



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, DECEMBER 7, 2022**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, December 7, 2022 at 9:00 a.m. for a Regular Meeting.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; and Comr. Bob Sanders

Board members Absent: Comr. Kevin Brinkley

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Kate Jones; Amy Miller; David Ryan; Nancy Carawan; Perry Hale; Shane Hite; Linda Bittner; Phil Wolfe; Christian Aguirre; Bruce Erickson; Steve Szymanski; Roberta Thuman; Matt Corriera; Susie Walters; Billy Moseley; Basil Belsches; George Barnes; Ann Cabell-Baum; Barbara Costa; Matt Costa; Duke Geraghty; Sam Vreeland; Bobby Harrell; Donna Creef; and Town Clerk Carolyn F. Morris

CALL TO ORDER

Mayor Cahoon called the meeting to order at 9 am. He noted that as the Town approaches the Christmas season there are those living in war conditions; he asked everyone to remember those during this holiday season. The moment of silence was followed by the Pledge of Allegiance. Mayor Cahoon stated that Comr. Brinkley was excused as he had an issue arise that kept him from today's meeting.

MOTION: Mayor Cahoon made a motion to postpone agenda item G-1 re: discussion of a proposed museum at Jockey's Ridge State Park until an upcoming meeting when all Board members would be able to be present. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Brinkley was excused.).

ADOPTION OF AGENDA

MOTION: Comr. Renée Cahoon made a motion to approve the December 7th agenda, as amended (with the postponement of agenda item G-1). The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Brinkley was excused.).

RECOGNITION

Public Services Director Nancy Carawan introduced Facilities Maintenance Technician Matt Corriera who was welcomed by the Board to Town employment.

PRESENTATION – Earl Murray Jr Employee of the Year Award
Mayor Cahoon asked nominees to stand as follows:

- Tax Collector Linda Bittner
- Permit Specialist Kim Thompson (unable to attend)
- Building Inspector Steve Szymanski
- Facilities Maintenance Technician Bruce Erickson
- Fire Captain Phil Wolfe
- Police Officer Christian Aguirre

Mayor Cahoon read comments from Comr. Brinkley congratulating all nominees; Board members thanked and congratulated the nominees.

Mayor Cahoon announced the Earl Murray Jr Employee of the Year winner as Facilities Maintenance Technician Bruce Erickson which was followed by a photo opportunity.

PUBLIC COMMENT

Attorney Leidy opened Public Comment at 9:10 a. m.

PUBLIC COMMENT – BARBARA COSTA

Barbara Costa, Southern Shores resident; she spoke on behalf of the OBX Running Company; she asked that the Board consider a modification to the Town Code to allow running events to be held weekly instead of requiring a 25-day wait in between events.

PUBLIC COMMENT – SUSIE WALTERS

Susie Walters, Nags Head resident; spoke re: Rogallo Foundation/Museum; she asked that the Board rescind its letter of October 20th to the State Parks as it contained inaccurate information concerning the Rogallo Foundation and potential museum at Jockey's Ridge State Park.

PUBLIC COMMENT – DONNA CREEF

Donna Creef, Government Affairs Director for the Outer Banks Association of Realtors; she spoke on behalf of the Board of Directors; her comments are attached to and made a part of these minutes as shown in Addendum "A"; the association is interested in initiatives that would allow multi-family structures to provide housing that would support our tourism-based economy; the following seven (7) local positions of support have been adopted by the association:

- Incentives that allow higher density for year-round housing
- Local / regional transportation solutions including public transportation to connect housing to jobs
- Policies that encourage accessory dwelling unit (ADU) construction
- Housing regulation simplification and intergovernmental consistency to reduce costs
- Public-private partnerships that provide multifamily workforce housing
- Housing tax credits
- A property owner's right to rent their property on a short-term basis to guests

PUBLIC COMMENT – BASIL BELSCHES

Basil Belsches, Nags Head resident; Old Nags Head Place neighborhood; he read a recent article in the Coastland Times re: the Dare County Board of Commissioners meeting where the Chair spoke re: affordable housing; in the area off of Hollowell St, there is no type of affordable housing units that would fit with this historic area; also spoke of the Town's Land Use Plan; the Town's Planning Board is currently studying this issue to see if more appropriate zoning regulations are needed in this historic area.

PUBLIC COMMENT - BOBBY HARRELL

Bobby Harrell, maintains an office in Nags Head; he spoke re: the need for central and affordable housing; the site on E Hollowell Street is being proposed for affordable housing by Woda Cooper; there is a definite need for this; primary residents/workforce live on the west side of the bypass; he spoke of housing costs that would not work for someone moving into this area to afford; he estimates a total of \$470,000 for someone coming in to buy a lot and build a starter home on the west side; it would be even higher mortgages for those building a home to rent monthly; businesses that operate for many years cannot operate seven days/week due to the lack of workforce housing.

