



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, NOVEMBER 6, 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, November 6, 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; Attorney Lauren Arizaga-Womble; Comr-Elect Kevin Brinkley; Andy Garman; Phil Webster; Perry Hale; Randy Wells; Shane Hite; Michael Zehner; David Ryan; Amy Miller; Roberta Thuman; Rich DeMedici; Vicky Wright; Chad Motz; Frank O. Brown III; Stephanie Westheiden; Martha Vaughan; Valerie Netsch; Robert Netsch; Karen DelVacchio; Mary Jo P. Wagner; Linda Matason; Jay Overton; Mike Morway; Jim Selckmann; and Town Clerk Carolyn Morris

CALL TO ORDER

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

ADOPTION OF AGENDA

MOTION: Comr. Siers made a motion to amend today's agenda and remove item #G-1 (Continuation of public hearing re: lot size for large residential dwellings). The motion was seconded by Comr. Renée Cahoon.

Comr. Siers said that the citizens have already spoken against the proposal so there is no need to have everyone wait two hours for no action to be taken; in response to Comr. Fuller, Comr. Siers stated that he would like the item permanently removed – he does not want it discussed later in the meeting.

Attorney Leidy said that this action would not preclude further consideration of the issue in the future – this action just removes it from today's agenda.

CONTINUATION OF MOTION: The motion passed unanimously.

MOTION: Comr. Renée Cahoon made a motion to approve the November 6th agenda as amended (with removal of item #G-1 re: lot size for large residential dwellings). The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

RECOGNITION

NEW EMPLOYEE – Public Works Director Ralph Barile introduced new employee Sanitation Equipment Operator Rich DeMedici who was welcomed by the Board to Town employment.

FIFTEEN YEARS – Finance Officer Amy Miller recognized Accounting Technician Vicky Wright who was congratulated by the Board on her fifteen years of service.

FIFTEEN YEARS – Fire Chief Randy Wells recognized Ocean Rescue Captain/Firefighter Chad Motz who was congratulated by the Board on his fifteen years of service.

Consideration of *Recycle Right North Carolina* Proclamation

Mayor Cahoon read the Recycle Right North Carolina Proclamation as follows:

'WHEREAS, North Carolina communities have established excellent recycling programs, and with the presence of strong established markets in the state, are able to redirect recycled materials back into the economy and create new products; and

'WHEREAS, single-stream recycling programs that emphasize the collection of cans, bottles, cardboard and paper recover the highest tonnages most efficiently; and

'WHEREAS, recycling stimulates local economies, creates jobs, saves energy and water, reduces greenhouse gas emissions, preserves natural resources and conserves landfill space; and

'WHEREAS, the North Carolina recycling industry supports more than 16,000 jobs and relies on the success of community recycling programs; and

'WHEREAS, the increasing amounts of non-recyclable items, or contaminants, being placed in recycling bins compromises the quality of truly recyclable materials and creates safety hazards for employees at the materials recovery facility where recyclables are sorted; and

'WHEREAS, recycling costs can be lowered by reducing the amount of contaminants in the mix; and

'WHEREAS, educating residents about which items go into the recycling container is the most effective way to recover the most recyclable material and avoid contamination; and

'WHEREAS, to focus the state's attention on the importance of reducing contamination in recycling, the NC Dept of Environmental Quality has created the "Recycle Right NC" campaign to educate the public on which items should/should not be placed in the recycling cart; and

'WHEREAS, participating in the "Recycle Right NC" campaign is an effective way to raise awareness about the need to recycle only the items accepted by local recycling programs; and

'WHEREAS, the Town of Nags Head pledges to participate in the "Recycle Right NC" statewide campaign as an opportunity to contribute to a larger movement to improve recycling and lead the nation in recycling education through harmonized messaging.

'Now, Therefore, I, Ben Cahoon, Mayor of the Town of Nags Head, do hereby pledge a proclamation of support and participation in the "Recycle Right NC" campaign."

MOTION: Mayor Pro Tem Walters made a motion to adopt the Recycle Right North Carolina Proclamation as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Presentation of 2019 Earl Murray Jr Employee of the Year nominees

Dept Heads introduced their department's individual nominee for the 2019 Earl Murray Jr Employee of the Year Award. The nominees were as follows:

Administrative Services – Tax Collector Linda Bittner
Fire and Rescue – Dep Fire Chief Shane Hite
Planning – Code Compliance Officer Ed Snyder
Police – Police Officer Joseph (JC) Mitchell
Public Works – Sanitation Superintendent Ricky Spencer

Town Manager Ogburn explained the reason for the name of the Employee of the Year Award and the importance Sgt. Earl Murray Jr. was to the Town and what a loss it was to everyone when he lost his life responding to a burglary in progress in May 2009. Board members agreed and noted it was going to be difficult choosing just one nominee.

PUBLIC COMMENT

PUBLIC COMMENT – LINDA MATASON

Linda Matason, owned her property since 1999 and it is now her permanent home; she came to today's meeting to speak during the public hearing re: lot size for large residential dwellings – the item that was removed from the agenda; she also wanted to note that the ads that she receives on her Facebook page from SAGA development company are not illegal but she is concerned as Mr. Sumpter Gupta of SAGA scares her.

PUBLIC COMMENT – ROBERT DETSCH

Robert Detsch, he has lived in Nags Head for the past six months; he spoke concerning the Harvey Soundside Access site as the sound is great for sailing but the site is not a great site for boats to launch from; he stated that some improvements would make it easier to launch a catamaran/kayak in/out of the water and he would be happy to work with the Board/staff to help provide some improvements.

