



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
MONDAY, SEPTEMBER 16, 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 Monday, September 16, 2019 at 9:00 a.m.

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

Board members Absent: None

Others present: Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; Phil Webster; Shane Hite; Michael Zehner; David Ryan; Amy Miller; Roberta Thuman; Brandon Stallings; Dave Herrmann; John McDowell; Ryan Farley; Mike Norris; Linda Bittner; Susan Lee; Michael Pfaff; Barbara Gourley; Mary Neiman; Doug Langford; Jim Selckman; and Town Clerk Carolyn Morris

CALL TO ORDER/PLEDGE OF ALLEGIANCE

Mayor Cahoon called the meeting to order at 9:00 a.m. A moment of silence for those impacted by Hurricane Dorian was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

MOTION: Comr. Renée Cahoon made a motion to approve the September 16, 2019 agenda as presented. The motion was seconded by Comr. Siers which passed unanimously.

RECOGNITION

Dep Fire Chief Shane Hite introduced Firefighter/EMT Brandon Stallings who was welcomed by the Board to Town employment.

Public Works Director Ralph Barile introduced new employees Sanitation Equipment Operator John McDowell and Facilities Maintenance Technician Ryan Farley who were welcomed by the Board to Town employment.

Public Works Director Ralph Barile introduced Facilities Maintenance Superintendent Mike Norris who was recognized by the Board for five years of service.

Town Manager Cliff Ogburn introduced Dep Town Manager Andy Garman who was recognized by the Board for five years of service.

Finance Officer Amy Miller introduced Tax Collector Linda Bittner who was recognized by the Board for five years of service.

RECOGNITION of Town Depts – Dept of Labor Safety Awards

Dep Fire Chief Shane Hite introduced Safety Committee members and the following Town departments were recognized by the State for consecutive five-year Safety Awards: Public Works Maintenance Garage, Public Works Administration, Septic Health, Public Works Water Operations, Planning Dept and Public Works Water Administration.

PUBLIC COMMENT

No one present wished to speak at Public Comment.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Tax Adjustment Reports

- Consideration of New Year (FY 19/20) Tax Adjustment Reports
- Consideration of Monthly Tax Adjustment Reports

Approval of minutes

Completion of Hazard Mitigation Plan Actions for Community Rating System (CRS)

Consideration of requests to conduct 2019 bonafide fishing tournaments:

Nags Head Surf Fishing Club, Fraternal Order of Eagles, and Outer Banks Association of Realtors

Request for Public Hearing to consider conditional use/site plan amendment submitted by Michael Morway of Albemarle & Associates, Ltd. on behalf of John Harris, You Can Fly, LLC for substantial site improvements to Kitty Hawk Sports located at 7517 S Virginia Dare Trail (The scope of work includes construction of a new principal retail structure with accessory 2nd story residential, additional parking areas and new observation deck and boardwalk)

Request for Public Hearing to consider proposed text amendment to the Zoning Ordinance/UDO to eliminate the minimum lot size required for the development of "large residential dwelling" and/or address other aspects of this regulation

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

The Tax Adjustment Reports, as approved, are attached to and made a part of these minutes as shown in Addendum "A".

Hazard Mitigation Plan action updates, as approved, read in part as follows:

"As part of our continued participation in the Community Rating System ("CRS") program the Town is required to provide updates on the actions contained in our Hazard Mitigation Plan. The requirement for

preparation of a Hazard Mitigation Plan was developed in response to NC Senate Bill 300 and the Federal Government Mitigation Act of 2000. The plan not only addresses natural hazards like hurricanes and nor'easters but other hazards such as terrorism and pandemic and public health events. A plan must be adopted by the local governing board every five (5) years. A FEMA-approved hazard mitigation plan is a condition for receiving certain types of non-emergency disaster assistance, including funding for mitigation projects. Ultimately, hazard mitigation planning enables action to reduce loss of life and property, lessening the impact of disasters.

'The Town's Hazard Mitigation Plan was originally adopted by the Nags Head Board of Commissioners on August 4, 2004, and then again on November 3, 2010. In 2014-2015, the Town participated in a regional hazard mitigation planning effort; Nags Head and twenty-five other jurisdictions in eastern North Carolina participated in a planning process to develop and adopt the Albemarle Regional Hazard Mitigation Plan. This plan was adopted by the Town in June 2017¹.

'As part of the Town's annual recertification for the CRS program, staff reviews the plan and actions on an annual basis. Continued participating in the CRS program ensures that the Town is able to maintain a Class 6 CRS Rating and residents are able to receive a twenty percent (20%) discount on flood insurance. Attached is a spreadsheet outlining updates to the action plan. No action by the board is necessary. Staff is providing this to the Board and the community for informational purposes. The entire Plan is available on the Town's website."

Three (3) organizations requested and received by the Board of Commissioners authorization to conduct fishing tournaments during October 2019.

The Outer Banks Association of Realtors (October 4, 2019) resolution, as adopted, read in part as follows:

"WHEREAS, the Outer Banks Association of Realtors is sponsoring its annual Surf Fishing Scholarship Tournament October 4, 2019; AND

'WHEREAS, in accordance with Section 8-83 (b)(3) of the Nags Head Code of Ordinances, the Outer Banks Association of Realtors submitted a request on August 23, 2019 for the Town of Nags Head to issue 80 (25 teams, up to 6 per team plus 5 for judges and scorers) short-term beach driving permits to the Outer Banks Association of Realtors to be distributed to participants in its annual Surf Fishing Scholarship Tournament.

