



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, OCTOBER 4, 2023**

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, October 4, 2023 at 9:00 a.m. for a Regular Meeting.

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

Board members Absent: None

Others present: Town Manager Andy Garman; Attorney John Leidy; Amy Miller; Kelly Wyatt; David Ryan; Perry Hale; Chris Montgomery; Randy Wells; Shane Hite; Michelle Gray; Roberta Thuman; Karen Snyder; Davis Bradley; Joe Costello; Jose Ramirez; Trey Simmons; David Bragg; Grayson Orsini; Basil Belsches; Shelly Blackstone; Debbie Carrera; Megan Lambert; Ann Cabell-Baum; Molly Harrison; Tim Morrison; Beth Sciaudone; Brian Joyner; and Town Clerk Carolyn F. Morris

CALL TO ORDER

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

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the October 4th agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

RECOGNITION

NEW EMPLOYEES

Police Chief Perry Hale introduced Police Officer Davis Bradley who was welcomed by the Board to Town employment.

Planning Director Kelly Wyatt introduced Dep Planning Director Joe Costello who was welcomed by the Board to Town employment.

Fire Chief Randy Wells introduced Firefighter/EMT Jose Ramirez who was welcomed by the Board to Town employment.

TEN YEARS

Fire Chief introduced Firefighter/EMT Trey Simmons who was congratulated by the Board for ten years of service.

PROCLAMATION – Fire Prevention Week – October 8 – 14, 2023

Dep Fire Chief Shane Hite introduced the upcoming Fire Prevention Week and provided a brief history.

Mayor Cahoon read the proclamation declaring October 8 – 14, 2023 as Fire Prevention Week as follows:

“WHEREAS, the Town of Nags Head is committed to ensuring the safety and security of all those living in and visiting our town; AND

‘WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; AND

‘WHEREAS, home fires killed more than 2,800 people in the United States in 2021, according to the National Fire Protection Association; AND

‘WHEREAS, two of every five home fires start in the kitchen with 31% of these fires resulting from unattended cooking; AND

‘WHEREAS, more than half of reported non-fatal home cooking fire injuries occurred when the victims tried to fight the fire themselves; AND

‘WHEREAS, North Carolina’s residents should turn pot handles toward the back of the stove; always keep a lid nearby when cooking; keep a three-foot kid-free zone around the stove, oven, and other items that could get hot; and set a timer to remind them that they are cooking; AND

‘WHEREAS, residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; AND

‘WHEREAS, working smoke alarms cut the risk of dying in reported home fires almost in half; AND

‘WHEREAS, the 2023 Fire Prevention Week theme, “Cooking safety starts with YOU. Pay attention to fire prevention,” effectively serves to remind us to stay alert and use caution when cooking to reduce the risk of kitchen fires.

‘NOW, THEREFORE, BE IT RESOLVED that I, Ben Cahoon, Mayor of the Town of Nags Head, do hereby proclaim October 8 – 14, 2023, as Fire Prevention Week, and I urge all the people of the Town of Nags Head to check their kitchens for fire hazards, use safe cooking practices, and support the many public safety activities and efforts of the Nags Head Fire Department.

‘All Town residents and visitors are invited to attend the annual Nags Head Fire Rescue Open House, held at the Douglas A Remaley Fire Station 16 on Thursday, October 12, 2023 from 5:00 to 7:30 pm.”

MOTION: Comr. Brinkley made a motion to adopt the Proclamation identifying Fire Prevention Week as October 8 – 14, 2023 as presented. The motion was seconded by Comr. Sanders which passed unanimously.

PUBLIC COMMENT

Attorney John Leidy opened Public Comment at 9:13 a.m.

PUBLIC COMMENT – DAVID BRAGG, Nags Head resident, spoke concerning Sec 24.8(a) of the State Budget adopted last week which is detrimental to the Town and would mean there is no representation

in zoning regulations for affordable building structures; this week at the Dare County Board meeting he spoke concerning this issue and afterwards received an email from the Dare County Board Chair, Bob Woodard, stating that the Nags Head Mayor Ben Cahoon met with Woda Cooper and was on board with affordable housing [at Hollowell]; Mr. Bragg stressed that Mayor Cahoon would have a conflict of interest if he is doing business with Woda Cooper for a structure in Nags Head; he wanted the Mayor to send a message to the public as he has a lack of trust in the Mayor making decisions for the Town's future – he questioned who he would be representing – Nags Head or his firm; he would like to see the Mayor address these issues.

