



**MINUTES  
TOWN OF NAGS HEAD  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
WEDNESDAY, JULY 3, 2019**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, July 3, 2019 at 9:00 a.m.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Susie Walters; Comr. Renée Cahoon; and Comr. Webb Fuller

Board members Absent: Comr. Michael Siers

Others present: Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; Phil Webster; Perry Hale; Shane Hite; Michael Zehner; David Ryan; Amy Miller; Brie Floyd; Roberta Thuman; Brandon Bostwick; Tanner Mann; Haiqing Kaczkowski (HK) Linda Harper; Dick Harper; Jim Morris; Joe Maione; Brian Rubino; Bryan Wilson; Richard Workman; Kent Wiles; Ralph Buxton; and Town Clerk Carolyn Morris

**CALL TO ORDER**

Mayor Cahoon called the meeting to order at 9:00 a.m. A moment of silent meditation was followed by the Pledge of Allegiance.

As he had previously informed Mayor Cahoon, Comr. Siers was not in attendance. Mayor Cahoon also noted that Attorney Leidy was currently held up by an accident in the northern part of Town; Attorney Leidy arrived at 9:05 a.m.

**ADOPTION OF AGENDA**

**MOTION:** Comr. Renée Cahoon made a motion to approve today's agenda with the addition of a Public Safety Career Progression discussion. The motion was seconded by Comr. Fuller which passed 4 – 0 (Comr. Siers was not present.).

Mayor Cahoon reported that an update on Beach Nourishment will follow Public Comment. He also pointed out that if anyone present wished to speak concerning Accessory Dwelling Units that a Public Hearing will be scheduled at a future date – and if interested to speak today during Public Comment on that issue.

**RECOGNITION**

Police Chief Phil Webster introduced Detective Brandon Bostwick who was recognized by the Board for his recent Advanced Law Enforcement Certification achievement.

Dep Fire Chief Shane Hite introduced Firefighter/EMT Tanner Mann who was recognized by the Board for having recently successfully completed the National Fire Academy Managing Officer Program.

2019 National Night Out

Police Chief Phil Webster presented information on the upcoming National Night Out 2019 scheduled for Tuesday, August 6, 2019 at the Ark Church. He invited everyone to come and enjoy the event.

Mayor Cahoon read the Proclamation as follows:

“WHEREAS, the National Association of Town Watch is sponsoring a unique, nationwide crime, drug and violence prevention program on Tuesday, August 6th, 2019 called “National Night Out”; AND

‘WHEREAS, the “36<sup>th</sup> Annual National Night Out” provides a unique opportunity for the Town of Nags Head to join forces with thousands of other communities across the country in promoting cooperative, police-community crime prevention efforts; AND

‘WHEREAS, the Nags Head Community Watch Association plays a vital role in assisting the Nags Head Police Department through joint crime, drug and violence prevention efforts in the Town of Nags Head and is supporting “National Night Out 2019” locally; AND

‘WHEREAS, it is essential that all citizens of the Town of Nags Head be aware of the importance of crime programs and the impact that their participation can have on reducing crime, drug and violence in the Town of Nags Head; AND

‘WHEREAS, police-community partnerships, neighborhood safety, awareness and cooperation are important themes of the “National Night Out” program.

‘THEREFORE, I do hereby call upon all citizens of the Town of Nags Head to join the Nags Head Community Watch Association and the National Association of Town Watch in supporting the 36<sup>th</sup> Annual National Night Out on August 6th, 2019.

‘FURTHER, Let it be resolved that I, Ben Cahoon, do hereby proclaim Tuesday, August 6th, 2019 as “National Night Out” in the Town of Nags Head, Dare County, North Carolina.”

Presentation – International Women’s Fishing Association

– Kay Rybovich Trophy – Linda Harper

Comr. Renée Cahoon introduced Linda Harper who was recently awarded the Kay Rybovich Trophy by the International Women’s Fishing Association. The award presented to Ms. Harper was for catching the most species of fish during one year among the membership. She caught over 56 species of fish over the past year.

Mayor Cahoon stated that the award speaks to the appreciation of sport fishing in Nags Head and the Outer Banks and congratulated Ms. Harper on her accomplishment.

## **PUBLIC COMMENT**

### PUBLIC COMMENT – JOE MAIONE

Joe Maione, Southridge Subdivision resident; he commended all Town staff involved with the recent construction of his house; he spoke of the Saturday-to-Saturday renters across the street – they put their trash carts out on Saturday when they are leaving which are not picked up until Tuesday; this creates very hazardous conditions.

### PUBLIC COMMENT – KENT WILES

Kent Wiles – he owns 6403 and 6405 S Virginia Dare Trail; he recently spoke with an attorney concerning 7407 S Virginia Dare Trail which is owned by SAGA and rented by Kees Vacations; he is a builder in the Chapel Hill area; his issues are concerning the nine-bedroom rental house which is marketed as an event house that is promoted to hold 150 people; safety is an issue and the house is actually a nuisance; it was built as a residential house but it is really a commercial house; he feels this issue will get bigger as time goes on; a nuisance occurs when events occur – noise is “ungodly” and well above the 60 decibels that Police measured; he would like the Board to have a discussion of what to do with event homes like this that are built as a residential structure – something similar to the ordinance Town of Southern Shores will be considering; he would like the Board to have a discussion and a plan.

There being no one else present who wished to speak, Attorney Leidy closed Public Comment at 9:30 a.m.