PUBLIC COMMENT – JOHN RATZENBERGER

John Ratzenberger, Nags Head resident; 1) He congratulated the Town employees selected as Earl Murray Jr Employee of the Year nominees and feels this is a great way to end the year; 2) He also thanked Renée Cahoon, Kevin Brinkley, and Keith Sawyer for running for office to serve the Town and for not littering the right-of-ways with campaign signage; 3) The UDO has passed its test as the Planning Board had about a dozen questions such as why is the Town preparing a separate document for the UDO – he congratulated the

Planning Board on their approach and he appreciated the highlighting of the UDO portion of the backup for this meeting.

PUBLIC COMMENT – JIM SELCKMANN

Jim Selckmann, Nags Head resident; Attorney Leidy confirmed with Mr. Selckmann that he would provide his comments during the actual Public Hearing on the proposed site plan for the You Can Fly agenda item.

2019 BEACH NOURISHMENT REPORT – Consultant, Coastal Science & Engineering

Coastal Science & Engineering (CS&E) President Tim Kana and Project Engineer HK Kaczowski provided an update on the Town's 2019 Beach Nourishment Project which was recently completed. A slide summary of the project was entitled "Nags Head 2019 Beach Renourishment Project Summary and Path Forward" and is made a part of these minutes as shown in Addendum "A".

Mr. Kana's slides provided the following:

- Key Dates of the Nags Head 2019 Nourishment
- CSE's Key Tasks in the NH 2019 Nourishment

He thanked the Board/Town for allowing him to work with the Town over the years on the Beach Nourishment projects.

Ms. Kaczowski summarized differences between the 2011 project and the 2019 project. Her slides provided the following:

- Landing Points and Construction Sequence
- Construction Management – On Time and under Budget
- Typical Fill Sections by Reach

In response To Comr. Renée Cahoon, Ms. Kaczowski said that six feet was the highest level of dune on the beach.

- Design Volume, Placed Volume, and CSE Confirmed Volume
- Goals of the Renourishment Project
- "Tidal Pool" (Pics)
- After Nourishment – Escarpments (Pics)
- After Nourishment – Profile Adjustment (Equilibrium Profile)
- Sediment Quality
- Post-Project Monitoring and Maintenance Program

A brief video with highlights of the project was shown and was well received.

Comr. Fuller asked about the metal flags on the beach and when they will be removed. Engineer David Ryan explained that staff would remove any metal flags, used to denote alignment for sand fencing and sprigging, that were not removed at completion of the sprigging/fence installation. Mr. Ryan explained that there were 296,000 sea oats planted for the project and application has been made to FEMA for reimbursement. Engineer Ryan said that the sprigging is complete and sand fencing is expected to be completed this week.

Mayor Cahoon conveyed to the consultant, CS&E, contractors and Town Staff the Board's appreciation of the good work done and how smoothly the project went.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #4 to FY 19/20 Budget
Consideration of Tax Adjustment Report
Approval of minutes
Consideration of T-Mobile Monopole Tower lease agreement
Consideration of resolution designating applicant's agent for Hurricane Dorian

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 Budget Adjustment, 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 T-Mobile monopole tower agreement, as approved, is on file in the Town Clerk's Office. The agenda summary sheet read in part as follows:

"Attached please find a draft lease agreement detailing the request from T-Mobile Northeast LLC about the possibility of leasing space on the Town Hall Monopole Tower to mount a cell phone antenna. Included are sketches of the initial proposed location. T-Mobile has started working on engineering for this site. The final drawings and geotechnical survey are anticipated to be ready to submit by the end of calendar year 2019. The commencement date will be on or before June 1, 2020 with a required building permit in place. Please note that there are currently two tenants already on the Town Hall Monopole Tower."

The Resolution designating applicant's agent, as adopted, is attached to and made a part of these minutes as shown in Addendum "D".

PUBLIC HEARINGS

Continuation of Public Hearing from October 2nd Board meeting: Public Hearing to consider proposed text amendment to Zoning Ordinance/UDO to eliminate minimum lot size required for development of "large residential dwelling" and/or address other aspects of this regulation – **The Board passed a motion earlier in today's meeting to remove this item from the agenda.**

Postponed from November 6th Board meeting - Public Hearing to consider the conditional use/site plan amendment for substantial site improvements to Kitty Hawk Sports

Attorney Leidy explained that Attorney Lauren Arizaga-Womble who is with the Twiford Law Firm was present to conduct this Public Hearing on behalf of the Town as his firm, Hornthal, Riley, Ellis, and Maland, had a conflict as another member of his firm has represented the applicant in previous matters.

Attorney Leidy introduced the Public Hearing to consider the conditional use/site plan amendment for substantial site improvements to Kitty Hawk Sports. 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. The time was 9:48 a.m.

Attorney Leidy asked if any Board member had any conflicts of interest to report.

Comr. Fuller stated that he spoke to the applicants to let them know of the questions he would ask at the public hearing; Attorney Leidy confirmed with Comr. Fuller that he would be able to make his decision based on the evidence presented today.

Mayor Pro Tem Walters disclosed that she is on a separate committee with applicant John Harris but it has nothing to do with this subject matter; she has not discussed anything to do with this subject matter with the applicant. Attorney Leidy confirmed with Mayor Pro Tem Walters that she would be able to make her decision based on the evidence presented today.

Comr. Siers reported that he has spoken with the applicant's engineer Jay Overton re: bike paths throughout the Town; and he has been on the Planning Board previously and dealt with Mr. Overton and Mr. Harris. Attorney Leidy confirmed with Comr. Siers that he would be able to make his decision based on the evidence presented today.

Attorney Leidy turned the Public Hearing over to Attorney Lauren Arizaga-Womble of the Twiford Law Firm. The time was 11:04 a.m.