PUBLIC COMMENT – BILLY MOSELEY

Billy Moseley, Nags Head resident; member of Friends of Jockey's Ridge Board (FOJR) for the past 20 years; he spoke on behalf of the FOJR Board of Directors to reiterate the FOJR has issued a resolution and the State Dep Director has stated that JRSP is not a suitable location for the Rogallo museum – has nothing detrimental to say re: Rogallo and Mr. Harris; he submitted to the Town Clerk on behalf of Friends of Jockey's Ridge attached to and made a part of these minutes as shown in Addendum "B".

Written comments received from John Harris prior to the meeting re: the proposed Rogallo Foundation Museum are attached to and made a part of these minutes as shown in Addendum C".

Written comments received from Sandra Allen prior to the meeting re: the proposed Rogallo Foundation Museum are attached to and made a part of these minutes as shown in Addendum "D".

There being no one else present who wished to speak, Attorney Leidy concluded Public Comment at 9:25 a.m.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Budget Amendment #7 to FY 22/23 Budget

Consideration of Tax Adjustment Report

Approval of minutes

Consideration of resolution authorizing execution of a Planning & Management Grant Contract

Consideration of request from Dominion Energy

Request for Public Hearing to consider various text amendments to the Unified Development Ordinance pertaining to the tree preservation/removal regulations within the Town

Request for Public Hearing to consider a Special Use/Site Plan Amendment submitted by Chris Greening on behalf of TW's Bait and Tackle for the reduction of three (3) required parking spaces with the use of bicycle racks pursuant to Section 10.15.2.5 of the Unified Development Ordinance. The property is zoned C-2, General Commercial and is located at 2230 S. Croatan Highway, Nags Head

MOTION: Comr. Sanders made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Renée Cahoon which passed 4 – 0 (Comr. Brinkley was excused.).

Budget Amendment #7, as approved, is attached to and made a part of these minutes as shown in Addendum "E".

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

The Resolution authorizing the execution of a Planning & Management grant contract, as adopted, read in part as follows:

'WHEREAS: The Town of Nags Head (the "Town") has been awarded a planning & management grant for a multi-decadal beach nourishment master plan-borrow area S1 analysis; AND

'WHEREAS: The Town is advised that a proposed contract between the Town and the North Carolina Division of Coastal Management (DCM) for a planning & management grant is being presented for the long-term nourishment of the Town's beaches to protect existing infrastructure and maintain recreational public access as discussed; AND

'WHEREAS: That, under the terms of the said contract, the total project cost is \$58,992.00; AND

'WHEREAS: The Town will pay a total local cash contribution of \$33,992.00 as its local share of the total project costs; AND

'WHEREAS: The total grant assistance requested is \$25,000.

'BE IT THEREFORE RESOLVED, as follows:

1. That a contract between the Town of Nags Head and the North Carolina Department of Environmental Quality be and the same is hereby approved.
2. That the Manager is hereby authorized to sign and execute the said contract for and on behalf of the Town of Nags Head and forward the same to the North Carolina Department of Environmental Quality.
3. That upon final execution, a copy of said contract be filed with the minutes."

The agenda summary request from Dominion Energy, as approved, read in part as follows:

"Request Board approval of Dominion Energy utility easement along Old Nags Head Woods Road in order to run a primary underground line to the adjacent properties. Their original request was approved by the Board on November 2nd.

'Below is an additional request from Samuel Torpy of Pike Engineering, on behalf of Dominion Energy, to extend past the property line of the first parcel.

'Back in early November 2022 we submitted an easement for approval by the BOC for a project on Old Nags Head Woods Rd where we will be running underground line along the Town of Nags Head right-of-way. The easement was approved by the BOC but after submitting the easement for recordation with the court system, our contact with Dominion informed us that we needed the easement to extend past the property line of the first parcel for construction to stay off the Nature Conservancy Property where we do not have any easement secured. After discussing potential plans to change the easement with the Town Attorney and Town Manager, it was determined that a new easement will be drawn up and put on the consent agenda with the original easement being quitclaimed after the updated easement is approved and signed by the BOC. The plan for the easement is the same where we will run the underground line along the right-hand side of the road then crossing the road once we reach the parcel owned by the Town of Nags Head. The only change is that the start of the easement extends approximately 10 feet past the first

parcel where easement has been secured (see attached chart to see addition; green is easement already secured, yellow indicates proposed additional easement, and red is easement that was not obtained that needs to be avoided). Attached please find associated agreement and diagram."