PUBLIC COMMENT – BASIL BELSCHES, Nags Head resident; stated that he spoke Monday at the Dare County Board meeting; there was plenty of back/forth between the Board and the public; it was never stated where the Section in the Budget derived from but the Dare County Board did say they would never force anything down the Town's throats; he stated that he would be happy to volunteer his time to serve on the task force that was mentioned to be made up of representatives of all the towns.

PUBLIC COMMENT – DEBBIE CARRERA, Nags Head resident; appreciates the time the Board puts into these meetings; it would be nice to have some regular citizens on the County Task Force, and the legislators have not represented the citizens of Dare County; she would like to see preparing for the re-election campaigns of the legislatures to better represent our area.

PUBLIC COMMENT – SHELLY BLACKSTONE, Nags Head resident; the Dare County task force should have a broader representation of those who live in Nags Head; there is no plan right now – just a reaction and Nags Head needs to be a part of the broader development plan; there should be a commitment from the developer of any new entity, hotels, etc. to include workforce housing otherwise the problem will just continue to get worse; Dare County denies they had anything to do with the legislation but they also skirted the issue that they would do any type of correction to the budget and she would like to see the Town continue to pursue that.

PUBLIC COMMENT – MOLLY HARRISON, Nags Head resident; representing her neighbors on Lakeside Street; they are concerned about the hotel proposed to be built at the end of their street; a big concern is the traffic flow; she feels it is very unfair to their neighborhood residents that will be entering and exiting that area along with the hotel and the existing gas station – all to be entering/exiting via their small, narrow Lakeside Street; she is aware that NCDOT will not be installing a traffic signal in that location which will make for a very unsafe situation; she would like the Board to look at the site plan carefully and try to push for a traffic signal or a crosswalk, etc. In addition, she questioned where will the hotel employees live as there is no workforce housing as we continue to bring in more development; she asked the Board to consider her neighborhood when reviewing the site plan for the hotel.

There being no one else present who wished to speak, Attorney Leidy closed Public Comment at 9:31 a.m.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

- Consideration of Budget Amendment #4 to FY 22/23 Budget
- Consideration of Tax Adjustment Report
- Approval of minutes

MOTION: Comr. Brinkley made a motion to adopt the Consent Agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Budget Amendment #4, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

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

PUBLIC HEARINGS

Public Hearing to consider text amendments to Sections 6.5, Classification and Review of Unlisted Uses, Section 66, Table of Uses and Activities, and Article 7, Supplemental Regulations as it pertains to listing Pawn Shops and Pawn Brokers as expressly prohibited uses within the Town and listing the appraisal and purchase of precious metals as an acceptable accessory use to retail jewelry shops – Consideration of updated Consolidated Fee Schedule

Town Attorney John Leidy introduced the Public Hearing to consider text amendments to Sections 6.5, Classification and Review of Unlisted Uses, Section 66, Table of Uses and Activities, and Article 7, Supplemental Regulations as it pertains to listing Pawn Shops and Pawn Brokers as expressly prohibited uses within the Town and listing the appraisal and purchase of precious metals as an acceptable accessory use to retail jewelry shops. The time was 9:31 a.m.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, September 20, 2023 and on Wednesday, September 27, 2023, as required by law.

The agenda summary sheet read in part as follows:

"At their September 6, 2023, the Nags Head Board of Commissioners requested that staff revise and have the Planning Board consider an ordinance amendment that would accomplish the following:

- Specify that retail jewelry shops are permitted to not only sell jewelry and similar items, but also to engage in the appraisal, purchase, and repair and jewelry and similar items.
- Allow retail jewelry shops to allow precious metal dealers to operate as an accessory use within existing shop for a specified amount of time on a temporary nature.
- Expressly prohibit pawn shops and pawn brokers, etc., within the Town.

'Planning Board Recommendation

At their September 19, 2023, meeting the Planning Board voted unanimously to recommend adoption of the ordinance amendment as proposed including the need to seek approval from the Planning Department for each independent precious metals event being hosted for tracking and compliance purposes."