### UPDATE ON BEACH RENOURISHMENT – Haiqing Kaczkowski (HK) FROM CS&E

Coastal Science & Engineering (CS&E) Project Engineer Haiqing Kaczkowski (HK) reported on the progress of the Beach Renourishment Project. The project started on May 1, 2019 and as of yesterday, July 2, 2019, 65% of the sand volume has been placed on the beach – completed by two dredges. The project is to be completed by the Liberty Island dredge – expected to be completed by the end of August 2019.

Progress Map - Ms. Kaczkowski reported that today the dredge is 800’ north of Town Hall heading north. She displayed several houses before and after renourishment. She also noted the Town’s Sandfencing and Sprigging program will take place after the project is completed and will assist with sand compaction. Dune adjustment will take from 12 – 24 months.

Ms. Kaczknowski’s slides are 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 #1 to FY 19/20 Budget  
Consideration of Tax Adjustment Report  
Approval of minutes

Consideration of resolution to adopt updated *North Carolina Local Government Records Retention Schedule*  
Consideration of reimbursement resolution for financing vehicles and equipment

Consideration of reimbursement resolution for financing pedestrian path construction, Dowdy Park lighting and decking, and the Public Works Fuel Tank Conversion

Consideration of Debris Removal Monitoring Service  
Consideration of Resolution of Approval for Local Water Supply Plan  
Approval of contract with Shoshin Technologies for IT Services

Request for Public Hearing to consider Conditional Use/Site Plan Amendment to convert a vacant commercial structure into an Indoor Entertainment Facility, OBX-Scape Rooms.

Request for Public Hearing to consider adoption of the proposed Unified Development Ordinance (UDO)

**MOTION:** Mayor Pro Tem Walters made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Fuller which passed 4 – 0 (Comr. Siers was not present.).

Budget Adjustment #1, 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 minutes of the following Board of Commissioners meetings/workshops, as approved, are on file in the Town Clerk's office and provided online on the Town's web site:

June 5, 2019 Regular Meeting minutes  
June 19, 2019 Unified Development Ordinance (UDO) Workshop

The memo re: the resolution to adopt updated NC Local Government Records Retention Schedule, as approved, read in part as follows:

"Attached please find an updated Records Retention and Disposition Schedule – General Records Schedule For Local Government Agencies. This document supersedes the previously-adopted "Municipal" Retention Schedule, as amended. The State Archives is recommending adoption of the schedule via the attached resolution.

'The listing of some of the records, such as Planning, Police, and Fire records, are being reviewed/updated by the State and will be updated/provided at a later date – the 2012 schedule is still in effect for those records – this is noted in the attached resolution.

'All Department Heads have been provided a copy for review and have verified their specific "when reference value ends" dates."

The Records Retention and Disposition Schedule Resolution of Approval, as adopted, read in part as follows:

"Resolution to: 1) Adopt the 2019 General Records Schedule For Local Government Agencies; 2) Reaffirm that portions of the previously adopted 2012 Schedule are still in effect; and 3) Adopt the Town of Nags Head's Records Retention and Disposition Schedule For Municipalities Concerning When Administrative/Reference Value Ends

'WHEREAS, the North Carolina Department of Natural and Cultural Resources, Division of Archives and Records, Government Records Section has published the General Records Schedule for Local Government Agencies, which supersedes parts of the Municipal Retention and Disposition Schedule which it is charged with issuing; AND

'WHEREAS, G.S. §121-5 and G.S. §132-3 require a municipality to approve the schedule in order to conduct routine disposal of records which must otherwise be retained without specific permission for disposal by the Division of Archives and Records; AND

'WHEREAS, the document attached to this Resolution is the form acknowledging the approval of the schedule as required by the Division of Archives and Records, Government Records Section; AND

'WHEREAS, to reduce the burden and costs of record retention and to maintain efficient Town records management, the Town Board finds and determines that this Resolution should be adopted.

'NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD THAT: The Town of Nags Head 1) Adopts the General Records Schedule for Local Government Agencies; 2) Reaffirms that Portions of the Previously Adopted 2012 Schedule Are Still in Effect; and 3) Adopts the Town of Nags Head's Records Retention and Disposition Schedule for Municipalities Concerning When Administrative/Reference Value Ends."

The resolution of reimbursement for financing vehicles and equipment, as adopted, read in part as follows:

"WHEREAS, The Town Manager and the Finance Director have described to the Board of Commissioners the desirability of adopting a resolution, as provided under federal tax law, to facilitate the Town's use of financing proceeds to restore Town funds when the Town makes capital expenditures prior to closing on tax exempt financing.

'BE IT HEREBY RESOLVED by the Board of Commissioners of the Town of Nags Head, North Carolina as follows:

'Section 1. The project is the financing of the acquisition of vehicles and equipment as identified in the fiscal year 2019-2020 budget.

'Section 2. The project is to be financed. The currently expected type of financing (which is subject to change) is an installment purchase contract. The currently expected maximum amount to be contracted for the project is \$1,100,000.

'Section 3. The Town presently intends, and reasonably expects, to reimburse itself for the original expenditures incurred and paid by the Town from the General Fund and Water Fund within 60 days of adoption of this Resolution from a portion of the financing proceeds.

'Section 4. This Resolution shall become effective immediately upon the date of its adoption."