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

"In an effort to both clarify, strengthen and consolidate regulations within the Town Code and Unified Development Ordinance related to tree protection, preservation and removal, planning staff has prepared draft ordinance revisions and additionally consolidated them into an Appendix for the Board of Commissioners consideration. The revised language includes proposed remedies for unauthorized removal of protected and/or regulated trees.

'Staff and Planning Board Recommendation

Planning Staff recommends adoption of the proposed text amendments and Appendix which consolidates the various tree protection, preservation, and removal regulations into one document, as presented.

'At their October 18th and November 15th meetings the Planning Board voted unanimously to recommend adoption of the proposed text amendments as well as the appendix respectively."

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

"Special Use Permit/Site Plan Amendment submitted by Chris Greening on behalf of TW's Bait and Tackle for consideration of the reduction of the three (3) required parking spaces with the use of three (3) compliant bicycle racks pursuant to Section 10.15.2.5, Modified and Reduced Parking Requirements. The property is zoned C-2, General Commercial and is located at 2230 S. Croatan Highway, Nags Head.

'Staff Recommendation/Planning Board Recommendation

Based upon Staff's review of the proposal staff recommends approval of the Special Use Permit/Site Plan Amendment as presented.

'At their November 15, 2022, meeting the Planning Board voted unanimously to recommend approval of the Special Use Permit/Site Plan Amendment as presented."

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

Update from Planning Director

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

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on December 7, 2022.

'Monthly Activity Report

'Attached for the Board's review is the *Planning and Development Monthly Report for October 2022*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, November 1st - Technical Review Committee Meeting
- Wednesday, November 2nd - Board of Commissioners Meeting
- Friday, November 4th – Movie at Dowdy Park
- Friday, November 4th – Planning to participate in RealtorFest
- Wednesday, November 9th - CRS Users Group Meeting
- Wednesday, November 9th – Committee for Art and Culture Meeting
- Thursday, November 10th – Board of Adjustment (no hearings)
- Saturday, November 12th – Dowdy Park Holiday Market
- Tuesday, November 15th – Planning Board Meeting
- Saturday, November 26th – Dowdy Park Holiday Market
- Saturday, November 26th – 2nd Annual Tree Lighting Ceremony

'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, November 15, 2022 and included consideration of a Special Use Permit/Site Plan Amendment submitted by Chis Greening of TW's Bait and Tackle for the reduction of three required parking spaces with the use of bicycle racks, a presentation of a draft Appendix to the Unified Development Ordinance outlining existing and proposed ordinance language pertaining to tree removal and preservation regulations. Planning staff provided an update on the Town's Short Term Rental Program regulations and engaged the Planning Board in a discussion of the Historic Character Area as set forth within the 2022 CAMA Land Use Plan/Comprehensive Plan and review of ordinances and existing land uses as it pertains to the recently adopted moratorium.

'The Planning Board's next meeting is scheduled for December 13, 2022. At this time, the agenda is expected to include ongoing discussions with the Planning Board pertaining to the Historic Character Area as it relates to the adopted moratorium prohibiting all non-residential development in the area north of Danube Street to Hollowell Street between US Hwy 158 and NC 12.

'Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in November 2022 and no requests have been received for the December 2022 meeting. Woda Cooper Development, Inc. has submitted an appeal of the UDO Administrators formal interpretation issued on October 31, 2022 that is scheduled to be heard by the Nags Head Board of Adjustment on Thursday, January 12, 2023.

'Additional Updates

- DWMP/Voluntary Septic Subscription Service – Planning staff will be presenting to the Board of Commissioners at their December 7, 2022 meeting a request to consider establishing a new charge for the working group appointed to the Voluntary Septic Subscription Service and to be renamed the Septic health Advisory Committee. This request comes following concerns over potential liability issues related to a subscription service. It was the consensus of the working group that the town does not pursue the voluntary septic subscription service at this time and focus on improving and enhancing the existing program.

- Estuarine Shoreline Management Plan – A project scoping meeting was held on November 23, 2022 with multiple permitting agencies. The purpose of this meeting was to discuss the proposed overall project and provide environmental permitting and regulatory information which will improve communications and the overall permitting process. The project locations and conceptual designs were introduced to the team. General feedback was received, and the meeting minutes are available on the

project website. The attendees were as follows: Doug Huggett, Moffatt & Nichol Justin Park, BioHabitats Holly Snider, DWR-401, Dawn York, Moffatt & Nichol, Pace Wilber, National Marine Fisheries, Carl Dunn, DEMLR-Stormwater, Brian Joyner, Moffatt & Nichol, Kathy Matthews, USFWS Randall Jones, DEMLR-Land Quality, David Ryan, Town of Nags Head, Gregg Bodnar, Coastal Management, Lyn Hardison, NCDEQ, Andy Garman, Town of Nags Head, Yvonne Carver, Coastal Management, Kate Jones, Town of Nags Head, Christa Sanderson, DMF Shellfish, Hunter Freeman, McAdams Company, Maria Dunn, NCWRC, Jessica Norris, BioHabitats and Jimmy Harrison, NCDMF.