'NOW, THEREFORE BE IT RESOLVED by the Town of Nags Head Board of Commissioners that the Town of Nags Head is pleased to offer its assistance for the Surf Fishing Scholarship Tournament this year.

'BE IT FURTHER RESOLVED as follows: The Town Clerk is authorized to issue 80 short-term beach driving permits to be distributed to participants in its annual Surf Fishing Scholarship Tournament to be held Friday, October 4, 2019. These special permits will be valid for one-day Friday, October 4, 2019.

'Only six (6) shall be allowed per team fishing in the tournament.

'The Outer Banks Association of Realtors is responsible for the distribution of all short-term beach driving permits for the 2019 Surf Fishing Scholarship Tournament. No short-term permits for the tournament will be issued by Staff.

'The name of the team and town to whom a permit is issued shall appear on each permit.

'Prior to the start of the tournament, the Outer Banks Association of Realtors shall provide the Nags Head Town Clerk with a list showing the team name or tournament official and the numbers of the permits issued to each.

'A pamphlet (to be provided by the Town) on Regulations Governing Beach Vehicular Traffic in the Town of Nags Head shall be supplied with each permit distributed by the Outer Banks Association of Realtors.

'Each permit shall be displayed on the inside front windshield on the passenger side of the vehicle, even if a normal Nags Head Beach Driving Permit is already displayed.

'The short-term beach driving permit MUST be in the possession of the team at all times. The permit is not transferable.

'The Town of Nags Head Beach Driving Ordinance is to be strictly enforced by the Nags Head Police Dept.

'Should the weather or high tide call for the closure of the beach or a section of the beach, the Town Manager will close the beach."

The Nags Head Surf Fishing Club (October 9 – 11, 2019) resolution, as adopted, read in part as follows:

"WHEREAS, the Nags Head Surf Fishing Club is sponsoring its annual Nags Head Surf Fishing Tournament October 9 – 11, 2019; AND

'WHEREAS, in accordance with Section 8-83 (b)(3) of the Nags Head Code of Ordinances, the Nags Head Surf Fishing Club submitted a request on July 10, 2019 for the Town of Nags Head to issue 282 (3 per team plus 42 for judges and scorers) short-term beach driving permits to the Nags Head Surf Fishing Club to be distributed to participants in its annual Nags Head Surf Fishing Tournament.

'NOW, THEREFORE BE IT RESOLVED by the Town of Nags Head Board of Commissioners that the Town of Nags Head is pleased to offer its assistance for the Nags Head Surf Fishing Tournament again this year.

'BE IT FURTHER RESOLVED as follows: The Town Clerk is authorized to issue 282 short-term beach driving permits to the Nags Head Surf Fishing Club to be distributed to participants in its annual Nags Head Surf Fishing Tournament to be held Wednesday, Thursday, and Friday, October 9, 10, and 11, 2019. These special permits will be valid for a three-day period from Wednesday, October 9, 2019, through Friday, October 11, 2019.

'Only three (3) shall be allowed per team fishing in the tournament.

'The Nags Head Surf Fishing Club is responsible for the distribution of all short-term beach driving permits for the 2019 Nags Head Surf Fishing Tournament. No short-term permits for the tournament will be issued by Staff.

'The name of the team and town to whom a permit is issued shall appear on each permit.

'Prior to the start of the tournament, the Nags Head Surf Fishing Club shall provide the Nags Head Town Clerk with a list showing the team name or tournament official and the numbers of the permits issued to each.

'A pamphlet (to be provided by the Town) on Regulations Governing Beach Vehicular Traffic in the Town of Nags Head shall be supplied with each permit distributed by Nags Head Surf Fishing Club.

'Each permit shall be displayed on the inside front windshield on the passenger side of the vehicle, even if a normal Nags Head Beach Driving Permit is already displayed.

'All three short-term beach driving permits MUST be in the possession of the team at all times. The permits are not transferable.

'The Town of Nags Head Beach Driving Ordinance is to be strictly enforced by the Nags Head Police Dept.

'Should the weather or high tide call for the closure of the beach or a section of the beach, the Town Manager will close the beach."

The Fraternal Order of Eagles (October 26 – 27, 2019) resolution, as adopted, read in part as follows:

"WHEREAS, the Fraternal Order of Eagles, Aerie #4506 is sponsoring its annual Surf Fishing Tournament October 26-27, 2019; AND

'WHEREAS, in accordance with Section 8-83 (b) (3) of the Nags Head Code of Ordinances, the Fraternal Order of Eagles, Aerie #4506 submitted a request on August 23, 2019 for the Town of Nags Head to issue 25 (two permits per team of six) short-term beach driving permits to the Fraternal Order of Eagles, Aerie #4506 to be distributed to participants in its annual surf fishing tournament.

'NOW, THEREFORE BE IT RESOLVED by the Town of Nags Head Board of Commissioners that the Town of Nags Head is pleased to offer its assistance for the Fraternal Order of Eagles, Aerie #4506 Surf Fishing Tournament this year.

'BE IT FURTHER RESOLVED as follows: The Town Clerk is authorized to issue 20 short-term beach driving permits to be distributed to participants in its annual Fraternal Order of Eagles, Aerie #4506 Surf Fishing Tournament to be held Saturday – Sunday, October 26-27, 2019. These special permits will be valid for two days, Saturday – Sunday, October 26-27, 2019.

'Only six (6) shall be allowed per team fishing in the tournament.