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

"At their August 15th, 2023 meeting, planning staff updated the Planning Board on recent inquiries and discussions with a business known as National Rarities, operating as a Precious Metals Dealer, and seeking permitting to host a temporary event at a local jewelry shop where they will evaluate and purchase jewelry from citizens. Staff had proposed, and the Planning Board had concurred, that all the uses listed and regulated by NCGS Section 66 Article 45, including Precious Metals Dealers, should be expressly prohibited within the Town.

'At their September 6, 2023, meeting the Nags Head Board of Commissioners requested that this item, which had been placed on the consent agenda for scheduling of a public hearing, be removed and an update be provided by staff on the discussions and recommendation to date (see memo attached).

'It was the consensus of the Board of Commissioners that staff revise and present to the Planning Board an ordinance amendment which would accomplish the following:

- Specify that retail jewelry shops are permitted to not only sell jewelry and similar items, but also to engage in the appraisal, purchase and repair of jewelry and similar items.
- Allow retail jewelry shops to allow precious metals dealers to operate as an accessory use within the existing shop for a specified time on a temporary nature.
- Expressly prohibit pawn shops and pawn brokers within the Town.

Staff has provided a draft ordinance for the Planning Board and Board of Commissioners consideration. Staff believes the drafted ordinance reflects the Board of Commissioners guidance and reiterates the compliance measures required under NCGS Section 66 Article 45 with regards to the Precious Metals Dealers Permit issued by the local law enforcement agency. Note that staff has additionally incorporated the requirements of NCGS Section 66 Article 45, Part 2 into Chapter 12 of the Town Code, Businesses and Licensing.

Jeweler, Ms. Gail Kowalski and attorney for National Rarities, Stephen Romine were in attendance at the Planning Boards September 19th, 2023 meeting and both addressed the board during public comment. At that time Ms. Kowalski informed the Planning Board that National Rarities appraises and potential purchases items other than precious metals, such as paintings, collectable cards, stamps, etc. Staff noted that this larger array of goods was not incorporated into the draft ordinance language as that would be outside the scope of precious metals dealers and the required precious metals dealer permit requirements. Staff confirmed for the Planning Board that the proposed draft language before them was what should be considered and if future amendments were necessary, we would bring those back respectively.

Ms. Kowalski and Mr. Romine expressed concern with the proposed language contained in Section 7.6.1.1 as it relates to seeking approval from the Planning Department for the temporary precious metals' events. Staff explained that this was included to accomplish two things, while not being overly burdensome by requiring the formal issuance of a zoning permit. First, to keep track of the number of days of each event to ensure that the 90-day limitation is not exceeded. The second, to ensure that what is occurring is indeed consistent with what is permissible under the precious metals dealer permit, and that items outside that realm are not being encouraged and accepted.

Planning Board Recommendation

At their September 19th meeting the Planning Board voted unanimously to recommend adoption of the ordinance amendment as proposed including the need to seek approval from the Planning Department for each independent precious metals event being hosted for tracking and compliance purposes. If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements (attached)."

Gail Kowalski, applicant; said that this is not about being a pawn shop that will take your item and sell it for you; a lot of people would like to sell their items to her store for her to re-sell; the National Rarities company does do this and it offers a very fair deal and it is not pawned, it is purchased; she would like this to be something offered here also and it would make sense to include it in the ordinance.

Comr. Brinkley confirmed with Ms. Kowalski that her shop is not a pawn shop; he questioned if this opens up the Town to a pawn shop. Ms. Wyatt said that to enforce the items coming through would not be easy; the concern is not just for Ms. Kowalski but for all jewelry shops in the Town.

There being no one else present who wished to speak, Attorney Leidy closed the Public Hearing at 9:51 a.m.

Mayor Cahoon stated that he senses an interest by the Board in finding other ways to allow other items to be sold.

MOTION: Comr. Renée Cahoon made a motion to adopt the ordinance amendments pertaining to listing Pawn Shops and Pawn Brokers as expressly prohibited uses within the Town and listing the appraisal and purchase

of precious metals as an acceptable accessory use to retail jewelry shops, as presented. The motion was seconded by Mayor Pro Tem Siers.

Mayor Cahoon suggested adopting the ordinance, as is, and then continuing to review and find a way to allow the additional use that Ms. Kowalski mentioned. Staff was directed to continue to look into this to find a way to address additional uses to be offered. Board members agreed.

CONTINUATION OF MOTION: The motion passed unanimously.

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

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 October 4th, 2023.