The project is wrapping up with a draft report expected to be submitted to staff by December 5th, and a final Advisory Committee meeting scheduled for Monday December 19th. Staff anticipates that the Board of Commissioners will be provided with the final report in January 2023.

- NC Resilient Coastal Communities Program – An agency scoping meeting was conducted on Monday November 28, 2022 to review the dune infiltration concept proposal. This provided an opportunity to receive feedback from the various state and federal agencies to identify potential regulatory issues. A significant amount of the discussion was centered around possible impacts to nesting sea turtles. Follow-up with several of the agencies will be required.

On a separate but related subject, water level data loggers have been purchased by the Town's consultant and are scheduled for installation in the upcoming week. The installation of this equipment will permit for a more continuous review of water levels and provide improved accuracy in calibrating the hydrologic and hydraulic model for the infiltration system design. The data loggers can be repurposed and utilized as part of the Towns water quality monitoring program as identified in the Decentralized Wastewater Management Plan update.

- Electric Vehicle Action Plan – Staff is looking into securing funding opportunities for an EV Charger at Town Hall. Staff will report on any potential grant opportunities.

- ETIPP Project/Program – No new updates, however we anticipate providing an update to the Board of Commissioners at their January 4, 2023 meeting.

- Whalebone Park: Phase 1 Planning – Staff is moving forward with the accessible restroom design and is currently preparing a scope of work. Due to the cost of the design being less than \$50,000, which is the trigger for the Qualifications-Based Selection (QBS) process, staff is recommending proceeding with Mini-Brooks Exemption to hire an architect to complete the drawings. Staff submitted the NC PARTF Accessibility for Parks (AFP) grant application in November 2022 and should hear if the grant was successful by Spring 2023.

- Dune Management Cost Share Program – Currently there are 48 property owners that have submitted applications for the cost share program. Of them, 46 are sand relocation projects, and 2 are only planting projects. Staff have been working diligently to align this grant program with the sand relocation permitting process. \$170,000 was the total amount funded to this program, and \$163,000 is currently allocated to the 48 applicants, leaving a balance of \$7000 as of 12/2/22.

- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture – The Town has now held three of the four scheduled Holiday Markets, with the latest being the night market held on Thursday, December 1st. This market was very well received by visitors and vendors alike with many compliments on the beautiful lights and decorations. There is one more Holiday Market coming up on Saturday, December 10th from 9am – noon. The 2nd Annual Tree Lighting Ceremony was well attended with many positive comments received. We are now accepting applications for the Townwide Holiday Decorating Contest.

Applications should be submitted by December 9th and judging will occur on the evening of December 13th. Lastly, the Flashlight Candy Cane Hunt is coming up on Thursday, December 15th.

Upcoming Meetings and Other Dates

- Thursday, December 1st – Holiday Market (4pm – 7pm)
- Friday, December 2nd – CRS Users Group Meeting
- Saturday, December 3rd – Towns Holiday Party.
- Monday, December 5th – Meeting Beach Concierge Vendors
- Tuesday, December 6th – Technical Review Meeting (no applications received)
- Tuesday, December 6th – SeeClickFix Training
- Wednesday, December 7th – Board of Commissioners Meeting
- Thursday, December 8th – Board of Adjustment Meeting (no hearings)
- Saturday, December 10th – Last Holiday Market (9am – noon)
- Tuesday, December 13th – Planning Board Meeting
- Tuesday, December 13th – Art and Culture Committee Holiday Contest Judging
- Wednesday, December 14th – All Hands Staff Meeting
- Wednesday, December 21st – Board of Commissioners mid-month meeting”

Comr. Sanders confirmed with Ms. Wyatt that at this time only Town Hall is being looked at for grant opportunities for electronic vehicle charging locations; staff will be looking at the Town’s parks in the future as well. Mayor Cahoon suggested the purchasing power of all towns getting a number of charging units at a better cost – for discussion at an upcoming planning directors luncheon.