The resolution of reimbursement for financing pedestrian path construction, Dowdy Park lighting and decking, and the Public Works Fuel Tank Conversion, as adopted, read in part as follows:

"WHEREAS, The Town Manager and the Finance Director have described to the Board of Commissioners the desirability of adopting a resolution, as provided under federal tax law, to facilitate the Town's use of financing proceeds to restore Town funds when the Town makes capital expenditures prior to closing on tax exempt financing.

'BE IT HEREBY RESOLVED by the Board of Commissioners of the Town of Nags Head, North Carolina as follows:

'Section 1. The project is the financing of the sidewalk pedestrian path, fuel tank conversion, and improvements at Dowdy Park as identified in the fiscal year 2019-2020 budget.

'Section 2. The project is to be financed. The currently expected type of financing (which is subject to change) is an installment purchase contract. The currently expected maximum amount to be contracted for the project is \$1,470,000.

'Section 3. The Town presently intends, and reasonably expects, to reimburse itself for the original expenditures incurred and paid by the Town from the General Fund and Water Fund within 60 days of adoption of this Resolution from a portion of the financing proceeds.

'Section 4. This Resolution shall become effective immediately upon the date of its adoption."

The memo re: Debris removal monitoring service, as approved, read in part as follows:

"On May 9, 2019 the Town issued Requests for Proposals (RFP's) to provide post-storm debris removal monitoring services for the period July 1, 2019 through June 30, 2020. Advertisements for RFP's were placed on the Town of Nags Head website. Proposals for Debris Monitoring were received from three firms. The firms submitting proposals for debris monitoring included Tetra Tech (Maitland, Florida), SEPI (Pinetown, NC), and Vaughn and Melton, (New Bern, NC). The first firm is a large, national firm. The second is a medium sized North Carolina firm, and the last a medium to large sized regional firm.

'The Debris Removal Monitoring Services Request for Proposals utilized a Category One Debris Generating Event as a baseline to estimate the necessary monitoring services required and associative debris monitoring positions. Hourly unit prices were requested based upon two separate documentation approaches; paper-based ticketing and automated ticketing.

'A Debris Monitoring evaluation was conducted utilizing a cost analysis matrix for those items listed on the bid form, by vendor, for the identified debris monitoring positions and associative hourly rates with an aggregate of the total unit prices computed for the two separate methods of document tracking. A comparative analysis of the submitted hourly prices indicates that **Tetra Tech, Inc.**, of Maitland, FL, as providing the most advantageous competitive hourly rates.

'Tetra Tech, Inc. has significant experience in dealing with many types of natural disasters throughout the US, with recently provided debris monitoring services in the City of New Bern, NC, the Town of North Topsail Beach, Craven County, NC as well as towns in South Carolina and Florida. Tetra Tech have supported clients throughout North Carolina for over a decade, performing more than 30 disaster debris, grant and emergency management projects. Each of the references checked for Tetra Tech provided very positive reviews.

'Staff recommends Tetra-Tech as the lowest responsive, responsible bidder. Board approval on this request will authorize the Town Manager to execute an agreement with Tetra Tech, Inc. for FY period 19/20. This agreement is a pre-positioned agreement for debris monitoring services that may activate in the case of a storm generating event. It should be noted that this agreement will not become "active" until a Notice to Proceed is issued."

The Resolution of Approval for the Local Water Supply Plan, as adopted, read in part as follows:

"WHEREAS, North Carolina General Statute 143-355 (l) requires that each unit of local government that provides public water service or that plans to provide public water service and each large community water

system shall, either individually or together with other units of local government and large community water systems, prepare and submit a Local Water Supply Plan; AND

'WHEREAS, as required by the statute and in the interests of sound local planning, a Local Water Supply Plan for the Town of Nags Head has been developed and submitted to the Nags Head Board of Commissioners for approval; AND

'WHEREAS, the Nags Head Board of Commissioners finds that the Local Water Supply Plan is in accordance with the provisions of North Carolina General Statute 143-355 (l) and that it will provide appropriate guidance for the future management of water supplies for the Town of Nags Head as well as useful information to the Department of Environmental Quality for the development of a state water supply plan as required by statute.

'NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of the Town of Nags Head that the Local Water Supply Plan entitled: the 2018 Local Water Supply Plan dated May 16, 2019 is hereby approved and shall be submitted to the Department of Environmental Quality, Division of Water Resources; AND

'BE IT FURTHER RESOLVED, that the Nags Head Board of Commissioners intends that this plan shall be revised to reflect changes in relevant data and projections at least once every five years or as otherwise requested by the Department, in accordance with the statute and sound planning practice."

The agenda summary sheet re: the contract with Shoshin Technologies for IT Services, as approved, read in part as follows:

"The current contract with Shoshin Technologies for Information Technology (IT) services expires June 30, 2019.

'Attached please find the proposed contract with Shoshin Technologies extending the current IT service through June 30, 2022."

Request for Public Hearing re: OBX-scape Rooms, as approved for Public Hearing, read in part as follows:

"Ray and Christina Jamieson have submitted a Conditional Use/Site Plan Amendment request to convert a former medical office into an Indoor Recreation Facility (OB-Xscape Rooms), a conditional use, as well as site improvements to accommodate the new use, including additional parking spaces and stormwater management measures. As part of this request, the applicant is seeking a parking waiver pursuant to Town Code Section 48-165, *Alternative and reduced parking commercial parking*, which also requires the issuance of a Conditional Use Permit. The subject property is located at 4125 S. Croatan Highway and is zoned C-2, General Commercial.