'Monthly Activity Report

Attached for the Board's review is the Planning and Development Monthly Report for August 2023.

'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, September 5th – Technical Review Committee Meeting
- Wednesday, September 6th - Board of Commissioners Meeting
- Thursday, September 7th – CRS Users Group Meeting
- Wednesday, September 13th – Committee for Art and Culture Meeting
- Thursday, September 14th – Board of Adjustment Meeting (No hearings scheduled)
- Tuesday, September 19th – Planning Board Meeting
- Wednesday, September 20th – Board of Commissioners Mid-Month Meeting if needed. • Dowdy Park Summer Concerts – Wednesday September 6th last concert

'Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, September 19th, 2023, and included consideration of the following:

- Text amendments to Sections 6.5, 6.6 and Article 7 of the UDO as it pertains to listing Pawn Shops and Pawn Brokers as expressly prohibited uses within the Town and listing the appraisal and purchase of precious metals as an acceptable accessory use to retail jewelry shops.
- Site Plan Review for reconsideration of a four-story, 90-unit Hotel (Inn at Whalebone). Request was submitted in advance of the expiration of the previous Site Plan approval.
- Initiation of the necessary text amendments within the SPD-C District to accommodate the construction of a Dare County EMS Station.

- Continued discussion of integrating the “multi-family dwelling” use into the Unified Development Ordinance with a focus on density provisions.

The Planning Board’s next meeting is scheduled for October 17th, 2023. At this time, the agenda is expected to include consideration of text amendments to Section 9.36, Table of Uses and Activities for the SPD-C District to list EMS Station as a permitted use within the Village at Nags Head Commercial-1 District, consideration of a text amendment to list Drive-Thru Restaurants a permissible use within Shopping Centers/Group Developments, consideration of a two-lot minor subdivision plat in S. Nags Head, and continued discussion on the multi-family dwelling ordinance.

‘Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in September 2023.

‘Additional Updates

- DWMP/Septic Health Advisory Committee –The Septic Health Advisory Committee and the Septic Health Program were recently highlighted in an article on WOBX as part of Septic Smart Week 2023, you can access that article [HERE](#). The remote ground water level and water quality data loggers as recommended in the recently updated Decentralized Wastewater Management Plan (DWMP) have arrived, 15 ground water loggers and 2 water quality loggers in total. The town is in the process of coordinating the location and installation of the necessary wells. Once complete the data loggers will become active upon installation. Staff will continue to update on the status of the loggers.
- Estuarine Shoreline Management Plan – No new updates. Staff anticipates hearing back on selection status in November 2023.
- Electric Vehicle Action Plan – Town staff will be meeting with Daniel Parsons of LoWire Technologies in early October to identify the best location for the installation of the Level 2 Public Charging Stations. Additionally, at their September 6th meeting, the Board of Commissioners requested that staff ensure that the equipment being purchased would be accessible to the widest range of electric vehicle users. Staff are currently communicating with ChargePoint, our anticipated vendor for the equipment, on the accessibility of their equipment.
- Sand Relocation and Dune Management Cost Share Program – Staff are preparing for the upcoming Sand Relocation season which will begin on November 15th, 2023. Staff will begin accepting applications for sand relocation on Monday, November 2nd for review purposes only. A brief educational presentation and Q&A session will be provided in mid-October for all equipment operators, property owners, and other interested parties wishing to participate in the sand relocation and dune management cost share program this year.
- Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture –
Reminder that the application for the Holiday Market will open October 12th at 8am. This market is first come, first serve so, once the application quota of 60 vendors for each market has been met the application link will close. Event Coordinator Paige Griffin has been pulling ideas together for several other events including Fall Movies, Winter Markets, Tree Lighting Ceremony, the townwide Holiday Decorating Contest and Candy Cane Hunt this winter.

‘Upcoming Meetings and Other Dates

- Tuesday, October 3rd – Technical Review Committee Meeting
- Wednesday, October 4th - Board of Commissioners Meeting

- Thursday, October 5th – CRS Users Group Meeting
- Wednesday, October 11th – Committee for Arts and Culture Meeting
- Thursday, October 12th – Board of Adjustment Meeting (no hearings scheduled)
- Tuesday, October 17th – Planning Board Meeting
- Wednesday, October 18th – Board of Commissioners mid-month meeting (if needed)”

Comr. Renée Cahoon asked for an update on the construction ongoing in the parking lot of the Outer Banks Mall; Ms. Wyatt reported that the Outer Banks Mall is currently constructing EV Chargers. It is a permitted use and will be for Tesla chargers as well as those with adapters that can use them for other vehicles also.