'The Fraternal Order of Eagles, Aerie #4506 is responsible for the distribution of all short-term beach driving permits for the 2019 Fraternal Order of Eagles, Aerie #4506 Surf Fishing Tournament. No short-term permits for the tournament will be issued by Staff.

'The name of the team and town to whom a permit is issued shall appear on each permit.

'Prior to the start of the tournament, the Fraternal Order of Eagles, Aerie #4506 shall provide the Nags Head Town Clerk with a list showing the team name or tournament official and the numbers of the permits issued to each.

'A pamphlet (to be provided by the Town) on Regulations Governing Beach Vehicular Traffic in the Town of Nags Head shall be supplied with each permit distributed by the Fraternal Order of Eagles, Aerie #4506.

'Each permit shall be displayed on the inside front windshield on the passenger side of the vehicle, even if a normal Nags Head Beach Driving Permit is already displayed.

'The short-term beach driving permit MUST be in the possession of the team at all times. The permit is not transferable.

'The Town of Nags Head Beach Driving Ordinance is to be strictly enforced by the Nags Head Police Dept.

'Should the weather or high tide call for the closure of the beach or a section of the beach, the Town Manager will close the beach.'

The information re: the Request for Public Hearing, as approved, read in part as follows:

'Mike Morway of Albemarle & Associates, Ltd. on behalf of John Harris and U Can Fly, LLC has submitted a Conditional Use/Site Plan Amendment request for substantial site improvements to Kitty Hawk Kites located at 7517 S. Virginia Dare Trail, Nags Head. The scope of work includes construction of a 1,616 square foot retail building with accessory 2nd story residential, re-designed parking areas and a new observation deck and boardwalk. This scope of work is considered to be a major modification to the previously approved conditional use/site plan and therefore must be reviewed via the conditional use process. The property is zoned C-2, General Commercial and is located within the Commercial-Outdoor Recreation Overlay District.

'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. Staff recommends approval of the Conditional Use/Site Plan Amendment application as presented with the condition that the appropriate agreement with the adjoining property owner (Gone Coastal) be sought for use of shared sanitation facilities and that the site be developed in substantial compliance with the plans dated August 13, 2019, and the use shall be conducted consistent with all the commitments made by the applicant in their application.

'At their August 20, 2019 meeting the Planning Board voted unanimously to recommend approval of the Conditional Use/Site Plan Amendment application with the condition that the appropriate agreement with the adjoining property owner (Gone Coastal) be sought for use of shared sanitation facilities.'

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

'As requested at the June 5, 2019 meeting, Staff is returning to the Board with a proposed text amendment concerning the minimum lot size required for the development of Large Residential Dwellings. This specific agenda item concerns the scheduling of a public hearing on the proposed amendment; given standard practice, the hearing would be schedule for October 2, 2019.

'Attached for the Board's review is a memo to the Planning Board, last updated August 15, 2019, along with two options for the proposed amendment. Ordinance Option A is specifically consistent with the Board's request, where the minimum lot area for a Large Residential Dwelling would be eliminated in its entirety; Option B is an alternative considered by the Planning Board which serves to reduce the current 16,000 square foot lot area threshold to 15,000 square feet and institutes a reduced maximum livable area size of 4,000 square feet for lots less than 16,000 square feet.

'Planning Board/Staff Recommendation

Staff recommends that the Board vote to schedule a public hearing on the proposed amendment for October 2, 2019.

'The Planning Board finalized its recommendation at the meeting on August 20, 2019. With a vote of 6-0, the Board voted to recommend that the Commissioners take no action on the proposed amendments; the Board's complete commentary on the amendment is as prepared by Staff, based on the Board's previous discussion, and included in the attached memo.'

PUBLIC HEARINGS

Public Hearing to consider text amendments related to Accessory Dwelling Units (ADU)

Attorney John Leidy introduced the Public Hearing to consider text amendments related to Accessory Dwelling Units (ADU) at 9:24 a.m.

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

"This agenda item is a public hearing on proposed amendments to the Unified Development Ordinance to allow and establish regulations from Accessory Dwelling Units (ADU's). A proposed ordinance is attached, establishing provisions allowing ADU's, both as by-right uses and with a Conditional Use Permit depending on the zoning district, and subject to certain standards.

'Planning Board/Staff Recommendation

Staff recommends adoption of the draft Ordinance. Staff is of the opinion that the proposed 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.

'At their meeting on June 18, 2019, the Planning Board unanimously (7-0) recommended adoption of the proposed amendments to the Zoning Ordinance.

'ADU Memo

'At the April 3, 2019 meeting of the Board of Commissioners (in response to a request at the March 2019 Board of Commissioners meeting), Staff presented the Board with draft provisions for Accessory Dwelling Units ("ADU's") as contained in the draft Unified Development Ordinance ("UDO"), as well as considerations informed by the Board of Commissioners, UDO Technical Review Committee, and Staff related to minimum lot size, maximum unit size, height limits, location of units on lots, adequacy of septic, utility service, parking requirements, allowable locations, length of stay, and density. The Commissioners discussed their perspectives on the draft provisions and considerations, ultimately voting 3-2 in favor of a motion directing Staff to prepare an Ordinance amending the Zoning Ordinance to allow ADUs, to be reviewed by the Planning Board at the April meeting and Commissioners at the May meeting.