The following were sworn in by Town Clerk Carolyn F. Morris: Adjoining property owner Jim Selckmann; Albemarle & Associates Jay Overton; Albemarle & Associates Mike Morway; Applicant John Harris; Public Works Director Ralph Barile, Planning Director Michael Zehner; Dep Planning Director Kelly Wyatt; Town Engineer David Ryan; Dep Town Manager Andy Garman; Fire Chief Randy Wells; Dep Fire Chief Shane Hite; and Police Chief Phil Webster.

Planning Director Michael Zehner summarized the staff report which read in part as follows:

"GENERAL INFORMATION

'Applicant: Mike Morway of Albemarle & Associates, Ltd. on behalf of John Harris and U Can Fly, LLC.

'Application Request: Conditional Use/Site Plan Amendment.

'Purpose: Redevelopment of site; construct 1,616 square foot retail building with an accessory two-bedroom apartment above in conjunction with operation of water dependent commercial outdoor recreational activities.

'Property Location: 7517 S. Virginia Dare Trail, Nags Head.

'Existing Land Use: Water-dependent commercial outdoor recreational uses, retail.

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

Zoning Classification of Surrounding Properties: All properties surrounding this site are zoned C-2, General Commercial, as well as located within the Commercial Outdoor Recreation Overlay District. Surrounding properties include Gone Coastal (formerly Caribbean Corners), Causeway Estuarine Access, Quality Oil Gas Station, and residential development.

Flood Hazard Zone of Property: VE 11; the regulatory flood protection elevation is 12 ft. msl. The proposed elevation of the first floor is shown on the site plan at 13.5 ft.

Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as Waterfront Commercial Recreation. 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.

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

- Page 3-12, LU-4c reads, "Explore ways to create cohesiveness in commercial activity centers by limited certain types of residential uses (single-family) or allowing single-family or residential uses only as accessory to commercial uses. This could include utilizing vertical or horizontal mixed use or detached accessory residential structures.
- 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 policies supporting access to the water and water-based recreation opportunities.

SPECIFIC INFORMATION

Applicable Zoning Regulations:

- Use Regulations: Water dependent commercial outdoor recreational activities with accessory retail and residential is permitted via Conditional Use within the Commercial Outdoor Recreation Overlay District.
- Lot Coverage: Total allowable lot coverage for this site is 55%. Existing lot coverage totals 52.6% of the lot area. Due to the property's proximity to estuarine waters, the Coastal Area Management Act (CAMA) prescribes allowable coverages in the 30 ft. setback/buffer and the 75 ft. area of environmental concern (AEC). Coverages within the CAMA AEC and buffer area currently exceed the maximum allowable. Proposed overall lot coverage when the site is redeveloped is compliant at 51%. In addition, lot coverage within the CAMA AEC and buffer will be reduced and is therefore determined to be compliant with CAMA regulations. Total lot coverage and CAMA lot coverage is compliant.
- Height: The maximum allowable building height within the Town is 35 ft. however, pursuant to Town Code Section 48-371(c), total height may be increased to 42 ft. with the use of an 8:12 roof pitch or greater. The height of the proposed structure is 41 ft. with an 8:12 roof pitch, therefore the proposed height is compliant however a height certificate will be required during construction to ensure compliance.
- Architecture Design Standards: Town Code Section 48-371 requires a total of 125 architectural design points be obtained. A total of 125 design points has been proposed through the use of porches, dormers, pitched roofs, bump outs, simulated wood shingles and various other architectural elements therefore architecture is compliant.
- Parking: Since the application was originally filed, staff was notified by the adjoining property owner that they no longer wish to uphold the shared parking cross-easement agreement, or combined dumpster facilitates. As such, all required parking must be provided onsite. Required parking for this project shall be provided in compliance with the Recreational Uses standards as well as the retail and residential standards. A total of 40 parking spaces are required; a reduction of two (2) spaces has been requested via the use of bicycle racks consistent with Town Code Section 48-165(e), thereby reducing the required onsite parking to 38 spaces. A total of 38 spaces have been provided onsite. This will only be deemed compliant if the Board of Commissioners accepts the proposed reduction of two parking spaces via the use of bicycle racks.

Additionally, Town Code Section 48-407(d)(3)(b)(iii) requires a minimum of 20% of the surface area of the parking area and drive aisles to be constructed using permeable surface materials. A total of 38.8% of the surface area of the parking area and drive aisles is proposed to be constructed of permeable surface materials therefore, the proposal is compliant.

- Buffering/Landscaping: Existing onsite landscaping and buffering has diminished over time. With the extent of improvements proposed, the vegetation onsite shall comply with the specifications of a Buffer Yard D along the front property line adjacent to US 64/264 and a Buffer Yard C along the side yards.

- Lighting: Lighting will be unchanged however a light audit will be conducted by staff prior to issuance of Final Zoning Approval to ensure continued compliance.
- Signage: Detailed signage information has not yet been provided however any freestanding and wall signage must be reviewed and approved prior to issuance of zoning and building permits.

Water and Sewage Disposal: The Dare County Health Department has reviewed and issued the necessary Improvement Permit and Authorization for Construction for the proposed scope work (see attached).

Stormwater Management: Town Code Section 34-5(a), *Stormwater, Fill and Runoff Management, Standards for Commercial Design*, requires that stormwater management measures be provided when redevelopment results in a net gain in built upon area and includes the importation of fill material. The proposed redevelopment results in a decrease in lot coverage and the applicant has indicated no fill will be imported, therefore, compliance with the stormwater management ordinance is not necessary. While compliance is not required, the applicant has provided a narrative delineating the measures they intend to take to capture some stormwater onsite and make the site less nonconforming with regard to stormwater management. The proposed stormwater management measures have been reviewed and approved by the Town Engineer; please see comments in the memorandum dated August 5, 2019 (attached).