Consideration of establishing a new charge for the working group appointed to the Voluntary Septic Subscription Service and to be renamed the Septic Health Advisory Committee

Dep Planning Director Kate Jones summarized her memo which read in part as follows:

“The third meeting of the Voluntary Septic System Subscription Service (VSSSS) working group was held Thursday, October 27th at 10am in the Board Room. The working group had previously charged staff to confer with the Town Attorney and identify potential liability issues related to the subscription service. After discussion among all the members of the working group, it was consensus that the town not pursue the voluntary septic subscription service at this time given potential liability concerns. Members felt efforts would be better spent improving the existing program, putting effort into more community outreach and education, having a more visible role in the community, and participating in activities to help inform citizens of the program. Members of the working group and staff agreed that having an on-going Septic Health Advisory Committee (SHAC), that met quarterly, to discuss the successes and challenges of the program and to provide input as we begin to implement the recommendations of the Decentralized Wastewater Treatment Plan (DWMP) would be beneficial. At this time, staff would like to recommend changing both the name, makeup, and charge of the committee. The new committee would be named the Septic Health Advisory Committee, consisting of the following members:

’Conner Twiddy, Environmental Planner
Kate Jones, Deputy Planning Director
Kelly Wyatt, Planning Director
Kevin Brinkley, Board of Commissioners

Megan Lambert, Planning Board
Bob Muller, Town Resident

'If the board would like to recommend additional members to the committee, staff are happy to add or recruit additional members. The charge of the committee would be to advise on the implementation of the recommendations from the recently adopted Decentralized Wastewater Treatment Plan (DWMP), as well as discussing the ongoing septic health program successes and challenges. The committee could host guest speakers from varying backgrounds and roles in the community and region, such as employees from the Dare County Health Department, local septic contractors, relevant researchers, and others working in the wastewater field. These invites could be determined as needed by the Septic Health Advisory Committee. Staff recommends that SHAC meet quarterly throughout the year, and the first meeting be scheduled for January 2023. (January, April, July, October) Staff would like approval of the new committee and charge, as well as guidance on the committee member makeup."

Mayor Cahoon requested regular (quarterly) reports to the Board on the progress of the objectives.

Comr. Renée Cahoon suggested asking for additional volunteers to serve on the committee, such as from the S Nags Head area where issues are often seen.

MOTION: Mayor Pro Tem Siers made a motion to approve the request for changes to the Voluntary Septic Subscription Service Committee [to include new name and charge] as requested. The motion was seconded by Comr. Renée Cahoon which passed 4 – 0 (Comr. Brinkley was excused.).

NEW BUSINESS

Committee Reports

Comr. Sanders – He noted that Planning Director Kelly Wyatt provided a thorough update on the Estuarine Shoreline Management Plan committee during her monthly report.

Comr. Renée Cahoon – The Pedestrian Project Advisory Committee is moving forward and members have provided Engineer Ryan their individual lists ranking the projects - for discussion at the committee meeting next week.

Consideration of Board/Committee appointments/reappointments

The agenda summary sheet read in part as follows:

"At the December 7th Board of Commissioners meeting, request Board consideration of the following:

'Appointment/Reappointment to Planning Board

Kristi Wright, Gary Ferguson, and Molly Harrison's terms expire January 8, 2023 – they all have indicated they would like to be considered for reappointment.

'Appointment/Reappointment to Arts and Culture Committee

Peggy Saporito and Kerry Oaksmith-Sanders' terms expire December 4, 2022 – they have indicated they would like to be considered for reappointment. (Currently, there are no candidates interested in serving.)

'Appointment to Nags Head Leasing Corporation

Nags Head Leasing Corporation is a non-profit, wholly owned subsidiary of the Town of Nags Head – it is not a Town Board/Committee. The corporation is used as a holding company and has saved considerable taxpayer money over the years.

'At the December 7th Board of Commissioners meeting, in accordance with the corporation's by-laws, staff is requesting that the Board appoint Town Manager Garman as the President/CEO of Nags Head Leasing. One of the directors of the corporation is to be appointed by the Board of Commissioners on an annual basis. The remaining Directors are elected by the Board of Directors at their annual meeting – held each May.

'Attached please find updated Tracking Rosters, as well as an updated Planning Board Candidate Chart - for the above listed board/committee."

Planning Board

MOTION: Comr. Renée Cahoon made a motion to reappoint Gary Ferguson, Kristi Wright, and Molly Harrison to additional three-year terms on the Planning Board. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Brinkley was excused.).

Arts & Culture Committee

MOTION: Mayor Pro Tem Siers made a motion to reappoint Peggy Saporito and Kerry Oaksmith-Sanders to additional three-year terms on the Arts & Culture Committee. The motion was seconded by Comr. Renée Cahoon which passed 4 – 0 (Comr. Brinkley was excused.).