'Planning Staff presented a draft Ordinance to the Planning Board for review at the meeting on April 16, 2019. The Planning Board unanimously voted to defer issuance of a recommendation pending further consideration; at the meeting the Board noted that there were too many associated questions to proceed to a recommendation. Members indicated an interest in further discussing the following:

- A general overview of ADU's, including photographs and examples;
- Policy objectives informing the consideration of ADU's;
- Experiences of peer communities;
- Enforcement;
- Limitations on unit size;
- Appropriate locations and zoning districts for ADU's;
- Limits on ownership and the potential creation of condominiums; and
- Limits on length of occupancy and incentives to discourage short-term rental use."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, September 8, 2019 and on Sunday, September 15, 2019 as required by law.

Comr. Fuller confirmed with Attorney Leidy that today's meeting and public hearing, postponed from the September 4th Board meeting date due to Hurricane Dorian, were properly scheduled.

Attorney Leidy asked if anyone present wished to speak at the Public Hearing.

Doug Langford, Northridge resident of Cutty Sark Lane; he is opposed to this zoning change; single family homes with an attached ADU are not compatible with single family homes and do not fit together; Other concerns he mentioned is it would be used as a short-term rental; he is concerned about safety with the number of pedestrians, etc. that travel the roadways; this use needs to be in a more compatible-type of zoning area of town.

Susan Lee, Northridge resident of Lookout Rd; in 1984 Northridge was one of the places without flooding; she is opposed to ADU's for various reasons to include it would be used as a short-term rental; parking and septic systems would be an issue; she is concerned about stormwater management especially when density is added to the lots; until the Town gets a handle on stormwater she doesn't want to see ADU's allowed in the neighborhood.

Michael Pfaff, Northridge resident of Lookout Rd; he and his wife Susan are vehemently opposed to the proposed zoning amendments; he has contacted Town officials concerning the amendment; he feels it is an inadequate solution to the housing problem; adding more density and more vehicles to the roadways that have stormwater issues and no public sidewalks will not help the existing issues; there are already numerous makeshift apartments in their neighborhood that add density; if the ordinance is adopted, he asks that the SPD-20 District be excluded from the allowed locations.

Barbara Gourley, Northridge resident of Buccaneer Street; she and her husband oppose the traffic, safety, noise, and environmental issues this use would cause; the Shepherds on Lookout Rd and the Ropers on Windjammer Rd also expressed their opposition; it is felt that the proposal would devalue properties in this residential neighborhood; does not feel this is the best solution to the workforce housing; there are already issues with neighbors renting out their individual rooms; ask the Board to continue to preserve the Town and its residents; please vote no to this amendment or at least exclude SPD-20.

Joe Maione, Southridge resident, former Northridge resident; currently duplexes already exist in their neighborhood; many of the ordinances on the books are not enforceable especially relating to these types of issues; people do not have to live on the beach to work on the beach; he feels that the Town could build workforce housing in several of the locations it owns; he feels that this is a private sector issue; he opposes the zoning amendment for the same reasons mentioned by others such as traffic, density, etc. and that this is not a good idea for their neighborhood.

Comr. Fuller stated that he received a text message from former Nags Head Mayor/Nags Head Cove resident Bob Muller opposing the ADU text amendments. He stated that Mr. Muller suggested that the Town set limits outside of the definition section and he also feels that the use would not be enforced by the Town.

Mary Neiman owns a house in Northridge on Buccaneer Drive; she felt safe when they built their house in 1992 but the last few years that has not been the case as there has been trouble with renters, trash carts, and she would like to continue to have a house in Northridge; she is opposed to the zoning amendments.

Board questions for staff:

Comr. Fuller stated that under conditional uses one conditional use proposed was related to noise, if there is an issue, how should Police respond to this in a timely manner; Mr. Zehner said that it would be at the discretion of the Board – it could be a finding for this Board to determine conditional use. Attorney Leidy suggested it could be added in order to grant the conditional use by the quasi judicial Board.

Comr. Renée Cahoon asked if the Board grants a conditional use, what is the liability to the Town; Attorney Leidy said that each situation would have to be judged on its own merit.

Comr. Siers questioned the true goal; Director Zehner said it was to expand housing options and to allow for additional units in a traditional single-family neighborhood in a way that is unobtrusive. Mr. Zehner said that it would be premature to look at other housing options until more of a study is done – he also feels that the solution would need to be in favor by the community for it to be successful.

Mayor Pro Tem Walters asked about this issue in other areas; Mr. Zehner said that currently Dare County, Duck, Kitty Hawk, and Manteo allow ADU's; Kill Devil Hills does not allow them attached or detached. It appears that Manteo has seen the most success.

Mayor Pro Tem Walters noted that there are a number of illegal duplexes in every neighborhood and while she was not aware of a lot of complaints about them, Comr. Fuller said that in the 2005 – 2010 timeframe there was public outcry about illegal duplexes and a number of court cases were filed against these homeowners, most of which the Town won.

There being no one else present who wished to speak, Attorney Leidy announced the Public Hearing closed at 10:42 a.m.

Comr. Fuller feels that everyone chose their neighborhood for a particular reason; he does not know why west side neighborhoods are even included in the proposal; he displayed on screen a house on Outlook Court with a detached garage used as an ADU which could not be any closer to the setback – he does not want impacts from ADU's to spill over to the neighborhood; he is opposed to anything in the west side neighborhoods – he would consider/discuss east side locations.

Mayor Pro Tem Walters said that there are a multitude of scenarios where ADU's would actually benefit families and communities especially as people age to include those of retirement age that need the income; she is not sure that her neighbors would have a problem with it; she suggested not focusing only on workforce housing as there are other reasons for ADU's to include a location for caregivers. She pointed out ADU's on the west side would mean people are around that would be able to keep track of what is going on. She stated that she understands the fear but the "not in my backyard" mentality is not beneficial.