Traffic Circulation: Traffic circulation has been reviewed by the Town Engineer; please see comments provided in the memorandum dated August 5, 2019 (attached).

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: Since the Planning Board's August meeting, staff has been notified by the adjoining property that he is no longer interested in providing combined dumpster facilities. The applicant has provided a revised site plan indicating the proposed location of the onsite dumpster facility. The Public Works Director has reviewed and approved the proposal as presented, noting that if there are doors on the screening, they will need to be left open the night before pick-up.

CAMA: A CAMA Major Permit is required for this proposed use. CAMA Major Permit 52-17 has been issued and is attached for your review.

ANALYSIS

Generally, Staff finds the proposed site plan to be consistent with the applicable use and development standards, as well as relevant land use policies; however, additional consideration should be given to the proposed reduction of required parking associated with the use of bike racks. As noted, the proposed development requires 40 parking spaces, but the applicant, under Section 48-165(e), is providing two (2) bicycle racks (each designed to support five bicycles), thereby allowing for a reduction of two parking spaces. While this provision does not require a conditional use permit, discretion is granted to the Board of Commissioners in that they "may allow" the reduction of parking. In this case, other than the standard roadway shoulder, there are no bicycle or pedestrian facilities providing access to the property. While, it would not mitigate concerns entirely, Staff would recommend that the applicant construct a multi-use path along the entirety of the property's frontage; this improvement would be consistent with the goals of the Nags Head Pedestrian Plan, adopted July 16, 2014, and would further the implementation of the Plan. Based on this, Staff is recommending approval with an associated condition.

'With regard to the Conditional Use Permit being sought for the water dependent commercial outdoor recreational activity use, pursuant to Section 48-525 and the requisite affirmative findings of fact, 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.

'These findings are based on Staff's recommendation of the aforementioned condition requiring construction of a multi-use path along the entirety of the property's frontage.

'PLANNING BOARD RECOMMENDATION

At their meeting on September 17, 2019, the Planning Board recommended approval of the Conditional Use Permit and Site Plan Amendment applications, as presented, with the conditions recommended by staff. Please note, condition #2 has been altered from the version presented to the Planning Board to allow an alternative payment-in-lieu option for the multi-use path.

'STAFF RECOMMENDATION

With the following conditions, Staff recommends approval of the Conditional Use/Site Plan Amendment application as presented, noting that the reduction of two parking spaces via the installation of compliant bicycle racks must be approved by the Board of Commissioners in conjunction with the site plan approval:

1. The site shall be developed in substantial compliance with the plans dated August 28, 2019, revised as necessary to comply with conditions of approval;
2. Prior to the issuance of permits for development, the applicant/owner shall submit revised plans for approval by the Director of Planning and Development incorporating a multi-use path, at least eight (8) feet in width, along the entire frontage of the subject property. Alternatively, the applicant/owner may submit a payment-in-lieu for the cost associated with the installation of this path, based on an estimate submitted and approved by the Director of Planning and Development, with this payment to be deposited into an escrow account and used by the Town for installation of a path on or within the vicinity of the subject property, to be used within three (3) years of the date of submittal or summarily returned to the applicant with no further obligation;
3. Prior to the issuance of permits for development, the applicant/owner shall submit the rated capacity of the boat as determined by the U.S. Coast Guard; or, when not regulated by the U.S. Coast Guard, the rated capacity of the boat as determined by the manufacturer. In no instance shall a tour boat have greater than 49 passengers; and
4. The use shall be conducted consistent with all commitments made by the applicant in the submitted application.

'In reviewing the application and considering their action, Staff recommends that the Board of Commissioners consider the issues noted herein, including consistency with the Comprehensive Plan and the findings of fact for conditional use permits."

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, October 23, 2019 and on Wednesday, October 30, 2019 as required by law.

The new information re: parking calculations for the site provided by Planning Director Zehner read in part as follows:

“Please find attached a letter from Mike Morway, P.E., Albemarle & Associates, Ltd., dated November 5, 2019, requesting that the pending Kitty Hawk Sports conditional use/site plan amendment application be subject to parking calculations provided in the newly effective Unified Development Ordinance. Based upon the proposed use of the site, the use may be categorized, and parking calculated as a Mixed-Use Development use; in conjunction, the applicant has also identified floor area that will be dedicated to the rental of water-dependent recreational equipment, as opposed to retail use, for which 29 parking spaces are provided. Therefore, the 38 parking spaces provided is compliant and no reduction of parking based upon bicycle parking is required.”

Planning Director Michael Zehner said that he would understand if the Board desired to return the item to the Planning Board.

Mayor Cahoon questioned that setting aside the timing of material received by the Board, are there any provisions as to when during the application process this needed to occur; the transition occurred before this meeting – how is this to be handled in the future? Director Zehner stated that the process does not respond to this situation.

Attorney Arizaga-Womble concurred that the UDO is silent as to which section the applicant wants to fall under; Planning Board review is mandatory under the UDO but are not binding on this report. She stated further that the only change would be the parking and based on Planning Board recommendation the bike racks were a concern and as no longer present that would resolve itself. However, the ordinance does provide that the Board can refer this back to the Planning Board for further consideration. Mayor Cahoon confirmed that there were no physical changes except for the bike racks.

Comr. Fuller confirmed with staff that the Planning Board has not seen the parking information that the Board has seen. Ms. Arizaga-Womble said that receiving supplemental information does not mean a decision can't be made and that sometimes items on a site plan change between the Planning Board review and Board of Commissioners review and she stated that one option for this Board would be to send it back to them.