Site Plan Review submitted by House Engineering, P.C. for construction of a four-story, 90-unit Hotel (Inn at Whalebone). The property is zoned SPD-C, Village Hotel is located within the Hotel Overlay District and is located at 6632 W. Pheasant Avenue

The agenda summary sheet read in part as follows:

“Site Plan Review submitted by House Engineering, P.C. for construction of a 90-unit Hotel (Inn at Whalebone) and all necessary site improvements. The Board of Commissioners originally reviewed and approved this Site Plan on October 5, 2022. Without the issuance of a building permit for the project, the Site Plan approval expires 12 months from the date of Board of Commissioners approval. This Site Plan is being requested for reconsideration and approval in advance of the Site Plan expiration of October 5, 2023.

‘Staff Recommendation

Staff recommends approval of the Site Plan Review application as presented with the following condition carrying over from the previous review:

‘An approved subdivision plat addressing the portions of lots 24, 29, 30 and 31 and a recombination plat addressing lots 32, 33, 34, 35, 36, 22, 23, 26 and 27 be approved and filed at the Dare County Register of Deeds prior to the issuance of any development permits for the proposed hotel project.

‘Planning Board Recommendation

At their September 19, 2023, meeting the Planning Board voted 4-1 to recommend approval of the Site Plan as proposed to include the previous condition, and noted above, as it pertains to the necessary subdivision and recombination plats as well as a new condition pertaining to a future TIA, see below:

‘A Traffic Impact Analysis be conducted after the hotel has been in operation for one full year to determine if additional safety measures are warranted. This study should occur during the peak summer season.”

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

“BACKGROUND INFORMATION

The Site Plan for Inn at Whalebone was reviewed and approved by the Nags Head Board of Commissioners on October 5th, 2022. This was a Site Plan approval (and not a Vested Right approval), as such the site plan approval expires one (1) year from the date of approval, meaning the site plan approval for Inn at Whalebone will expire on October 5th, 2023. Planning staff were recently contacted by the applicant to discuss the upcoming expiration and what steps could be taken to extend the approval. It was at that time that staff notified the applicant of the requirements of Section 4.15, Time Limits for Site Plan, Zoning Permits, & Building

Permits, of the Unified Development Ordinance, included below.

Section 4.15 - Time Limitations for Site Plans, Zoning Permits, & Building Permits.

The following provisions pertaining to time limitations to obtain building permits, and to commence, continue and complete construction, shall apply in all cases in which a site plan approval or development permit is required unless otherwise provided for in [Section 3.6](#), Establishment of Vested Rights.

4.15.1. Time Limitation to Obtain Building Permit. Final approval of a site plan by the Board of Commissioners or approval of a zoning permit by the UDO Administrator shall be valid for twelve (12) months from date of approval. The Building Inspector may issue a building permit within twelve (12) months from the date of such approval, provided that all other requirements are met. If a building permit is not issued within twelve (12) months from the date of final approval of the site plan or zoning permit, the site plan or zoning permit shall expire and the applicant must submit a new site plan conforming to the then current provisions of this Ordinance for review by the Planning Board and Board of Commissioners or a new zoning permit application for review by the UDO Administrator and pay the applicable fees. Upon the issuance of a building permit, the approval of the underlying site plan or zoning permit shall remain valid as long as the corresponding building permit remains valid as provided for in this section.

'Note that following site plan approval by the Board of Commissioners a building permit must be issued within twelve (12) months from the date of approval, or the site plan approval expires, and the applicant must then submit a new site plan review conforming with the current provisions of the Unified Development Ordinance. In speaking with the applicant, they are unable to submit a complete development permit application in anticipation of having the building permit issued in advance of October 5th, 2023. As such, they have resubmitted their previously reviewed and approved Site Plan Review application for the Planning Board and Board of Commissioners consideration. The staff report from the Board of Commissioners October 5th, 2022, meeting has been provided below.