Mayor Cahoon stated that he can't approve something that he would not be willing to do himself; anyone in the business community is aware of the lack of affordable housing for their employees; the accessory dwelling units and the short-term rentals are separate entities that he feels can be addressed in incremental steps. This is something necessary that he would accept in his own neighborhood.

Comr. Renée Cahoon said that she has heard more pro comments concerning ADU's from those east of US 158 and more against from those west of US 158; she has not heard anyone mention tying it to income level or tying it to someone who wants to rent for an entire season; she is not comfortable at this point adding to the density of the west side neighborhoods.

Comr. Siers noted that there are very few places that have the lot coverage to do any of the items mentioned in the ordinance; staff needs to take a more broader look at the issue – to look more than just at ADU's as a solution to workforce housing.

Attorney Leidy pointed out the legislation that was adopted to allow ADU's with specific limitations ("granny pods") – temporary dwelling units that are for a specific use that are supposed to eventually go away.

MOTION: Mayor Pro Tem Walters made a motion to adopt the ordinance text amendments related to Accessory Dwelling Units (ADU) as written. The motion was seconded by Mayor Cahoon.

Comr. Siers reminded Board members that the Planning Director had stated that ADU's wouldn't work if the community does not support them – he does not want to see an application every month from someone asking to put an ADU on their property.

CONTINUATION OF MOTION: The motion to adopt the ordinance failed 2 to 3 with Comr. Renée Cahoon, Comr. Fuller, and Comr. Siers casting the NO votes.

Public Hearing to consider text amendments related to Multi-Level Deck Platforms

Attorney John Leidy introduced the Public Hearing to consider text amendments related to multi-level deck platforms at 11:28 a.m.

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

'Following discussion with the Planning Board at their June 2019 meeting, staff proposed two draft Unified Development Ordinance text amendments pertaining to the construction of multi-level deck platforms within the Town for Board consideration.

'These draft text amendments were proposed following the erection of this type of structure on the Town's oceanfront, at 3807 S. Virginia Dare Trail (photos attached). While this structure was properly permitted via CAMA and town zoning regulations it has precipitated a larger discussion of whether this type of development is consistent with the Town's vision.

'Generally, this type of structure would be considered a permissible accessory structure within the Town and could be permitted if it met the lot coverage, setbacks and maximum height requirements for the district in which it is located. Specifically, this type of structure could locate as close as five (5) feet from any side or rear property line (with the exception of the oceanfront where it must meet the CAMA setback based upon the Erosion Rate within that area) and could be as tall as 35 ft. in height.

'The Planning Board verbalized several concerns about the existing structure and the potential proliferation of these types of structures throughout the Town, and more specifically on the oceanfront. Concerns of the overall height, obstruction of viewsheds and the ability for emergency personnel to access these structures were noted as the primary areas of concern.

'Staff has drafted two ordinances for your review and consideration.

'Option A would not affect the current allowance of multi-level decks and porches structurally attached to a principal or accessory structure and complying with all dimensional standards of the district in which it is located, but would define Multi-Level Deck Platforms as structurally independent, prohibit such structures if detached or standalone, and allow them if attached to a principal or accessory structure with limits on height

and area. Option B would use the same definition for Multi-Level Deck Platforms, but would prohibit them entirely, again, not affecting structurally attached decks and porches.

'It is important to note that the proposed definition for Multi-Level Deck Platform excludes "decking customarily found in conjunction with residential dwellings when located within the CAMA Ocean Hazard Area and required to be structurally detached pursuant to 15A NCAC 07H 0.300, when such decking is in contact with the principal or accessory structure on two or more levels." It is common for this type of decking to be constructed within the Town, and as stated, the Coastal Area Management Act (CAMA) requires all decking within Ocean Hazard setback to be structurally detached; absent the qualified exclusion, these structures would be precluded within the Ocean Hazard setback.

'Below are excerpts from the 2017 Comprehensive Plan as it may relate to this type of development:

'Page 3-8, LU-1 reads, "Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by:

- Development that blends with the landscape, preserving natural vegetation, dunes, open spaces and environmental quality.
- Views from the ocean beach of dunes, vegetation and structures that are low in height, blend with the landscape and do not shade the beach
- Buildings with a residential scale and appearance with low heights and small footprints that are designed to reflect the heritage of Nags Head.
- Land uses that are compatible with the community and adjacent properties that don't create excessive noise, light, unsafe conditions or other nuisances.

'Page 3-10, LU-3 reads, "Recognize a low-density pattern of development for the oceanfront that is characterized by small scale, adaptable structures".

- LU-3b: Regulate accessory structures in the active, oceanfront environment where frequent damage occurs to protect private property and limit storm damage and debris. This may include additional regulations applicable to oceanfront pools, dune decks, walkovers and gazebos.

'STAFF ANALYSIS AND RECOMMENDATION:

Planning staff, using a NC Planners email list serve, asked other municipalities within the state if they had experience with these types of structures and if so, did they have any unique or special regulations of multi-level deck towers. While it did generate some discussion, no responses were received with regard to the regulation of such deck platforms.

'Staff shares the same concerns as the Planning Board and as such would recommend that these structures at a minimum, be regulated with imposition of conditions as proposed in Option A. The Planning Board may also wish to consider limiting the cumulative area of these decking platforms by a percentage of the area of the building upon which it is attached to.