Comr. Renée Cahoon agreed with Comr. Fuller that the procedure was violated but that the integrity of the project is still within the footprints; she is not willing to penalize the applicant because of this. Mayor Pro Tem Walters also noted that historically, this Board moves forward rather than holding up the process – even though items were received at the 11th hour.

Comr. Renée Cahoon pointed out that the site plan should have US 264/64 listed and not US 158; Planning Director Zehner agreed.

Jay Overton of Albemarle & Associates; he requested a change in condition #3 – changing the word to “utilization” does not allow them to move forward; He stated that it's the same plan as what the Planning Board saw, he is just responding to some concerns re: the bike path. He also apologized to the Board as staff was trying to help and he could have brought it forward during the meeting today instead of providing parking calculations to staff yesterday.

Jim Selckmann, adjacent property owner to this proposed project; he verified in the prior hearing he did withdraw the parking agreement; he has also filed to construct a fence on the property line; dumpster location he has plans to relocate depending on what is convenient to Public Works on his property; he is concerned about the volume of the tour boats – he spoke in favor of the business and is concerned about the

impact from parking; he needs to re-survey his property and changes in lot coverage need to be re-examined due to fence, dumpster locations, lot coverage – he does not want to be the parking lot police; he is concerned about parking in his lot by those going to Tale of the Whale Restaurant.

Planning Director Zehner stated that he is not comfortable issuing the building permit without a review of the boats.

Comr. Siers asked about neighboring lot and fencing – he expressed concern based on the site plan if a fence comes up; Director Zehner stated that with a CAMA minor site plan review it could be approved administratively.

Comr. Fuller said that with conditions #1 and #3 changing, he feels that there are too many substantive changes to make a decision today.

Ms. Arizaga-Womble asked if the applicant wanted to respond; Mr. Overton said that the project has already been granted a minor CAMA permit; the proposed site plan will reduce coverage.

Ms. Arizaga-Womble declared that as there was no one else present who wished to provide evidence that the evidentiary portion of the hearing was closed; she asked the Board if they would like to deliberate. The time was 12:18 p.m.

Mayor Cahoon questioned the pleasure of the Board. **It was Board consensus** to allow staff to work through the issues discussed and present an update after the Board reconvenes from lunch.

RECESS FOR LUNCH

Mayor Cahoon recessed the Board meeting for lunch – the time was 12:20 p.m.

RECONVENE FROM LUNCH

Mayor Cahoon reconvened the Board meeting from lunch at 12:50 p.m.

(CONTINUED FROM BEFORE LUNCH) Conditional Use Public Hearing for YOU CAN FLY application

Planning Director Michael Zehner reviewed the conditions with Board members; the sheet he prepared with modified conditions based on Board discussion was distributed to Board members and read in part as follows:

"1. The site shall be developed in **substantial** compliance with the plans dated August 28, 2019 **and stipulations made in November 5, 2019 submission from Albemarle & Associates**, revised as necessary to comply with conditions of approval;

'2. The development of the site shall result in the overall decrease of any preexisting nonconformities, consistent with the provisions of Article 5, Nonconformities of the Unified Development Ordinance;

~~'2. Prior to the issuance of permits for development, the applicant/owner shall submit revised plans for approval by the Director of Planning and Development incorporating a multi-use path, at least eight (8) feet in width, along the entire frontage of the subject property. Alternatively,~~

~~the applicant/owner may submit a payment in lieu for the cost associated with the installation of this path, based on an estimate submitted and approved by the Director of Planning and Development, with this payment to be deposited into an escrow account and used by the Town for installation of a path on or within the vicinity of the subject property, to be used within three (3) years of the date of submittal or summarily returned to the applicant with no further obligation;~~

'3. Prior to the issuance of ~~permits for development~~ **a Certificate of Occupancy and annually thereafter**, the applicant/owner shall submit the rated capacity of the boat(s) as determined by the U.S. Coast Guard; or, when not regulated by the U.S. Coast Guard, the rated capacity of the boat(s) as determined by the manufacturer. In no instance shall a tour boat have greater than 49 passengers; and

OR

'3. Prior to the ~~issuance of permits for development~~ **commencement of the use of tour boats and annually thereafter**, the applicant/owner shall submit the rated capacity of the boat(s) as determined by the U.S. Coast Guard; or, when not regulated by the U.S. Coast Guard, the rated capacity of the boat(s) as determined by the manufacturer. In no instance shall a tour boat have greater than 49 passengers; and

~~'34.~~ The use shall be conducted consistent with all commitments made by the applicant in the submitted application."

MOTION: Comr. Renée Cahoon made a motion to approve the Conditional Use Site Plan for this application subject to the following conditions:

- With the required three findings of fact as follows:

The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.

The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.

The use as proposed will not overburden the firefighting capabilities and the municipal water supply capacity of the Town.

- With adoption of Conditions #1, #2, #3a, and #4 as follows:

#1 - The site shall be developed in compliance with the plans dated August 28, 2019 and stipulations made in November 5, 2019 submission from Albemarle & Associates, revised as necessary to comply with conditions of approval;

#2 - The development of the site shall result in the overall decrease of any preexisting nonconformities, consistent with the provisions of Article 5, Nonconformities of the Unified Development Ordinance;

#3a - Prior to the issuance of a Certificate of Occupancy (CO) and annually thereafter, the applicant/owner shall submit the rated capacity of the boat(s) as determined by the U.S. Coast Guard; or, when not regulated by the U.S. Coast Guard, the rated capacity of the boat(s) as determined by the manufacturer. In no instance shall a tour boat have greater than 49 passengers; and

#4 - The use shall be conducted consistent with all commitments made by the applicant in the submitted application.

The motion was seconded by Mayor Pro Tem Walters.