'The Planning, Fire, Police, and Public Services Department have all reviewed the new submittal and find it to be consistent with the previously approved October 5th, 2022, submittal. Town Engineer has reviewed the stormwater design, which has been slightly modified. They have removed the underground storage chamber system from the eastern parking lot and placed it along the western portion of the parking area with an underground storage chamber system. The change in location results in a greater subsurface storage area and an overall greater volume of stormwater storage for the site. This additional storage is concentrated on the western side of the site, which will mitigate any potential for stormwater impacts on the adjoining properties to the west. From an overall stormwater management volume requirement, 20,220 cubic feet is required, 25,932 cubic feet of storage has been provided. Mark up of revised stormwater plan has been included in the packet.

'Note that the finalized Traffic Impact Analysis was received and reviewed by NCDOT in advance of the October 5th, 2022, Board of Commissioners meeting with no comments provided. Town Engineer David Ryan reached out to Jason Davidson, Division Traffic Engineer with NCDOT upon the new submittal to see if anything over the past year would result in them providing comments or necessitating additional review. Mr. Davidson confirmed that they did not have anything new or additional affecting this site moving forward.

'Staff Recommendation

Staff recommends approval of the Site Plan Review application as presented with the following condition carrying over from the previous review:

1. An approved subdivision plat addressing the portions of lots 24, 29, 30 and 31 and a recombination plat addressing lots 32, 33, 34, 35, 36, 22, 23, 26 and 27 be approved and filed at the Dare County Register of Deeds prior to the issuance of any development permits for the proposed hotel project.

Planning Board Recommendation

'At their September 19, 2023, meeting the Planning Board voted 4-1 to recommend approval of the Site Plan as proposed to include the previous condition as it pertains to the necessary subdivision and recombination plats as well as a new condition that a traffic impact analysis be conducted after one full year of operation to determine if any additional measures are warranted. This study should occur during the peak summer season.

'STAFF REPORT FROM OCTOBER 5, 2022 BOARD OF COMMISSIONERS MTG

GENERAL INFORMATION

Applicant: House Engineering, P.C.

Application Type: Site Plan Review.

Purpose/Request: Construction of a four-story, 90-unit Hotel along with all necessary site improvements.

Property Location: 6632 W. Pheasant Avenue, Nags Head.

Existing Land Use: Vacant.

Zoning Classification of Property: SPD-C, Village at Nags Head Hotel District, and Hotel Overlay District.

'Zoning Classification of Surrounding Properties: Property to the north is zoned SPD-C, Village Recreation (Golf Course). Property to directly to the south and across Lakeside Street is zoned C-2, General Commercial and developed commercially (Duck Thru Gas Station) and residentially. Property to the west is zoned R-3, High Density Residential and is developed residentially (Roanoke Shores Subdivision). Property to the east and across US Highway 158 is zoned C-2, General Commercial and developed commercially (gas station and Forbes Retail).

'Flood Hazard Zone of Property: Property is located in an X Flood Zone, per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. The proposed first floor elevation of the hotel is proposed to be at an elevation of 9.1' and is therefore compliant.

'Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as General Commercial. This proposal is consistent with this land use classification and stated Land Use Policies.

'SPECIFIC INFORMATION

Applicable Zoning Regulations:

- Use Regulations: Section 9.36, Table of Uses and Activities for the SPD-C District lists "Hotel" as a Permitted Use within the Village Hotel District, with supplemental regulations set forth in Section 9.37.1. This section requires that Hotels be permitted in accordance with Section 9.36 provided that hotel suites comprise no more than thirty-three (33) percent of the total units in the building.

Section 9.24.5, Development Standards within the Hotel District states that in cases where the standards of this section conflict with standards contained in Article 10, Part VI, Commercial Design Standards, the more restrictive standard shall apply.

- Lot Coverage: Section 9.24.5.1 of the UDO, Coverage for Hotels states that for buildings with a height between 49 – 60 feet, the maximum building coverage shall not exceed 35%, maximum parking coverage shall not exceed 45% and must have a minimum landscaped area of 20%. Proposed building coverage is 12.94%, proposed parking coverage is 36.18% and there is a proposed landscaped area of 28.2%. Proposed coverage is compliant.
- Height: Section 9.24.5.5 of the UDO states that the maximum height for hotel developments is 60 feet. The proposed hotel has a height of 59.10 feet therefore height is compliant. If constructed, a height certification will be required prior to any final zoning inspections.

