to the benefits received by properties in these areas.

It is anticipated that the existing and proposed municipal service districts would be utilized and combined to fund future projects. Property owners east of South Virginia Dare Trail and South Old Oregon Inlet Road would be located within two separate districts and would likely be assessed two MSD tax rates. For example, an oceanfront property owner south of Bonnett Street would be located within districts 1 and 3. Property owners west of South Virginia Dare Trail and South Old Oregon Inlet Road would be within one MSD and therefore assessed one tax rate. The new districts combined with the existing districts would allow for a modified distribution of project costs.

The town has in recent years completed several drainage and flood control projects in the proposed MSD areas. An example of this includes the extension of the ocean outfalls and the redesign and reconstruction of the conveyance system connecting to the Red Drum ocean outfall. The town anticipates continuing to address this work in future years and is therefore including this as an established purpose of the proposed MSDs.

'3) Plan for Providing in the Municipal Service Districts One or More of the Services Listed in 160A-536

Statutory Authority:

Section 160A-536 of the North Carolina General Statutes authorizes the town to create one or more Municipal Service Districts (MSDs) to finance, provide, or maintain for the district(s) beach erosion control and flood and hurricane protection works as well as related drainage projects; the work described herein is planned for the purpose of providing these services in the proposed MSDs. Section 160A-537(a) of the North Carolina General Statutes allows the town to establish, by ordinance, service districts upon a finding that the proposed districts are in a demonstrably greater need than other areas of the town for services authorized by §160A-536. In order to establish an MSD or MSDs, the Board of Commissioners must hold a public hearing on the proposed district(s). Prior to this public hearing, a report must be prepared that includes: 1. a map of the proposed district(s), showing its proposed boundaries; 2. a statement showing the proposed district(s) meet or meets the standards set out in §160A-537(a); and, 3. a plan for providing in the district(s) one or more of the services listed in §160A-536. This report is intended to provide the foregoing three requirements.

The Nags Head Board of Commissioners will hold a public hearing on the proposed Municipal Service Districts on Wednesday, May 5, 2021 at 9:00 a.m. The town will advertise format of the meeting and methods to provide comments when the agenda is published.

The town has entered into a contract with consultants to conduct planning and design work for future beach erosion control and hurricane protection works projects. This work includes the following tasks:

- Establishing data collection protocols for the town's annual maintenance and monitoring plan.



- Establishing a schedule for annual surveys/monitoring.
- Establishing protocols and requirements for conducting assessments/surveys on an as-needed basis pre- and post-storm events.
- Examining the town's existing reports and historical data to understand past project performance.
- Analyzing data and developing/refining models that will become the basis for design criteria and future project assumptions. Adjusting reach boundaries accordingly to consider how the town aggregates areas with similar performance. Establishing protocols for and considering revisions to the town's maintenance and monitoring plan.
- Working with the Town Board of Commissioners and staff to establish preferred strategies for planning, permitting and design of future projects. This would include consideration of timing of future efforts in conjunction with other local projects, permitting strategies and timing, and providing input to assist with the development of the town's funding strategy.
- The town is also working to construct a FEMA beach restoration project related to damages from Hurricane Dorian.

Future work will include design, permitting and construction of future projects as well as ongoing shoreline management initiatives."

#### *Schedule of Public Hearing*

MOTION: Mayor Pro Tem Siers made a motion to schedule the Public Hearing on the proposed Municipal Service Districts for 9 am on Wednesday, May 5, 2021. The motion was seconded by Comr. Brinkley. The Town Clerk polled each Board member and the motion passed unanimously.

Comr. Renée Cahoon asked for clarification on the proposed District 4 description - she noted that S Virginia Dare Trail does go around the Whalebone Catholic Church.

#### Update on Fire Station #21 Repairs

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

"After several modifications to the HVAC system servicing the 2<sup>nd</sup> floor bunk room at fire station 21, this portion of the building continues to experience issues with excessive heat and humidity. Subsequently, an analysis of the building was completed which led to a series of recommendations to address heat and moisture issues as well as the building's thermal envelope. The primary recommendations include re-insulating the 2<sup>nd</sup> floor bunk room with closed cell spray foam insulation, limiting the degree of outside air penetrating into the porch roof soffits, providing conditioned air in the stair tower, closing off and venting the third floor of the watch tower, and limiting the amount of untreated air entering the first-floor mechanical room.

'The board budgeted \$50,000 for this project during its November meeting. Bid received for this work were in excess of budgeted funds. Additional value engineering continues which may lead to cost savings

in the final contract. At this time, staff is requesting a budget amendment for an additional \$55,000 to allow this project to proceed.”

MOTION: Comr. Brinkley made a motion to approve the Fire Station #21 repairs and associated budget amendment as presented. The motion was seconded by Comr. Renée Cahoon. The Town Clerk polled each Board member and the motion passed unanimously.

## **BOARD OF COMMISSIONERS AGENDA**

### Comr. Renée Cahoon - Consideration of GEACC 2021-2022 Annual Budget

Comr. Renée Cahoon reported that the proposed budget for the Government Education Access Channel Committee includes funding for the second full-time position as well as a new video system.

MOTION: Comr. Renée Cahoon made a motion to approve the GEACC 2021-2022 Annual Budget as presented. The motion was seconded by Mayor Pro Tem Siers. The Town Clerk polled each Board member and the motion passed unanimously.

### Mayor Pro Tem Siers - Town Hall roof

Mayor Pro Tem Siers asked that staff look at the Town Hall roof that he noticed several weeks ago had lost some shingles. He would like to see them replaced. Staff is to take care of the roof shingles.