Nags Head Leasing Corporation

MOTION: Comr. Renée Cahoon made a motion to appoint Town Manager Andy Garman as a director in the Nags Head Leasing Corporation. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Brinkley was excused.).

Consideration of bid award for FY 22-23 Street Resurfacing Project - Consideration of Budget Amendment

Town Engineer David Ryan summarized his memo which read in part as follows:

"On October 14, 2022, the Town of Nags Head solicited formal bids for street resurfacing and utility infrastructure improvements for the Nags Head Acres Subdivision, a portion of Old Nags Head Cove Subdivision, E. Barnes St., Admiral St., East and West Soundside Rd., E. Bladen St., a portion of S. Memorial Ave., and Bainbridge St. Watermain and stormwater infrastructure replacement accompany the E. Barnes St. scope of work and drainage infrastructure replacement and improvements accompany the Nags Head Acres subdivision scope of work.

'The bid package was structured with a base bid and two add alternate bid items to permit the Town flexibility to award a portion of the scope of work if the bids exceeded the available funds. Nags Head Acres Subdivision, Old Nags Cove, Admiral St. and E. Barnes St. scope of work were included in the base bid items with Soundside Rd., and the lower end of S. Memorial Ave. indicated as add alternates.

'Only two formal bids were received on November 10, 2022, which facilitated a re-advertisement and re-bid which was conducted on November 18, 2022. Only two formal bids were received at the time of re-bid.

N.C.G.S. permits a governing body to accept the lowest responsible bid from a reputable and qualified contractor if less than three bids are received as the result of a second advertisement.

'Barnhill Contracting Company submitted a bid with a total amount of \$1,977,057.42. Fred Smith Company submitted a bid with a total amount of **\$1,967,321.50** and the lowest, responsive, responsible bidder.

'The lowest bid price exceeds the budgeted funds for the project work. Staff was able to identify supplemental funding from two separate sources which would be able to fund all portions of the project work except for W. Soundside Rd. Negotiations were conducted with Fred Smith Company, removing the W. Soundside Rd. scope of work resulting in an adjusted total amount of **\$1,786,758.00**.

'Staff requests the Board to consider the following:

'Board Action #1: Consideration of a budget amendment in the amount of **\$1,069,544** to permit the adjusted scope of project work. This amount includes a \$100,000 construction contingency.

'Board Action #2: Consideration of Notice of Award to Fred Smith Company for the construction bid in the amount of **\$1,786,758.00** and authorize the Town Manager to execute the construction contract amount contingent upon Attorney Review.

Funding Request		
Contract Amount	\$1,786,758	Request Board Approval
Contingency Amount	\$100,000	Request additional funding for contingency
Total Funding Request	\$1,886,758	Includes contract plus \$100,000 contingency
Funding Sources		
Amendment not needed	\$393,182	FY 22/23 Streets and Stormwater
Amendment not needed	\$95,000	FY 22/23 Powell Bill
Amendment not needed	\$44,500	FY 22/23 Water Fund portion
Budget Amendment needed	\$573,145	Unused FY 21/22 Streets/Stormwater capital reserve funds
Budget Amendment needed	\$251,599	Unused FY 21/22 Powell Bill funds
Budget Amendment needed	\$244,800	Public Services Complex interest-CIF fund
Amendment not needed	\$284,532	Stormwater Project Area #4 grant not received-CIF fund
Total Funding Sources	\$1,886,758	
Total Budget Amendment	\$1,069,544	Request approval of Budget Amendment 7.6"

MOTION: Comr. Renée Cahoon made a motion to approve the FY 22-23 Street Resurfacing Project Budget Amendment in the amount of \$1,069,544 to permit the adjusted scope of project work, as presented. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Brinkley was excused.).

MOTION: Mayor Pro Tem Siers made a motion to award the construction bid to Fred Smith Company and to authorize Town Manager Garman to execute the construction contract in the amount of \$1,786,758 as presented. The motion was seconded by Comr. Renée Cahoon which passed 4 – 0 (Comr. Brinkley was excused.).

Engineer Ryan stated that he will keep the Board informed and make sure neighborhood liaisons are kept informed as the work progresses.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Town Attorney Leidy – New addition to the Hornthal, Riley, Ellis, and Maland firm

Town Attorney Leidy reported that he and his firm are pleased to announce that Attorney Lauren Womble is joining their firm as of January 1, 2023.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman - Update on Soundside Road access to Jockey's Ridge State Park

Town Manager Garman reported on a meeting with several of the Soundside Road neighborhood residents concerning access to Jockey's Ridge State Park and other items of concern on October 21, 2022. Speed signs and cushions were installed that collect speed data and that data has indicated pretty good compliance with the speed limit. There are no plans at this time to change anything.