'Planning Board/Staff Recommendation

Planning Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies. However, Staff's final recommendation to the Board of Commissioners is pending final review and approval of the stormwater management and traffic circulation measures as noted by the Town Engineer.

'At their June 18, 2019 meeting the Planning Board voted unanimously to recommend approval of the Conditional Use/Site Plan Amendment, including the requested parking waiver, contingent upon approval of stormwater management and traffic circulation concerns noted by the Town Engineer prior to consideration by the Board of Commissioners."

Request for Public Hearing re: Unified Development Ordinance, as approved for Public Hearing, read in part as follows:

'This agenda item requests the scheduling of the public hearing on the proposed UDO, which includes the repeal/deletion of existing chapters of the Town Code which are included in the UDO; the public hearing would be scheduled for the Board's meeting on August 7, 2019.

'Planning Board/Staff Recommendation

Staff recommends that the Board schedule the public hearing on the proposed UDO for the meeting on August 7, 2019.

'At their meeting on June 18, 2019, the Planning Board unanimously (7-0) recommended adoption of the UDO as presented."

## **PUBLIC HEARINGS**

Public Hearing to consider conditional use/site plan amendment submitted by Brian Rubino of Quible & Associates, P.C. on behalf of Millers Waterfront Restaurant for the construction of a platform, finger piers and associated mooring pilings to accommodate four transient boat slips; Property is zoned C-2, General Commercial and is included within the Commercial Outdoor Recreation Overlay District - located at 6916 S. Croatan Highway

Town Attorney Leidy introduced the Public Hearing to consider a conditional use/site plan amendment on behalf of Millers Waterfront Restaurant for construction of a platform, finger piers and associated mooring pilings to accommodate four transient boat slips.

Attorney Leidy explained that the Board sits as a quasi-judicial body and must make its decision: 1) based on competent material and substantial evidence - and those presenting must be sworn in 2) based on information presented, and 3) Board members must be recused if there is basis for believing that they would not be able to be an impartial decision maker - to include a commissioner having a fixed opinion not susceptible to change. He verified that Board members had no potential conflict and nothing to disclose at this time. The time was 9:46 a.m.

Those presenting evidence and sworn in by Town Clerk Carolyn Morris were: Dep Planning Director Kelly Wyatt; Brian Rubino of Quible and Associates; Bryan Wilson, owner of Miller's Restaurant; and Richard Workman.

The Public Hearing was advertised in the *Coastland Times* on Wednesday, June 19, 2019 and on Wednesday, June 26, 2019 as required by law.

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

"GENERAL INFORMATION

Applicant: Brian Rubino of Quible & Associates, P.C. on behalf of Millers Waterfront Restaurant.

Application Request: Conditional Use/Site Plan Amendment.

Purpose: Addition to the existing pier, consisting of a platform, finger piers, and associated mooring pilings to accommodate four (4) transient boat slips.



'Property Location: 6916 S. Croatan Highway, Nags Head.

'Existing Land Use: Restaurant.

'Zoning Classification of Property: C-2, General Commercial District; Commercial Outdoor Recreation Overlay District.

'Zoning Classification of Surrounding Properties: Properties to the north and south of this site are zoned C-2, General Commercial, and are also located within the Commercial Outdoor Recreation Overlay District (Harvey Tract Sound Access and Kitty Hawk Water Sports). Properties east of this site and directly across US 158 are zoned C-2, General Commercial (Island Limousine and vacant). The property adjoins the Roanoke Sound to the west.

'Flood Hazard Zone of Property: AE 10; the pier structure associated with this application is not subject to flood protection regulations.

'Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as Waterfront Commercial Recreation. It is also within the Waterfront Recreation Activity Node. Below is the description of this classification:

*'The Waterfront Commercial Recreational designation recognizes and capitalizes on the unique natural resources and viewsheds in this area. This designation is intended to accommodate high quality development with a focus on small, low scale hotel type development and regional point of community gatherings and events. Other appropriate uses include multi-family, commercial, retail, restaurant (walk-up/sit down), personal service establishments, indoor entertainment, indoor/outdoor recreation, water dependent uses, gallery/museum, institutional uses, and gymnasium/fitness studio. Planned, mixed use development with an emphasis on pedestrian connectivity is highly desirable. Development should be oriented not only to the road but the water as well. Additionally, access to the water and protection of viewsheds is important.*

*'The Waterfront Recreational Commercial Recreational Activity Node is a focal point of activity and higher intensity development in the town. Areas in this designation are anticipated to have future concentration of uses that serve as destinations or hubs of activity for the town. This designation is intended for a higher intensity of commercial mixed use, hotel, and recreation, shopping, and dining. Compatibility among the mix of uses with the areas natural resources and scenic views should be maintained through development patterns that preserve open space, natural resources, and scenic viewsheds.*

'When determining if the proposal is consistent with the Land Use designation staff considered the following excerpts and policies as being relevant:

- Page 3-16, LU-7 reads, "Review regulations in the Ocean and Sound Waters Overlay District and the Commercial Outdoor Recreation Overlay District to ensure proper use of the ocean and sound waters, including islands that adjoin the town, to ensure the continued scenic, conservation and recreational value that these waters provide to the town, its residents, visitors and the surrounding area."

LU-7a: "Review regulations for commercial boating and personal watercraft to maintain compatibility with adjacent uses and the estuarine environment."