Mayor Pro Tem Walters asked about the Certificate of Occupancy which could take place but the boats may not be ready. Comr. Renée Cahoon stated that the boats should be ready by the time the building is ready.

CONTINUATION OF MOTION: The motion passed unanimously.

Attorney Leidy returned to the Board meeting – The time was 1:02 p.m.

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

Consideration of Acceptance of Improvements to Dove Street

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

"In conjunction with the development of the *Haven on the Banks* cottage court and event site project, the developer, Gandt Development, LLC, also made improvements to the formerly unimproved Dove Street paper street, establishing the street and drainage elements to Town standards. An as-built of the street improvements is attached for the Board's review and David Ryan, the Town Engineer, has confirmed that the improvements have been installed consistent with Town standards.

'One caveat to the completion of the improvements is that permanent vegetative cover has not yet been established in disturbed portions of the right-of-way. However, pursuant to Section 36-4(d) of the Town Code of Ordinances, "in lieu of an established vegetative groundcover, the developer may submit a performance bond in the form of a cashier's check made payable to the Town of Nags Head which shall be in an amount equal to the cost of stabilization, plus 20 percent to guarantee that applied stabilization techniques will produce a permanent vegetative groundcover within a reasonable period of time sufficient to prevent erosion." Mr. Ryan has determined this amount to be \$1,120.41; Gerry Wilkins, the principal representative of Gandt Development, LLC, has agreed to the bond and submitted the requisite cashier's check to the Town.

'Based upon the above, staff would recommend that the Board adopt a resolution (a draft is attached) to accept the improvements as made and identified on the as-built titled "Dove Street - 50' Right of Way," dated "Drawn 8/22/19," prepared by Seaboard Surveying & Planning, Inc., and further, that Dove Street be officially accepted into the Town's street system and included on the Town's Powell Bill Map."

MOTION: Comr. Fuller made a motion to adopt the resolution accepting Dove Street into the Town street system, as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

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

"WHEREAS, With the development of Haven on the Banks Cottage Court, 115 East Dove Street, and Event Site, 101 East Dove Street, the property developer Gandt Development, LLC has made improvements to the formerly unimproved Dove Street; AND

'WHEREAS, The street and drainage elements of Dove Street have been constructed in accordance with Town standards - which has been confirmed by the Town Engineer; AND

'WHEREAS, the developer intends to dedicate said improvements to the Town; AND

'WHEREAS, The developer will submit a performance bond in the form of a cashier's check made payable to the Town of Nags Head guaranteeing that the required vegetative groundcover will be established for stabilization purposes.

'NOW, THEREFORE BE IT RESOLVED that the Board of Commissioners of the Town of Nags Head accepts the improvements as made and identified on the as-built diagram titled "Dove Street – 50' Right of Way" dated August 22, 2019. This acceptance into the Town's street system includes incorporation onto the Town's Powell Bill Map."

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From October 2nd Board meeting – Discussion of membership in NCBIWA organization

Mayor Cahoon introduced this item concerning the October 2019 NCBIWA Board of Directors meeting and lack of adoption of a resolution by NCBIWA in opposition to offshore oil and gas exploration.

The summary sheet read in part as follows:

"At the October 2nd Board of Commissioners meeting, Town Manager Ogburn reported that at the quarterly NCBIWA Board meeting a resolution was presented opposing offshore drilling (**attached**) which was subsequently tabled (for the second time). He pointed out that attempts for discussion on the resolution/issue were not successful. The NCBIWA Board has thus far not taken any action opposing offshore oil drilling.

'The Town has adopted numerous resolutions/letters opposing offshore drilling and Board members asked that the Town's membership in the NCBIWA be brought forward for discussion at the November 6th Board of Commissioners meeting. Also attached please find a proposed letter/resolution for Board review and consideration.

'The Town became a member of the NC Shore and Beach Preservation Association in November 1998 which is the organization that became known as NCBIWA (along with two other coastal organizations) in 2005 when it widened its scope."

It was Board consensus to authorize the Town Manager to request of the NCBIWA Executive Committee Chair that the Town's letter and resolution re: opposition to offshore oil and gas exploration be placed on the next NCBIWA Board of Directors (BOD) meeting agenda for consideration; and that beforehand both proposed letter and resolution be emailed to the full BOD and the full membership; and that the resolution be presented at the full membership meeting on November 12, 2019 in Wrightsville Beach.

NEW BUSINESS

Committee Reports

Comr. Fuller – Dare County Tourism Board (DCTB) - The DCTB has appointed a Working Committee to look at the Soundside Event Site for discussion at their December 2019 meeting. In response to Comr. Renée

Cahoon, Comr. Fuller stated that the Pamlico Jack sale closing date is before the end of 2019. He stated further that because of prior commitments at the site, the building does not have to be vacated by January 10, 2020.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Ogburn - Discussion of scope for Town Workforce Housing Study/Plan

Planning Director Michael Zehner who summarized his memo concerning the proposal for the Town Workforce Housing Study/Plan as follows:

"As directed by the Board as part of the FY19-20 Budget, Staff has developed a draft scope for a project being referred to as the *Town Workforce Housing Study & Plan*. The intent of this Study & Plan is to identify and address the housing needs of the Town's seasonal employees, specifically Ocean Rescue staff. To that end, attached for the Board's review and pre-approval, is a draft scope for the Study & Plan. This draft scope anticipates tasks to be performed by Town Staff and DJG, Inc., the Town's on-call architectural consultant. The project will be managed by Town Staff.

'Staff would request any comments, questions, or suggested revisions to the scope.'

Comr. Fuller confirmed that the housing was for seasonal employees.