## **MAYOR'S AGENDA**

### Mayor Cahoon - Lunch time walk with Public Works staff

Mayor Cahoon recently walked with Public Works staff during lunch - every Thursday Public Works staff walks during their 30-minute lunch to talk with each other and to do something healthy. He would like to see other departments follow their lead. He emphasized that it's a good way to get to know your employees and it's a healthy thing to do.

### Mayor Cahoon - International online flood conference

Mayor Cahoon and Town Engineer David Ryan, next Thursday, March 11<sup>th</sup> from 9 am to 10:30 am, will be participating in a seminar entitled Adaptation of a Flood as part of an international online conference. He stated that he and Engineer Ryan will be speakers in a breakout session, along with another speaker who is principal advisor for a Netherlands flood control program.

### Mayor Cahoon - Soundside Event Site

Mayor Cahoon mentioned the email recently received by Board members from former Mayor Bob Muller which read in part as follows:

“Subject: Soundside event site

From the Coastland Times report is a recent Event Site Committee meeting:

'Nettles then added that Nags Head officials are not going to offer a yes or no based on any hypothetical uses. Specific details with a reason for them will be needed for an opinion.

'Thank you for not making decisions based on pie in the sky promises. Make sure the people of Nags Head have a chance to comment on any proposed development and changes. And tell Lee Nettles that 35 feet height limit is an important value with a long history that is valued by the Town. Bob Muller"

Mayor Cahoon stated that he and Comr. Fuller were in a meeting last week at the Visitors Bureau re: the Soundside Event Site. Discussion involved the kind and size of facility the Visitors Bureau may want to develop on that site. He and Comr. Fuller were resisting speculative discussion about what size facility the Town may permit - he wants to make sure the Visitors Bureau doesn't spend time and resources on a building that goes beyond the Town's limit. He would like to inform the Visitors Bureau of this - if the Board concurs.

It was Board consensus to agree with Mayor Cahoon to inform the Visitors Bureau, currently in discussions with various vendors concerning a facility/building for the Soundside Event site, that the Town's ordinance speaks for itself re: building size and height.

Mayor Cahoon - Resolution to rescind Executive Order 10052 re: Suspension of J-1 Visas

Mayor Cahoon noted that rescission of Executive Order 10052 re: suspension of J-1 Visas was originally brought to his attention by Comr. Renée Cahoon.

MOTION: Comr. Brinkley made a motion to adopt the resolution to rescind Executive Order 10052 concerning the suspension of J-1 Visas as presented. The motion was seconded by Comr. Renée Cahoon. The Town Clerk polled each Board member and the motion passed unanimously.

Mayor Cahoon directed the Town Clerk to affix his electronic signature to the resolution for faster processing.

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

"WHEREAS the Town of Nags Head, its residents, local businesses, and tourists depend on and value the students who participate in the J-1 Visa Exchange Visitor Programs - Summer Work Travel Programs to meet the demands of visiting tourists during the summer season; and

'WHEREAS the Presidential Proclamation issued on June 22, 2020, suspended the Summer Work Travel Programs through December 31, 2020, with the possibility of extension; and

'WHEREAS on December 31, 2020 President Trump did extend the Proclamation through March 31, 2021; and

'WHEREAS during the 2019 season there were approximately 400 Summer Work Travel participants employed within the Town of Nags Head, while during the 2020 season no more than 40 were employed within the Town; and

'WHEREAS due to the suspension and loss of Summer Work Travel Program participants, Summer Work Travel Host Employers have needed to reduce services and operating hours, close off portions of their facilities, and turn away customers; and

'WHEREAS Town of Nags Head Ocean Rescue, which has relied on Summer Work Travel Program participants in seasons' past, has also been impacted, having approximately 20 fewer lifeguards, resulting in the reduction of lifeguard stands from 15 to 10 and negatively impacting this critical service; and

'WHEREAS a recent survey of Summer Work Travel Host Employers found the average employer laid off or furloughed 13 employees each, and lost on average \$250,000 in revenues, because of the loss of Summer Work Travel participants; and

'WHEREAS the Town of Nags Head is committed to ensuring American employees are protected during these difficult economic times, but that not nearly enough Americans are applying for the seasonal jobs offered in Nags Head, and certainly not enough to replace the lost Summer Work Travel Program participants; and

'WHEREAS waiting for the Proclamation to expire on March 31, 2021 will put the summer 2021 program in jeopardy, denying businesses adequate time to plan for seasonal staffing, and jeopardizing the Town of Nags Head's potential for a fully staffed ocean rescue division.

'NOW, THEREFORE, BE IT RESOLVED that the Town of Nags Head determines the immediate resumption of the Summer Work Travel Program is necessary to the immediate and continuing economic recovery of businesses within the Town of Nags Head, wholeheartedly endorses the State Department's Summer Work Travel program, and:

1. Petitions the White House and Biden Administration to immediately rescind Executive Order 10052;
2. Asks the federal Congressional delegation for the Town of Nags Head to engage the White House in support of this rescission;
3. Directs the Clerk of the Town to send a copy of this Resolution to the President and all federal Congressional Members representing Nags Head;
4. Encourages all Town residents to participate in events and initiatives that will raise the overall awareness of the need for the resumption of the Summer Work Travel Program and to engage their Congressional Representatives asking them to support this program as well; and
5. Supports the Outer Banks International Student Outreach Program (ISOP) and Summer Work Travel Program sponsors as they help our Town resume this program."

## **ADJOURNMENT**

**MOTION:** Comr. Brinkley made a motion to recess to Wednesday, March 10<sup>th</sup> at 9 am in the south wing of the Fire Station. The motion was seconded by Comr. Renée Cahoon. The Town Clerk polled each Board member and the motion passed unanimously. The time was 11:15 a.m.

Date Approved:           **April 7, 2021**          

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Carolyn F. Morris, Town Clerk

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