Manager Garman expressed his continued concern about visits by the public to the access; some other items he noted follow:

- Staff will continue to coordinate with Jockey's Ridge State Park staff as necessary
- The walkway was removed and the Town assisted with closing out the area with sand fencing to allow more vegetation to grow
- The Park needs to start thinking about ADA access to their beach
- The lease with the Town/Park has expired and it was determined that there is no continued need for a lease
- He would like to see coordination of or at least notice of upcoming events and any future improvements to make sure Soundside Road residents are aware; Board members concurred.

It was Board consensus to agree with Town Manager Garman's report and his recommendations regarding Soundside Road and Jockey's Ridge State Park to include coordination with the park concerning notice of upcoming events.

Town Manager Garman - Consideration of FY 2023/2024 Budget Calendar

The proposed FY 2023/2024 Budget Calendar was reviewed with Board members.

MOTION: Comr. Renée Cahoon made a motion to approve the FY 2023/2024 Budget Calendar as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Brinkley was excused.).

The FY 2023/2024 Capital Improvement Program and Budget Workshop Schedule, as approved, read in part as follows:

"Board adopts budget calendar

December 7, 2022

'Retreat/Budget Planning Workshop

February 15, 2023; following 9 am Board of Commissioners meeting

<u>'Capital Improvement Program/Budget Workshop</u>	Wed. March 1, 2023; following 9 am Board of Commissioners meeting
<u>'Capital Improvement Program/Budget Workshop</u>	Wed. March 15, 2023; 9 am
- If continuation is needed	Wed. April 5, 2023; following 9 am Board of Commissioners meeting
<u>'Presentation of Managers Recommended Budget and Capital Improvement Program</u>	Wed. May 3, 2023; 9 am
<u>'Capital Improvement Program/Budget Workshop</u>	Wed. May 17, 2023; following 9 am Board of Commissioners meeting
<u>'Budget Public Hearing</u>	Wed. June 7, 2023; 9 am
<u>'Capital Improvement Program/Budget Workshop</u> - If continuation is needed	Wed. June 7, 2023; following 9 am Board of Commissioners meeting
<u>'Budget Adoption</u>	Wed. June 21, 2023; 9 am"

Town Manager Garman - Discussion of the sand relocation program

- Consideration of Beach Nourishment Maintenance Capital Project Ordinance amendment

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

"At the December 7th Board of Commissioners meeting, Town Manager Garman will discuss the sand relocation/sprigging/sand fencing grant program. The program has been very popular with property owners and out of the \$170,000 budgeted for the current fiscal year, \$159,500 in applications has already been received.

'A capital project ordinance amendment is provided for Board consideration in the amount of \$100,000. Staff is prepared to discuss the budget for this program and any limits for this year."

MOTION: Comr. Renée Cahoon made a motion to adopt the Beach Nourishment Maintenance Capital Project Ordinance amendment as presented. The motion was seconded by Mayor Pro Tem Siers which passed 4 – 0 (Comr. Brinkley was excused.).

The Beach Nourishment Maintenance Capital Project Ordinance Amendment #6, as adopted, read in part as follows:

"BE IT ORDAINED by the Governing Board of the Town of Nags Head, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance as adopted December 16, 2020, amended February 3, 2021, amended September 1, 2021, amended January 5, 2022, amended August 3, 2022, amended October 5, 2022, is hereby further amended as follows:

'Section 1. The project authorized is a locally funded beach nourishment project to be financed by appropriation of Beach Nourishment Capital Reserve Fund Balance and grants committed by the Federal Emergency Management Agency (FEMA), the N.C. Department of Public Safety (NCDPS), and the N.C. Department of Environmental Quality (NCDEQ).

'Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the budget contained herein.

'Section 3. The following amounts are appropriated for the project:

Engineering and construction oversight	\$ 1,337,636
Pumping Costs	6,173,419
Mobilization/Demobilization	5,023,000
Professional fees	793,000
Surveying and Monitoring	472,200
Sand fencing	161,000
Capital outlay-other	285,000
Sprigging	64,750
Turtle monitoring	80,000
Contingency	<u>98,359</u>
	<u>\$ 14,488,364</u>

'Section 4. The following revenues are anticipated to be available to complete this project:

Intergovernmental Grants	\$12,714,542
Contribution from Capital Reserve Fund	<u>1,773,822</u>
	<u>\$ 14,488,364</u>

'Section 5. The Finance Director is hereby directed to maintain within the Capital Project Fund sufficient detailed accounting records to satisfy federal, state, and local regulations.

'Section 6. The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3.