Comr. Siers asked about a timeline; Planning Director Zehner stated that Phase I completion is anticipated the beginning of January 2020 and Phase 2 completion is anticipated at the beginning of March 2020.

Mayor Pro Tem Walters expressed her concern that it be sustainable.

Board members were in favor of the Town Workforce Housing Study/Plan proposal as presented.

Town Manager Ogburn - Discussion of building access safety at Town facilities

The memo presented on building access safety at Town facilities read in part as follows:

"In consultation with the Town Manager and Department Heads, the Town Safety Committee has been researching the issue of security for town buildings and properties. The Safety Committee's focus primarily deals with physical security measures. On July 10, 2019, the Safety Committee received a presentation from Major Jeff Derringer of the Dare County Sheriff's office. Major Derringer reviewed security measures the County has implemented, including a key card security system that controls and documents access to County facilities. Following this presentation, staff met with the vendor who installed this system to understand its capabilities and limitations, as well as cost. While this type of system is useful for specific purposes, there may be other physical improvements to buildings and facilities that are necessary to create a comprehensive security plan that meets the town's goals and maintains an inviting atmosphere for the public.

'Staff would like to engage the Town's on-call architect, DJG Inc., to assist us in reviewing alternatives to improve the security of town facilities. This would primarily focus on Town Hall, Public Works, and Fire Stations 16 and 21. Staff is currently engaging the on-call architect on several other projects, so doing this now would allow the town to minimize the cost of this effort. Our goal would be to present a recommendation to the Board in advance of the CIP and budget workshops. Staff would need to request \$12,000 to begin this review. If the Board agrees, we would prepare a budget amendment for the December 2019 meeting.

'Staff would note that the Police Department is currently working to develop a Campus Security policy for town facilities, which provides guidance to staff in handling active threats and unruly/dangerous individuals. Staff would anticipate incorporating the recommendations of this policy into an overall plan which includes both physical and soft strategies.'

Dep Town Manager Andy Garman stated that DJG would be utilized for all three projects: Americans with Disabilities Act (ADA) Study; Workforce housing, and Town building facilities security.

It was Board consensus that a summary memo with the financing/cost figures of all three projects discussed today (ADA Study, Workforce housing, Building security) be provided to Board members before the December 4th Board meeting. In addition, the financing/associated budget adjustments and any additional details on the proposals presented today be an agenda item for Board discussion at the December 4th Board of Commissioners meeting. It was Board consensus to not hold up the projects but concern was expressed about financing, especially the Building security costs.

Town Manager Ogburn - Consideration of Community Care Clinic lease agreement

Town Manager Ogburn summarized the proposed Community Care Clinic (CCC) lease agreement with Board members; the agreement has been reviewed and approved by the CCC Director. The summary sheet read in part as follows:

'At the November 6th Board of Commissioners meeting, Town Manager Ogburn will present the attached proposed lease agreement with the Community Care Clinic for Board consideration. The term of the lease is from Jan 1, 2020 through Dec 31, 2021 and may be renewed for another year to terminate on Dec 31, 2022.

'The Executive Director of the Community Care Clinic has reviewed and concurs with this agreement.'

MOTION: Comr. Fuller made a motion to approve the Community Care Clinic lease agreement as presented. The motion was seconded by Mayor Pro Tem Walters which passed unanimously.

The approved agreement, as approved, is on file in the Town Clerk's office.

Town Manager Ogburn - Report on Veterans Day Ceremony

Town Manager Ogburn invited everyone to the Veterans Day Ceremony at Town Hall on Monday, November 11th at 11 am. Police Chief Phil Webster, a Marine Corps veteran, is the guest speaker.

Town Manager Ogburn – Stormwater Projects Update

At the December 4th Board of Commissioners meeting, a Comprehensive Stormwater Maintenance and Projects update will be provided.

Town Manager Ogburn – Planning Board terms to expire

At the December 4th Board of Commissioners meeting the Board will consider appointments/reappointments for three (3) Planning Board members whose terms expire in December 2019.

Town Manager Ogburn – Multi-use path extension

As requested by Comr. Renée Cahoon, Town Engineer David Ryan updated the Board on the current west of US 158 multi-use path extension projects – the Soundside Road to Danube Street and the Baymeadow Drive to Gull Street projects – permits have been applied for and are expected this week – project includes (on the East of US 158) a small section of sidewalk from Deering Street to Dunn Street.

Town Manager Ogburn noted that this was the plan previously approved by the Board.

Comr. Renée Cahoon stated that the Board may need to look into procurement of outside contractors in order to get more projects done.

BOARD OF COMMISSIONERS AGENDA

Comr. Renée Cahoon – Discussion of use - Cottage Court/Event Center Project

Comr. Renée Cahoon brought forward for discussion the Cottage Court/Event Center project between the highways. She has received numerous phone calls, messages, etc. from people expressing various concerns about the site and wants to make sure any disruption is minimized. Since cottage courts were approved by the Board, she wants to make sure the site is a good neighbor to the community.

Town Manager Ogburn reported that signage identifying the path to the beach, to minimize trespassing, has been installed.

Comr. Renée Cahoon also received concurrence from Board members to have a review of the Town's noise ordinance on a future agenda.

Comr. Fuller – Discussion of potential public boat storage and launching site at Harvey Soundside Access

Comr. Fuller mentioned Mr. Robert Netsch who spoke this morning during Public Comment re: organization for better use of the Harvey Soundside Access site. The site needs to be further developed so people can appreciate the site more and more people can use it. Equipment/items to organize and increase use of this site will be discussed further during the Town's Capital Improvement Program (CIP) process.