- Also, on page 3-16, LU-8 reads "Ensure proposals for future commercial uses in the sound are not detrimental to the marsh, sound bottom, and submerged aquatic vegetation. Compatible sound uses will not increase turbidity in the water and will maintain overall water quality. The town will not support upland excavations for the development of canals or uses that will destroy significant areas of wetlands or marsh."

- Page 3-45 "Just beyond the marshes, submerged aquatic vegetation, which thrives on the sound bottom, provides important habitat and spawning areas for fish, crabs, and other marine life."
- Page 3-47 "The goal of the town is to maintain and improve estuarine water quality and natural estuarine functions while providing water-based recreation opportunities that do not compromise water quality goals."
- Page 3-48 Natural Resources and Resiliency Policies NR-1, NR-2 and NR-4 speak to the protection of estuarine shorelines.

Staff finds this proposal to be consistent with land use policies, placing reliance on the findings of the issued CAMA Major Permit with respect to water depths of approximately 3'-5" at the pier, no observable SAV's, and no designation of primary nursery habitat in this area. Related, Staff finds that the proposal is consistent with policies supporting access to the water and water-based recreation opportunities.

#### SPECIFIC INFORMATION

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##### Applicable Zoning Regulations:

- Use Regulations: A docking facility as an accessory use to a restaurant is allowed as a Conditional Use within the C-2, General Commercial, Zoning District provided certain conditions are met, as follows, with staff comments in italics:
  - a. There shall not be more than one docking facility per lot. *There is only one docking facility proposed on this lot.*
  - b. Docking facilities may not provide any of the following services: permanent docking spaces, overnight mooring, dry storage, fueling facilities, haul-out facilities, repair services, or any other water dependent commercial-outdoor recreational use. *The applicant has not proposed any of the services delineated as prohibited.*
  - c. Boat slips shall not be utilized to satisfy the required parking for the principal use. *The applicant has not requested the four (4) slips be considered as required parking, nor is there any increase in customer service area being proposed to necessitate additional parking.*
  - d. Piers and slips shall be limited to 200 feet measured perpendicular to the shoreline for the normal water line. This distance is not inclusive of the platform at the end of the facility. *The total length of the pier is 187 feet and therefore compliant.*
  - e. There shall be 30-inches of water depth relative to the normal water level adjacent to all boat slips and boat access areas. *Compliant water depth determined with issuance of CAMA Major Permit 109-16. Note that this CAMA Major Permit expires on December 31, 2019.*
  - f. The docking facility shall include a designated No Wake Zone that shall be extended 600 feet measured perpendicular to the shoreline for the normal water line. There shall be a No Wake Zone sign conspicuously posted on the facility. *The applicant has provided an attachment showing the extent of the 600 foot No Wake Zone and areas upon the facility where No Wake signage will be provided. The applicant has not provided information on the appearance or dimensions of the proposed signs but has noted that the signs will be custom made to include language specifying that users of the facility must maintain No Wake Speed for 600 ft.*
- Lot Coverage: Lot coverage will be unaffected by this request.
- Height: Structural height will be unaffected by this request.
- Architecture Design Standards: No architectural design standards apply to this request.

- Setbacks: The five (5) foot accessory structure setback is not affected by the linear extension of the existing pier.
- Parking: Pursuant to Town Code Section 48-407(c)(14)(c) the proposed four (4) boat slips are not proposed as, or intended to satisfy, the required parking for the restaurant use. Additionally, there is no increase in customer service area being proposed that would necessitate any additional parking.
- Buffering/Landscaping: There is no buffering or landscaping required as part of this request.
- Lighting: The applicant has indicated that low level security lighting will be placed on every other piling to match what is present on the existing pier (photos attached). If a light audit is required, this will be conducted prior to the issuance of the Certificate of Occupancy.
- Signage: No signage beyond the "No Wake Zone" signage has been requested or approved at this time. A total of two (2) "No Wake Zone" signs on both ends of the platform facing westward are proposed to meet the requirements of Town Code Section 48-407(c)(14)(f).

Water and Sewage Disposal: No review or approval required by the Dare County Health Department for this request.

Stormwater Management and Traffic Circulation: The proposed scope of work does not necessitate additional stormwater management measures or traffic circulation considerations.

Fire: The Project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

Public Works: The Public Works Department has reviewed and approved proposed plan.

CAMA: A CAMA Major Permit is required for this proposed use. CAMA Major Permit 109-16 has been issued and is attached for review. Please note that the CAMA Major Permit cites the approval of 9 boat slips. This Conditional Use/Site Plan Amendment would permit a maximum of four (4) boat slips.

#### ANALYSIS

Staff finds that the proposal is consistent with the applicable use and development standards, based in part on the findings associated with the issued CAMA Major Permit 109-16, as well as relevant land use policies supporting access to the water and water-based recreation opportunities.

With regard to the affirmative findings of fact for conditional use permits, pursuant to Section 48-525, Staff is of the opinion that:

1. The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.
2. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
3. The use as proposed will not overburden the firefighting capabilities and the municipal water supply capacity of the Town.

STAFF RECOMMENDATION

Staff recommends approval of the Conditional Use/Site Plan Amendment application as presented, with a condition requiring compliance of the use and site with those materials and plans submitted as part of the application.

PLANNING BOARD RECOMMENDATION

At their May 21, 2019 meeting the Planning Board voted unanimously to recommend approval of the Conditional Use/Site Plan Amendment as presented."

Comr. Fuller questioned Ms. Kelly about the no-wake zone signage to be approved by the State.

Brian Rubino, Quible and Associates, representing the applicant, agreed with the six conditions and issues outlined by Ms. Wyatt.