- **Architecture Design Standards:** Section 10.82 of the UDO, Applicability, states that Commercial Design Standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review. This project must adhere to the Commercial Design Standards set forth within Part VI of the UDO, Division II – Building Design. Staff has reviewed the submittal and finds the proposal to be compliant with the standards required in Building Design, Building Size/Dimensions, Building Height, Architectural Design/Elements, Site Design and Building Footprint Orientation. The following are a few examples lending to the compliance of the proposed structure: incorporation of dormers and other roof articulations, covered porch area, screened typical rooftop installations such as mechanical equipment, exhaust vents, residential style double-hung windows, use of gable brackets, workable shutters, and column trim.
- **Parking:** Pursuant to Article 10, Table 10-2, Required Parking by Use, Hotels shall provide parking at one parking space for each hotel unit without kitchen facilities. There are additional parking standards if hotel units have kitchens or there or conference, assembly, restaurant, or retail uses associated with the hotel. The proposed hotel units will not have kitchen facilities and there are no other uses proposed. With 90 hotel units proposed, 90 parking spaces are required. A total of 93 parking spaces have been proposed therefore parking is compliant.

In addition, Section 10.92.14.4 of the UDO, Surface Materials, requires that a minimum of twenty (20) percent of the surface area of the parking area and drive aisles shall be constructed of permeable surface materials. Approximately 22.9% has been proposed in permeable surface materials therefore the proposal is compliant.

- **Buffering/Landscaping:** Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:

➤ Section 10.92.6.2 of the UDO, Parking and Drive Aisle Setbacks, requires that where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way. A compliant buffer has been proposed along Forrest Street, Lakeside Street and US 158 rights-of-way.

➤ Section 10.93.3.2 of the UDO, Commercial Transitional Protective Yards, requires increased landscaping to be provided and maintained when non-residential land uses are adjacent to a residential use or residential zoning district. Specifically, Section 10.93.3.2.2 states that where a high impact use abuts a residential district, a buffer strip of at least twenty-five (25) feet in width along the entire length of the lot shall be provided. The buffer yard shall consist of three rows of plant material. Hotel is a listed High Impact Use. The western property boundary abuts residential subdivision, Roanoke Shores and a compliant 25-foot-wide commercial transitional protective yard has been proposed along the entirety of the western property boundary.

➤ Section 9.24.5.3.2.3 of the UDO, Building Setback Requirements for Hotels over three stories in height states that for hotels west of NC 12, a minimum 25-foot natural or landscaped buffer shall be provided along the northern and southern boundaries. This is a Village Hotel standard that is more stringent than the Hotel Overlay standard. As noted in Section 9.24.5, the more stringent standard applies. The applicant has shown a compliant 25-foot-wide landscape buffer along both the northern and southern property boundaries and therefore the proposal is compliant.

➤ Section 10.93.3.7 of the UDO, Interior Parking Lot Landscaping, requires parking lot landscaping be provided at a minimum rate equal to ten percent of the total area of the parking spaces. The minimum area necessary for compliance is 1,643 square feet of vegetation. The applicant has proposed 1,937 square feet of vegetation (approx. 12%) therefore interior parking lot landscaping is compliant.

➤ Section 10.93.3.8 of the UDO, Vegetation Preservation/Planting Requirements, requires that new development projects either preserve a minimum of ten (10) percent of the lot's total area with existing natural vegetation and/or dune elevations or plant new vegetation in lieu of preservation. When existing vegetation cannot be preserved, the planting of a minimum of fifteen (15) percent of the lot's total area shall be required. The applicant has provided the required calculations and notation on the landscape plan demonstrating that the vegetation planting requirements will be met. While the applicant is proposing to preserve a small percentage of existing, mature vegetation in the northwest corner of the site, they have also proposed to provide approximately 18.8% of the site area in newly planted trees, shrubs and herbaceous plants and ornamental grasses therefore, this requirement has been met.

- Lighting: A lighting plan compliant with the requirements of Article 10, Part IV of the Unified Development Ordinance will be required prior to the issuance of any development permits. In addition, a light audit will be required prior to issuance of occupancy permits.

- Signage: No additional signage is being proposed at this time.

'Water and Sewage Disposal: The applicants' proposal includes the management of on- site wastewater through an advanced treatment system in combination with four (4) separate low-pressure disposal fields. The average daily design flow of 11,000 gallons per day will require approval through the NC Department of Health and Human Services, Environmental Health Section, On-Site Water Protection Branch. We request that copies of the permit approvals be submitted to the Town. Note, no development permits will be issued prior to receipt of the state permit approvals.