Comr. Fuller – Short-term rentals

Comr. Fuller confirmed with Town Manager Ogburn that the deadline for short-term rentals to sign up/register with the Town is December 31, 2019. Comr. Fuller asked that an item be included on the January 2020 agenda summarizing the information received. He stated that at a recent presentation from a DCTB consultant, there are approximately 800 short-term rentals in the County but that number includes those under property management.

MAYOR'S AGENDA

Mayor Cahoon - Review of proposed 2020 Board of Commissioners meeting calendar

Mayor Cahoon summarized the proposed 2020 Board of Commissioners meeting schedule with Board members.

MOTION: Comr. Renée Cahoon made a motion to adopt the proposed 2020 Board of Commissioners meeting schedule with the following changes: the January 1st meeting was moved to January 8, 2020; the April 1st meeting was moved to April 15, 2020 at 9 am. The motion was seconded by Comr. Siers which passed unanimously.

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

1. **Jan 8** BOC Regular Meeting 9 am
Jan 15 BOC mid-month meeting (if scheduled) 5:30 pm
2. Feb 5 BOC Regular Meeting 9 am
Feb 19 BOC mid-month meeting (if scheduled) 5:30 pm
3. Mar 4 BOC Regular Meeting 9 am
Mar 18 BOC mid-month meeting (if scheduled) 5:30 pm
4. **Apr 15** BOC Regular Meeting 9 am
5. May 6 BOC Regular Meeting 9 am
May 20 BOC mid-month meeting (if scheduled) 7 pm
6. Jun 3 BOC Regular Meeting 9 am
Jun 17 BOC mid-month meeting (if scheduled) 7 pm
7. Jul 1 BOC Regular Meeting 9 am
Jul 15 BOC mid-month meeting (if scheduled) 7 pm
8. Aug 5 BOC Regular Meeting 9 am
Aug 19 BOC mid-month meeting (if scheduled) 7 pm
9. Sep 2 BOC Regular Meeting 9 am
Sep 16 BOC mid-month meeting (if scheduled) 7 pm
10. Oct 7 BOC Regular Meeting 9 am
Oct 21 BOC mid-month meeting (if scheduled) 5:30 pm
11. Nov 4 BOC Regular Meeting 9 am
Nov 18 BOC mid-month meeting (if scheduled) 5:30 pm
12. Dec 2 BOC Regular Meeting 9 am
Dec 16 BOC mid-month meeting (if scheduled) 5:30 pm

Mayor Cahoon – Traffic safety/concerns

Little Bridge

Mayor Cahoon said that he is reluctant for the Town to prohibit fishing and cut off access to the north pier site at Little Bridge. Board members are concerned that all the safety items at the site cause confusion for pedestrians as well as motorists.

It was Board consensus that staff place the Little Bridge discussion back on the agenda for the new sitting Board to discuss on December 4th. Staff is to include a check-off list of all items that have been requested/installed at the Little Bridge site to include the flashing lights and the crosswalk. The Board discussed the possibility of removing all or some of the items placed at this site – to include putting the area back to its original condition. The new sitting Board can determine what, if any, action to take. Police Chief Webster is to provide updated incident information for the site and if an incident occurred before or after installation of DOT safety items.

US 158 speed limit reduction to 45 MPH

Mayor Cahoon said that his checking with the Town of Kill Devil Hills concerning support for lowering the speed limit on US 158 to 45 MPH has been placed on hold until the new mayor of Kill Devil Hills is in place.

Comr. Renée Cahoon asked staff to continue to pursue the speed limit reduction to 45 MPH that the Town requested from NCDOT from the Town line on the Nags Head/Manteo Causeway north to the Nags Head Elementary School.

Easement/Sidewalk at the 10.5 Shoppes

Comr. Renée Cahoon asked Town Manager Ogburn about the easement with NCDOT for the Adams Lane/Shoppes at 10.5 crosswalk. Town Manager Ogburn reported that the Town has prepared the easement and delivered it to NCDOT; he said that he will follow-up with DOT to determine status.

Discussion of January 23-24, 2020 Board Retreat Agenda

Mayor Cahoon reviewed the proposed January 23-24, 2020 Retreat Agenda with Board members; the summary sheet read in part as follows:

“Mayor Cahoon, at the November 6th Board of Commissioners meeting, will discuss the upcoming January 23-24, 2020 Retreat agenda with Board members.

‘The following list has been provided as possible items for discussion at the retreat:

- Meeting with Planning Board Chair
- Beach Nourishment Municipal Service Districts
- Pavement Condition and Drainage Infrastructure
- Dare County Control Group MOU”

Mayor Cahoon encouraged Board members to provide additional topics to the Clerk for inclusion on the Retreat agenda.

CLOSED SESSION

MOTION: Comr. Renée Cahoon made a motion to enter Closed Session to discuss the following:

Selection of the 2019 Earl Murray Jr Employee of the Year; a Personnel issue; Acquisition of real property located at 7813 S North Shore Road in the Pond Island Subdivision; an attorney/client issue and to preserve that privilege re: the Richardson Beach Nourishment easement condemnation - in accordance with GS 143-318.11(a) (2), (6), (5), and (3). The motion was seconded by Mayor Pro Tem Walters which passed unanimously. The time was 2:38 p.m.

OPEN SESSION

The Board re-entered Open Session at 3:51 p.m. Attorney Leidy reported that during Closed Session the Board did discuss the items mentioned when entering Closed Session and instructions were given to the Town Manager re: acquisition of real property but no other action was taken.

ADJOURNMENT

MOTION: Mayor Pro Tem Walters made a motion to recess to a Municipal Services District (MSD) Workshop on Monday, November 18, 2019 at 9 am in the Board Room. The motion was seconded by Comr. Fuller which passed unanimously. The time was 3:53 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: December 4, 2019

Mayor: _____
Benjamin Cahoon