'PLANNING BOARD RECOMMENDATION:

After much discussion the Planning Board recommended moving forward with Option B, to prohibit multi-level deck platforms in all zoning districts throughout the Town. A primary concern was that of access for emergency personnel and a concern that the NC Fire Prevention Code does not contemplate this type of structure in a residential setting."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, September 8, 2019 and on Sunday, September 15, 2019 as required by law.

Comr. Renée Cahoon confirmed with staff that the height is 35' and Comr. Siers confirmed that the deck on top is legal.

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 11:36 a.m.

MOTION: Comr. Renée Cahoon made a motion to adopt the Option B ordinance [prohibiting multi-level deck platforms in all districts] as presented. The motion was seconded by Comr. Fuller which passed unanimously.

The ordinance prohibiting multi-level deck platforms in all Town districts, as adopted, is attached to and made a part of these minutes as shown in Addendum "B".

Public Comment Period to consider DEQ-DCM Public Beach and Coastal Waterfront Access Grant for Islington Street for construction of improved beach access to include a parking area, platform and walk extension

Attorney John Leidy opened the Public Comment Period to consider the DEQ-DCM Public Beach and Coastal Waterfront Access Grant for Islington Street for construction of an improved beach access to include a parking area, platform, and walk extension at 11:39 a.m.

Principal Planner Holly White summarized her memo which read in part as follows:

"At the August 7, 2019 Board of Commissioners meeting the Board authorized staff to apply for the DEQ – DCM Public Beach and Coastal Waterfront Access grant for the Islington Street improved beach access as presented. In addition, staff was directed to hold the required public comment period at the September 4th Board meeting. Attached please find the appropriate public notice and the backup provided at the August 7th Board meeting. In addition, summary information provided at the August 7th Board meeting is below:

'The town was invited to submit a final grant application for the Islington Street Public Access through the Division of Coastal Management's ("DCM") Public Beach and Coastal Waterfront Access Grant Program; a public meeting on the proposal is a prerequisite of the application. Fourteen local governments within the 20 coastal counties submitted pre-applications totaling over \$2.4 million in grant requests. Approximately \$1 million in grant funding is available. The deadline for final applications is September 6, 2019. All final applicants will be notified of funding decisions in October 2019. It is anticipated that Governor's award letters will be sent in late September and contracts executed in November 2019.

'The Town's proposal involves the construction of an improved beach access in South Nags Head in an existing fifty (50) foot right-of-way (Islington Street) on the east side of S. Old Oregon Inlet Road/SR 1243, improvements to include a parking area, platform and walk extension to an existing dune cross over, shower, bike rack, lighting, signage, and stormwater management. Additional project materials are attached for your review."

Notice of the Public Comment Period was published in the *Coastland Times* on Sunday, September 8, 2019 and on Sunday, September 15, 2019 as required by law.

There being no one present who wished to speak, Attorney Leidy closed the Public Comment period at 11:40 a.m.

MOTION: Comr. Renée Cahoon made a motion to approve the DEQ-DCM Public Beach and Coastal Waterfront Access Grant application for Islington Street application for construction of improved beach access to include a parking area, platform and walk extension as presented. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

NEW BUSINESS

Committee Reports

Dare County Tourism Board meeting – Comr. Fuller reported that direction was given to DCTB staff to look into the acquisition of additional property. The DCTB meets this Thursday and Comr. Fuller will find out more at that time. In addition, the Town was mailed a letter from the DCTB Executive Director asking for a representative from the Town to serve on a working committee. It was Board consensus to relay to the DCTB Executive Director that the Town already has a representative (Comr. Fuller) and no additional appointment is necessary.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy requested a Closed Session to preserve attorney/client privilege and to discuss a personnel matter at the appropriate time. It was Board consensus to enter Closed Session at the end of the Board meeting.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Ogburn - Consideration of update to Disposal of Surplus Property via Online Auction as well as Chapter 2, Section 2-7 of the Town Code (Authorization for town manager to dispose of certain personal property)

Finance Officer Amy Miller's memo was presented and read in part as follows:

"Staff is requesting to align the Town's policy and ordinance with State Statute regarding methods of sale and limitations (160A-266 section (c)). This statute regulates prescribing procedures for disposing of personal property valued at less than thirty thousand dollars (\$30,000) for any one item or group of items. This is designed to secure the Town fair market value for all property disposed of in order to accomplish the disposal efficiently and economically. The Board may authorize the Town Manager to declare surplus any personal property valued at less than thirty thousand dollars (\$30,000) for any one group of item or group of items.

'Currently, the value is less than \$5,000. This does not circumvent standard procedures and protocol regarding surplus, it would authorize the Town Manager to have the final decision for disposal of surplus property under \$30,000. This would create an efficiency authorizing the Town Manager to be given the final decision for online auctions and disposals as well as private negotiation and sale within this value, which is a majority of our obsolete assets. Assets can be immediately sold upon authorization which reduces wait time.

'This would create a better flow of asset replacements coming in and out, and a savings could be realized by not carrying insurance on obsolete assets once a sale transfer is complete. Since all records of property sold must be kept, documentation will be kept for full transparency. Additionally, advertising requirements for private sales would still be required. A greater efficiency regarding use of staff and Board time would be recognized in elimination of paperwork and creating a more streamlined Board packet.

'The final decision for real property, of any value, and personal property valued at thirty thousand dollars (\$30,000) or more for any one item or group of similar items will be given to the Board."