Richard Workman lives in Nags Head five months per year; he is concerned about the Harvey access and those that use it for windsurfing, kayaking, etc. The Harvey site access is unique and he is concerned about public safety – such as for small children in the water that may not be seen by boaters; non-motorized equipment; with boats coming into and out of the site.

Comr. Fuller asked about catamarans sitting at the site – Mr. Workman stated one of the catamarans was his; the facility is used by paddle-boarders and others a lot and he is concerned about the safety issue.

Mr. Rubino responded stating that a perpendicular platform with four slips will be constructed – on the outside - which will minimize the boats entering the area where non-motorized craft may be located; it would essentially be a 15' buffer (a 15' corridor); he stated that CAMA recognizes both sides of the site.

Comr. Renée Cahoon confirmed with Mr. Rubino that he can get a letter from CAMA acknowledging the platform as it is not on the site plan.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 10:04 a.m.

**MOTION:** Comr. Fuller made a motion to approve the conditional use/site plan amendment as submitted for Millers Waterfront Restaurant by making the following required findings of fact:

- 1) The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.
- 2) The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
- 3) The use as proposed will not overburden the firefighting capabilities and the municipal water supply capacity of the Town.

And further that the Board is only approving four (4) boat slips, and further that there must be approval by the Division of Marine Fisheries [Wildlife Resources Commission] for the no-wake zones along with the appropriate signage. The motion was seconded by Comr. Renée Cahoon.

Mayor Pro Tem Walters said that while the applicant has met the ordinance, she understands Mr. Workman's public safety concerns.

Comr. Renée Cahoon shared Mayor Pro Tem Walters' concerns about public safety – she would like to see this area monitored, especially for safety purposes.

Mayor Cahoon stated that boat activities are not restricted in this area and there has been some conflict between motorized/non-motorized boats in the past; his expectation is that those boats will not come as close to shore and with the No Wake Zone there should be a slower speed and more awareness. He agreed that this area should be monitored.

**CONTINUATION OF MOTION:** The motion passed 4 – 0 (Comr. Siers was not present.).

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

### Update on Coastal Resilience Summit

Planning Director Michael Zehner summarized his memo which read in part as follows:

"Staff of the Planning & Development Department (Michael Zehner, Kelly Wyatt, Deputy Director of Planning & Development, Holly White, Principal Planner, and Todd Krafft, Environmental Planner) recently attended the North Carolina Coastal Resilience Summit in Havelock on June 11 and 12; general information may be found [HERE](#), the agenda and presentations may be found [HERE](#), and a further summary of the Summit and photographs may be found [HERE](#).

'As noted by the North Carolina Coastal Federation in the pages linked above "the Summit will inform the development of the North Carolina Coastal Climate Risk Assessment and Resilience Plan ("Plan") under [Governor Cooper's Executive Order 80](#) so as to propel the coastal region's preparedness for the effects of climate changes including rising sea levels, increased frequency and severity of coastal and riverine flooding, increasing extreme weather, changing groundwater conditions and other shifting natural conditions. The Summit will also showcase a gamut of existing solutions to address the identified challenges." Prior to the Summit, the participating organizations held workshops in the Northeast (Elizabeth City) and Southeast (Wilmington), to help inform the Summit as well as to collect stakeholder input for the development of the Plan; information on the workshops may be found [HERE](#).

'The Summit was valuable to Staff, providing updated information on changing natural conditions, the effects of such conditions, and the best practices that communities are using to address such conditions. Additionally, both Mr. Krafft and Ms. White served as presenters at the Summit, Mr. Krafft as part of a panel titled *Smarter Critical Systems and Built Environment: Infrastructure Solutions* where he discussed the Town's Septic Health Initiative, and Ms. White as part of a panel titled *Synthesis and Next Steps: How to Build Partnerships for Success* where she discussed the value of the Town's collaboration with academic research initiatives and groups such as North Carolina Sea Grant. It is also important to note that during opening remarks, Secretary Regan of the N.C. Department of Environmental Quality specifically referenced the Town and Ms. White's initiative as a reason for the workshops and the Summit.

'Staff will continue their involvement in the development of the Plan, coordinating on behalf of the Town's interests."

In response to Mayor Cahoon, Mr. Zehner said that the Best Management Practices Manual should be in draft form in early 2020.

Comr. Renée Cahoon noted that the State of Virginia is ahead of North Carolina in resilience planning.

Director Zehner's report was well received by the Board.

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

### From May 1<sup>st</sup> Board meeting – Accessory Dwelling Unit (ADU) ordinance update

Planning Director Michael Zehner summarized his agenda summary sheet which read in part as follows:

"Staff is presenting to the Board a draft Ordinance, recommended by the Planning Board, allowing for ADU's within the Town both as by-right uses and with a Conditional Use Permit depending on the zoning district, and subject to certain standards. Staff has provided information considered by the Planning Board at meetings in May and June. This item is for discussion, with the Board to consider the scheduling of a public hearing on the amendments.

#### Planning Board/Staff Recommendation

Staff recommends that the Board of Commissioners discuss the draft Ordinance recommended by the Planning Board, the issues and questions referenced, and any other related topics, and proceed to schedule a public hearing. Anticipating that the UDO is adopted prior to the public hearing on the subject amendment, the draft Ordinance will need to be revised to amend the UDO as opposed to amending the current Zoning Ordinance.