'Section 7. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues in this capital project in every budget submission made to this Board.

'Section 8. Copies of this project ordinance shall be furnished to the Clerk of the Governing Board, and to the Budget Officer and Finance Director for direction in carrying out this project.

'Section 9. The Town Manager, or in his absence his designee, is hereby authorized to execute change orders or amendments to contracts in amounts up to \$50,000 appropriated from contingency when it contains sufficient funds. The Budget Officer is authorized to reallocate appropriations between contingency and the various objects of expenditures as a result. Such changes shall be reported to the Governing Body at the next regular meeting.

'Section 10. In case of emergency which threatens lives, health, and safety of public, the Town Manager may execute contractual documents and authorize expenditures in an amount necessary to meet the emergency so long as such amount does not exceed the amount in the contingency account not to exceed \$125,000 and the expenditure is reported to the Board of Commissioners as soon as possible, and the appropriate budget amendments are submitted at the next regular meeting."

Town Manager Garman – Public Comments

Town Manager Garman brought forward the current practice of reading aloud comments received prior to a Board meeting.

Mayor Cahoon questioned the need to continue to read comments received into the public record – he doesn't want to take away from those that make the effort to show up in person. He would be in favor, if not otherwise obligated, to simply enter comments into the meeting minutes record.

Attorney Leidy clarified that since COVID requirements have expired, if comments are submitted for a specific quasi-judicial or legislative matter, they can be addressed at that time but in the context of a public comment session – reading the comments aloud can be discontinued. Attorney Leidy also suggested adding this information to the next few upcoming agendas and on the Town's web site to make sure the public is aware.

It was Board consensus that since the requirements put in place for COVID have expired, comments received prior to a Board of Commissioners meeting, not associated with a legislative or quasi-judicial public hearing, will be entered into the meeting minutes but will not be read aloud.

BOARD OF COMMISSIONERS AGENDA

Mayor Pro Tem Siers – Thank you to staff for fixing Village at Nags Head watermain leak

Mayor Pro Tem Siers thanked those involved in fixing the Village at Nags Head watermain leak last week.

Mayor Pro Tem Siers – Thank you to employees for a great year

Mayor Pro Tem Siers thanked all Town employees for doing a great job this past year.

MAYOR'S AGENDA

Mayor Cahoon - Consideration of 2023 BOC Meeting calendar

MOTION: Mayor Pro Tem Siers made a motion to approve the 2023 Board of Commissioners meeting calendar as presented. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Brinkley was excused.).

Mayor Cahoon - Request for Lightkeeper/Nags Header Nominations

Mayor Cahoon spoke of the upcoming Lightkeeper/Nags Header nomination process. For the benefit of the public, he encouraged and reminded everyone of this opportunity.

Mayor Cahoon – Town Manager's review

Mayor Cahoon received concurrence from Board members to conduct the Town Manager's annual review on January 4, 2023.

Mayor Cahoon – Congratulations to Surf City Mayor, Doug Medlin

Mayor Cahoon noted Mayor Medlin's recent announcement of retirement and thanked him for his many great years of service to Surf City.

Mayor Cahoon - Consideration of employee Christmas bonus

Board members spoke in favor of an employee Christmas bonus. Comr. Renée Cahoon thanked the late, former commissioner Doug Remaley, who began the employee bonus gift many years ago.

MOTION: Mayor Pro Tem Siers made a motion to approve the employee Christmas bonus of \$150 for full-time and \$75 for part-time employees. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Brinkley was excused.).

CLOSED SESSION

MOTION: Mayor Pro Tem Siers made a motion to enter Closed Session pursuant to GS 143-318.11(a)(3) in order to consult with the Town Attorney regarding matters protected by the attorney/client privilege and to preserve that privilege, including the cases of TONH v. Cherry, Inc.; TONH v. Satterfield Landing; TONH v. Budlong; and TONH v. 205 Baltic Street. The motion was seconded by Comr. Renée Cahoon which passed 4 – 0 (Comr. Brinkley was excused.). The time was 10:25 a.m.

OPEN SESSION

The Board re-entered Open Session at 11:05 a.m. Attorney Leidy reported that during Closed Session those items the Board went into Closed Session to discuss were discussed but no actions were taken.

ADJOURNMENT

MOTION: Mayor Pro Tem Siers made a motion to recess to a mid-month meeting on Wednesday, December 21, 2022 at 9 am in the Board Room. The motion was seconded by Comr. Sanders which passed 4 – 0 (Comr. Brinkley was excused.). The time was 11:07 a.m.

Carolyn F. Morris, Town Clerk

Date Approved: January 4, 2023

Mayor: _____
Benjamin Cahoon