MOTION: Comr. Fuller made a motion to approve the revised surplus policy for amounts up to \$30,000 as presented. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

The revised surplus policy, as approved, read in part as follows:

"The final decision for disposal of surplus property is given to the Board of Commissioners in the case of assets over \$30,000 or to the Town Manager in the case of assets not exceeding \$30,000.

'For property that has been approved for surplus using an online auction disposal method, the following policy applies.

'All public auctions will be advertised and held electronically. The Town must continually advertise that it disposes of surplus property via online auction on the Town's web site and via printed flyer available at Town offices.

'To sell an asset via online auction, the following information must be provided in the online auction advertisement:

1. Availability of a title, if appropriate. If there is no title available, such as in the case of an ATV or Jet Ski, this information (that there is no title available) must be included in the advertisement.
2. Accurate description of the property taken directly from the surplus form. Mileage must be double checked with the Town's garage staff prior to placing the vehicle up for auction to ensure accurate mileage reporting. Serial or VIN numbers must also be included, as well as year, make and model.
3. The asset number shall be used as the online auction inventory ID.
4. The lowest bid price must reflect the minimum price on the property's surplus form in addition to the online auction charge.

'If property is advertised via online auction but does not receive any bids, then the property must be re-advertised on the online auction site at a price that is 25% lower than the original minimum selling price. If the property still does not receive any bids after the second online auction advertisement, then the Town Manager may approve an alternate method of disposal, which can include donating or destroying the property or re-listing it again for auction.

'If property is advertised via online auction, but the bids do not meet the reserve price (the minimum price the Town will accept for the property), then the property may go to the highest bidder provided the highest bid is no more than 25% lower than the reserve price.

'If property is advertised via online auction, but the buyer defaults on the purchase, the property must be listed for online auction again at a price that is 75% of the previous selling price. If the second buyer defaults, then the property may be sold to the 2nd highest bidder on the last sale."

Town Manager Ogburn - Consideration of resolution to waive building permit fees associated with Hurricane Dorian

MOTION: Comr. Siers made a motion to adopt the resolution to waive building permit fees that are associated with Hurricane Dorian as presented. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

The resolution waiving building permit fees associated with Hurricane Dorian, as adopted, read in part as follows:

'WHEREAS, On September 6, 2019 Hurricane Dorian hit the Outer Banks with high winds, flooding from heavy rainfall and both ocean and sound storm surge; AND

'WHEREAS, Storm surge conditions caused flooding in already-saturated areas in the Town of Nags Head; AND

'WHEREAS, Overwash and strong winds caused property damage to a number of residences and businesses throughout the Town; AND

'WHEREAS, Repairs to damaged structures and reconstruction efforts will require permits, along with the associated reviews and inspections, in accordance with Town Code Chapter 10 (Buildings and Building Regulations) and Chapter 48 (Zoning); AND

'WHEREAS, Property owners are normally responsible for paying the permit fees associated with their home repairs and reconstruction projects; AND

'WHEREAS, The Town of Nags Head wants to work with property owners to assist them in making the necessary repairs to their properties as quickly and as easily as possible.

'NOW THEREFORE BE IT RESOLVED that the Town of Nags Head Board of Commissioners does hereby waive permit fees for the repair or reconstruction of structures that were damaged during the recent Hurricane Dorian.

'NOW THEREFORE BE IT FURTHER RESOLVED that the waiver of permit fees associated with the impacts of Hurricane Dorian is effective September 6, 2019 and will expire December 31, 2019."

BOARD OF COMMISSIONERS AGENDA

Comr. Renée Cahoon – Consideration of Resolution Opposing Designation of Special Secondary Nursery Areas

Comr. Renée Cahoon brought forward a resolution entitled: Resolution Opposing The Designation Of Special Secondary Nursery Areas.

The Summary sheet information read in part as follows:

"A petition for rulemaking was submitted to the NC Marine Fisheries Commission by the NC Wildlife Federation which would severely limit shrimp trawling which would have a devastating impact on commercial fishing families.

'Comr. Renée Cahoon is bringing this resolution forward for Board consideration at the September 4th Board of Commissioners meeting. The resolution was adopted by Dare County on August 5th."

MOTION: Comr. Renée Cahoon made a motion to adopt the resolution opposing the designation of special secondary nursery areas as presented. The motion was seconded by Comr. Siers which passed unanimously.

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

“WHEREAS, a petition for rulemaking to designate Special Secondary Nursery Areas and Reduce Bycatch Mortality has been submitted to the NC Marine Fisheries Commission by the NC Wildlife Federation; AND

‘WHEREAS, the petition seeks to designate all inshore and ocean waters out to three miles as Special Secondary Nursery Areas and define the type of gear and how and when gear may be used during shrimp season; AND

‘WHEREAS, if adopted, the petition would severely limit shrimp trawling, which would have a devastating impact on commercial fishing families by arbitrarily impairing their livelihood and depriving American tables of fresh, healthy catches of North Carolina harvested shrimp; AND

‘WHEREAS, shrimp trawling has been a vibrant and successful part of North Carolina’s heritage and culture for all of its history and represents a means by which generations of commercial watermen create jobs, provide for their families, and contribute to the economic wellbeing of North Carolina’s coastal communities; AND

‘WHEREAS, existing state and federal regulations provide ample provisions for monitoring and regulation of commercial shrimping with serious penalties and sanctions for rule violations, which have proven to be effective in preventing overfishing and waste.