'Staff is supportive of the Ordinance as recommended by the Planning Board and is of the opinion that the amendments are consistent with the Town's 2017 Comprehensive Plan, namely that they expand housing opportunities while proactively addressing potential negative impacts to established single-family neighborhoods. Staff would recommend that a reference to ADU's be inserted in Section 48-122 of the Zoning Ordinance, and therefore included in the draft Ordinance to be considered for adoption.

'The Planning Board has recommended adoption of an Ordinance amending the Zoning Ordinance, as attached."

Director Zehner requested that a Public Hearing be scheduled no earlier than September 2019 as comments received from residents indicate that they want to be in Town for it.

Megan Vaughan, Chair of the Planning Board; she reported on a couple of key components of the Planning Board deliberations; Planning Board members were skeptical about the ADU when it first came to them in April 2019; they discussed concerns about workforce housing which they decided to separate from ADU's – two meetings were spent discussing this issue; in the final analysis the Planning Board felt that ADU's would to a degree self-regulate; allowing them by conditional use only was important and they noted that some had neighborhood covenants banning them; Ms. Vaughan said that she feels that the Planning Board did its due diligence and, once separated from the workforce housing issue, was able to be unanimous in moving this draft ordinance forward.

Comr. Fuller confirmed with Director Zehner that maximum square footage is 600' everywhere.

Comr. Fuller said that his issue is with the Town's Comprehensive Plan – you can make a statement for and against ADU's depending on where you look in the Plan. He also stated that the definition of ADU can be read a number of different ways.

**MOTION:** Mayor Pro Tem Walters made a motion to put the Accessory Dwelling Unit item on the September 2019 Board of Commissioners agenda for Public Hearing to discuss further and to give the public an opportunity to comment. The motion was seconded by Comr. Fuller.

Comr. Renee Cahoon confirmed that the September meeting is scheduled for Wednesday, September 4, 2019 at 9:00 a.m.

**CONTINUATION OF MOTION:** The motion passed 4 – 0 (Comr. Siers was not present.).

Unified Development Ordinance (UDO) - Mayor Cahoon directed staff to provide responses to the Board comments on the UDO comments as soon as possible.

## **NEW BUSINESS**

### Committee Reports

Comr. Renée Cahoon – Government Education Access Channel Committee (GEACC) – a new employee has been hired; Mayor Cahoon pointed out the new monitor/screen in the Board Room allowing for sharper, clear images – purchased as a result of a GEACC Grant.

### Discussion of requests to NCDOT

The agenda summary sheet read in part as follows:

“At the July 3<sup>rd</sup> Board of Commissioners meeting, Board members will discuss the possibility of requesting that NCDOT take action as follows:

- a) Evaluate possibility of full traffic signal at Soundside Road and S Croatan Highway (US 158)
- b) Installation of pedestrian-activated signal at Grouse Street and S Croatan Highway (US 158) for use during events
- c) Installation of pedestrian-activated signal at Epstein Drive and S Croatan Highway (US 158)

‘Conflicts between vehicles, pedestrians, and bicyclists have become more of an issue in Nags Head as well as the Outer Banks due to increased visitors in the summer and increased year-round residents.

‘Attached please find three (3) draft letters to NCDOT for review pending Board discussion.’”

Town Manager Ogburn summarized the information provided in each item listed and noted that backup includes draft letters prepared to be forwarded to NCDOT specific to each of the following issues:

- a) Evaluation of full traffic signal at Soundside Road
- b) Installation of pedestrian-activated signal at Grouse Street for use during events
- c) Installation of pedestrian-activated signal at Epstein Drive

Comr. Fuller suggested delaying the Grouse Street item because Dare County Tourism Board (DCTB) is preparing a new plan for its Soundside Event Site which may modify the Grouse Street pedestrian-activated signal item.

Mayor Cahoon stated that if preparing a concrete pad for Epstein St, then to add a concrete pad for Mall Drive also.

**MOTION:** Comr. Fuller made a motion to approve the Soundside Road and Epstein Drive letters, as presented, to be forwarded to NCDOT, Jerry Jennings, with a copy to Transportation Board member Allen Moran, but to not include the Grouse Street letter. The motion was seconded by Mayor Pro Tem Walters which passed 4 – 0 (Comr. Siers was not present.).

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

Mayor Cahoon stated that Closed Session to discuss Attorney/Client privilege items in addition to the consideration of Closed Session minutes will take place at the end of the meeting.

Town Attorney Leidy reported that the Supreme Court ruled in the Richardson case that a new trial will be scheduled focusing only on the market value of the property.

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

Town Manager Ogburn - Consideration of new Stormwater and Streets Technician job description

Town Manager Ogburn stated that as authorized in the recently adopted budget, the job description for Stormwater and Streets Technician was provided for Board consideration.

Comr. Fuller stated that the Town Manager position creates and eliminates positions – he questioned if the Town Manager prepares/approves the job description or if that is that something the Board does. Town Manager Ogburn stated that when a new position is created the Board must approve the job description; Town Attorney Leidy agreed.

**MOTION:** Comr. Fuller made a motion to approve the Stormwater and Streets Technician job description as presented. The motion was seconded by Mayor Pro Tem Walters which passed 4 – 0 (Comr. Siers was not present.).