‘NOW THEREFORE BE IT RESOLVED that the Nags Head Board of Commissioners hereby opposes the petition for rulemaking to Designate Special Secondary Nursery Areas and Reduce Bycatch Mortality In North Carolina Coastal Fishing Waters as set forth by the NC Wildlife Federation and strongly urges the North Carolina Marine Fisheries Commission to reject it.

‘BE IT FURTHER RESOLVED that the Nags Head Board of Commissioners asks all coastal communities to support North Carolina’s working watermen by adopting similar resolutions in opposition of this petition for rulemaking that would put North Carolina shrimping in jeopardy.”

Comr. Renée Cahoon – Consideration of Government/Education Channel Local Programming Development Initiative (LPDI) Grant Request

The Government / Education Channel – Local Programming Development Initiative (LPDI) grant request summary sheet read in part as follows:

“For Fiscal Year 2019-2020, the Dare County Government/Education Channel’s Local Programming Development Initiative is once again offering a \$10,000 grant to each member.

‘Staff would like to apply for the grant and use the funds to:

1. Purchase a Macbook Pro laptop, as suggested by Current TV staff, for in-house video creation and editing of Board meetings for preparation for submission to Current TV staff (about \$4,000)
2. Use the remaining funds to hire vendors to create additional videos on such topics as, but not limited to, Crosswalk Safety, Updated Video on Trash and Recycling Services in Nags Head, Nags Head’s Oceanside Multi Use Path – History and Etiquette, Early History of Nags Head”

MOTION: Comr. Renée Cahoon made a motion to approve moving the Gov/Ed Channel LPDI grant application forward for processing. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

Comr. Fuller – Safety

Comr. Fuller complimented staff and Town management for working closely with OSHA and being the recipient of the State Dept. of Labor Safety Awards.

Comr. Fuller – Dare County Control Group/Town Memorandum of Agreement (MOA) from 2015

Comr. Fuller reported that the MOA with the County Control Group was signed in 2015 by former Mayor Bob Edwards. That MOA authorized certain authorities be granted to the Control Group that are under the purview of the Town of Nags Head. Action to approve/implement the MOA could not be found in the Board minutes.

It was Board consensus that Town Attorney Leidy research the MOA and how the Town can get out of it. It was noted that the only actions the Dare County Control Group can officially do are to determine when to evacuate and when to re-enter the County.

Comr. Fuller – Enforcement efforts on actions heard today at the ADU Public Hearing

Comr. Fuller asked if what was heard today during the ADU Public Hearing rose to the level of enforcement actions.

Mayor Cahoon said that the perception in some parts of the community is that it is not being done. Staff is to look into it and report back on enforcement actions taken on the ADU/STR/illegal duplex issues that were mentioned today.

Mayor Pro Tem Walters – Communication among Board members

Mayor Pro Tem Walters reported that at last week's Board Retreat the Board discussed communication between Board members and staff. At the January 2019 Board Retreat ethics and many other issues were discussed and it was agreed by all Board members that the Mayor's role was for him to be the spokesperson for the Board. She noted that at last week's Board Retreat Comr. Fuller took exception to that and opted out of this agreement stating that he will respond as an individual. This is concerning to her as a Board member because of the importance that everyone be on the same page. She has concerns on how to move forward as a Board if the Mayor is only speaking for four of the five members.

Attorney Leidy responded that this is a policy issue that could result in public confusion. He said further that the Code of Ethics governs and one of those items authorizes the Mayor to speak on behalf of the Board. There is nothing that prohibits individual Board members to seek information from staff and to share or not share information with others – anyone who requests information from the manager or individual staff members should understand that the information should be provided to all Board members. Attorney Leidy felt it would be a good idea to review the Code of Ethics.

MAYOR'S AGENDA

Mayor Cahoon – October 2, 2019 Board meeting

Mayor Cahoon reported that he would be on vacation and not able to attend the Board of Commissioners October 2nd meeting.

Mayor Cahoon - Beach Nourishment 2019 – Commendation of Great Lakes Dredge & Dock

Mayor Cahoon commended Great Lakes Dredge & Dock for their work on the Town's Beach Nourishment Project: he said that they came prepared, knew what they were doing, the lines of communication were good, they did extra work, and did not ask for change orders. The Town appreciated their professionalism and great job that they did and the Town was well served.

Mayor Cahoon - Report on NCDOT's response to the Town re: Little Bridge crosswalk

North Carolina DOT did their traffic counts and research, and determined that there was nothing they would or could do at Little Bridge for safety. Mayor Cahoon will bring back for Board consideration a letter to be forwarded to NCDOT detailing what the Town feels would be the most appropriate action to take such as removing the infrastructure and/or blocking the catwalk.

RECESS TO AND RECONVENE FROM LUNCH

The Board recessed for lunch at 12:15 p.m. and reconvened at 1:20 p.m.

CLOSED SESSION

MOTION: Mayor Pro Tem Walters made a motion to enter Closed Session to confer with the Town Attorney and to preserve the attorney/client privilege pursuant to GS 143-318.11(a)(6). The motion was seconded by Comr. Renée Cahoon which passed unanimously. The time was 1:22 p.m.

OPEN SESSION

The Board re-entered Open Session at 2:54 p.m. Attorney Leidy reported that during Closed Session the Board did discuss a matter with the Town Attorney re: attorney/client privilege and no actions were taken.

ADJOURNMENT

MOTION: Comr. Renée Cahoon made a motion to adjourn. The motion was seconded by Mayor Pro Tem Walters which passed unanimously. The time was 2:55 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: October 2, 2019

Mayor: _____
Benjamin Cahoon