Town Manager Ogburn – Public Safety Career Progression (added to the agenda earlier in the meeting)

Town Manager Ogburn said that he is asking the Board to approve the Budget Adjustment with funds coming from Contingency for police salaries and grade changes for Police and Fire as presented. The proposed grade changes are as follows:

<b>2019-20 Job Title</b>	<b>Grade</b>	<b>Min</b>	<b>Mid</b>	<b>Max</b>
Facilities Maintenance Custodian	1	30,720.00	38,400.00	46,080.00
Not Assigned	2	32,275.00	40,344.00	48,413.00
Customer Service Rep/Cashier	3	33,909.00	42,387.00	50,864.00
Office Asst/Dep Town Clerk	3	33,909.00	42,387.00	50,864.00
Office Assistant	3	33,909.00	42,387.00	50,864.00
Facilities Maintenance Technician	3	33,909.00	45,014.00	56,144.00
Sanitation Equipment Operator	3	33,909.00	45,014.00	56,144.00
Stormwater Tech	3	33,909.00	45,014.00	56,144.00
Water Services Technician	3	33,909.00	42,387.00	50,864.00
Water Plant Operator	3	33,909.00	42,387.00	50,864.00
Fleet Maintenance Mechanic	4	35,626.00	44,533.00	53,439.00
Accounting Technician	4	35,626.00	44,533.00	53,439.00



Payroll & Benefits Specialist	5	37,430.00	46,787.00	56,144.00
Admin Asst-Planning/Development	5	37,430.00	46,787.00	56,144.00
Water Billing & Customer Service Coordinator	5	37,430.00	46,787.00	56,144.00
Permitting Coordinator	6	39,324.00	49,156.00	58,987.00
IT Assistant	6	39,324.00	49,156.00	58,987.00
Office Manager	7	41,315.00	51,644.00	61,973.00
Fire Fighter/EMT	7	41,315.00	54,845.00	68,406.00
Police Officer (SRO, K9, Detective, ACO)	7	41,315.00	54,845.00	68,406.00
Facilities Maintenance Supervisor	7	41,315.00	51,644.00	61,973.00
Senior Fleet Maintenance Mechanic	7	41,315.00	51,644.00	61,973.00
Sanitation Supervisor	7	41,315.00	51,644.00	61,973.00
Water Services Supervisor	7	41,315.00	51,644.00	61,973.00
Water Operations Supervisor	7	41,315.00	51,644.00	61,973.00
Admin Assistant/PIO	8	43,407.00	54,259.00	65,110.00
Tax Collector	9	45,604.00	57,005.00	68,406.00
Code Enforcement Officer	9	45,604.00	57,005.00	68,406.00
Zoning Administrator	9	45,604.00	57,005.00	68,406.00
Facilities Maintenance Supt	9	45,604.00	57,005.00	68,406.00

**MOTION:** Comr. Renée Cahoon made a motion to approve the Career Progression path for Police and Fire as presented with an associated Budget Adjustment of \$19,942. The motion was seconded by Mayor Pro Tem Walters which passed 4 – 0 (Comr. Siers was not present.).

The associated Budget Adjustment in the amount of \$19,942 is attached to and made a part of these minutes as shown in Addendum "D".

Town Manager Ogburn – Annual Fireworks Display

Town Manager Ogburn invited everyone to attend the Town’s annual fireworks display tomorrow, July 4<sup>th</sup>, at 9:25 p.m. at the Nags Head Fishing Pier.

Town Manager Ogburn – Thank you to staff

Town Manager Ogburn thanked Administrative Services staff for their work on the turnover to a new fiscal year.

## **BOARD OF COMMISSIONERS AGENDA**

### Comr. Renée Cahoon – Requests of NCDOT

Discussion of request that NCDOT lower speed limit on US 64 from Washington Baum Bridge (Little Bridge) where it joins US 158 and on US 158 through Nags Head – to 45 MPH

Board members agreed with Comr. Renée Cahoon's request.

Discussion of request that NCDOT modify Melvin Daniels Bridge (Little Bridge) pedestrian crosswalk lights from yellow to red when activated

Turning the blinking yellow lights at Little Bridge to red blinking lights may help people stop; Dep Town Manager Garman pointed out that the draft letter to NCDOT references a device "Hawk"; Mayor Cahoon questioned using both.

**MOTION:** Comr. Renée Cahoon made a motion to request that NCDOT modify the blinking lights at Little Bridge to warn motorists of the upcoming pedestrian bridge from yellow to red blinking lights. The motion was seconded by Comr. Fuller which passed 4 – 0 (Comr. Siers was not present.).

### Comr. Renée Cahoon - Discussion of crosswalks

Comr. Renée Cahoon reported that she has heard from various businesses concerning the lack of crosswalks in the Town.

Mayor Pro Tem Walters suggested an evaluation of all crosswalks/areas that need them Town-wide.

In response to Mayor Cahoon, Mr. Garman stated that staff will review the 2014 Pedestrian Plan to see how crosswalks are referenced. Staff was directed to review the Pedestrian Plan and bring this back for Board discussion at the August 7<sup>th</sup> meeting.

### Comr. Fuller – Town Manager's Contract

Comr. Fuller reminded Board members that the Manager's contract is up for review in September 2019 and at the August 2019 Board meeting he would like to propose a process for review and provide background information. He stated that the Board would be provided the evaluation forms some time in August and the Town Attorney would review the forms and prepare a spreadsheet (without names) so the Board can review grades, etc. Mayor Cahoon directed staff to include this item on the August Board meeting agenda.

Mayor Pro Tem Walters explained that, historically, the Mayor, and not the Town Attorney, would summarize with a spreadsheet all the grades and provide it for review.