'Traffic Circulation: Traffic circulation has been reviewed by the Town Engineer with the following comments:

➤ Two points of ingress and egress are depicted along Lakeside Street. Section 10.92.2.2.7.4 of the UDO indicates curb cuts in excess of one, on streets other than US 158, NC12/US64/264 or SR1243, are allowed if the Board of Commissioners determines that more than one curb cut is necessary or desirable to facilitate traffic flow. Staff feels two separate access points from Lakeside St. is appropriate to facilitate traffic flow in conjunction with emergency vehicle access and sanitation truck access.

➤ A loading zone has been provided in compliance with UDO Section 10.17.2.

➤ A draft copy of a Traffic Impact Analysis as prepared by VHB, a traffic consultant for the applicant, has been submitted for staff review and NCDOT review. Existing traffic data was collected in early September 2022 to review existing intersection turning movements along East & West Lakeside St from both S. Croatan Hwy. and S. Virginia Dare Trail. The collected data was analyzed based on the current roadway geometrics and traffic counts with no proposed improvements recommended at full project buildout. The traffic consultant will be available to present the findings of the report at the Board of Commissioners meeting. Comments of the NCDOT review have not been received at this time.

'Stormwater Management: Stormwater management has been reviewed and approved by the Town Engineer with the following comments:

➤ This proposal is being reviewed under Section 11.4 General Standards for Commercial, Mixed Use, and All Non-Single Family or Non-Duplex Residential Development, Including Multi-Family Development which requires development of a property to provide stormwater control measures to retain runoff from a 4.3- inch design storm.

➤ Questions have arisen as to how this application should be reviewed regarding stormwater

management and whether this proposal would be considered as part of the Village at Nags Head stormwater master plan approval. NC Department of Environmental Quality, Division of Energy, Mineral and Land Resources staff was contacted to discuss the matter. First and foremost, this application would NOT be viewed as a common plan of development. A common plan of development means a site where multiple and distinct development activities may be taking place at different times on different schedules but governed by a single development plan. Since this Village at Nags Head stormwater plan did not account for the subject property, it should not be considered as part of the system, and it is appropriate to review under the current state and local stormwater regulations.

➤ During the review process a negative easement was discovered to be applied to the subject property. The negative easement was applied in conjunction with the 1984 approval of the gas station immediately to the east of the subject property. The verbiage of the negative easement is designed for the purpose of assuring the availability of adequate drainage for the gas station property. The proposed stormwater management design for the hotel proposal accounts for rainfall runoff from the proposed improvements in addition to the gas station property. In total, stormwater management improvements for both on-site runoff and off-site runoff are designed to manage runoff volume for an approximate 5 -inch rainfall event, which is in excess of the Town design storm event of 4.3 inches.

➤ Review of published data, to include the National Wetland Inventory Map and on- site soil investigation do not indicate the presence of hydric soils or wetlands.

➤ A NCDEQ High-Density stormwater permit shall be acquired, and copies shall be submitted to the Town in advance of the issuance of a building permit. Copies of the executed operation and maintenance agreement of the stormwater control measures shall be submitted in conjunction with the approved state permit.

➤ An engineer's certification shall be submitted to the Town in association with construction record drawings prior to the issuance of a certificate of occupancy.

'Erosion & Sediment Control: Proposed Erosion and Sediment Control has been reviewed and approved by the Town Engineer with the following comments:

➤ The building permit submission for land disturbing activities shall include the ground stabilization and material handling and inspection, recordkeeping and reporting detail sheets as required by the NCG01 NPDES Construction Program.

➤ The applicant shall apply for a Certificate of Coverage through the NPDES Construction Program and prior to land disturbing activities occurring.

➤ A pre-construction conference shall be coordinated by the applicant to include the design engineer, contractor, and Town representatives prior to land disturbing activities.

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

'Public Works: The Public Works Director has reviewed and approved the proposed site plan as presented.

'ANALYSIS

Staff finds that the proposal is consistent with the applicable use and development standards as well as relevant land use policies. In addition, staff finds that the proposed stormwater management plan satisfies the requirements of the negative easement via an approved alternative drainage plan which accommodates the

4.3-inch storm event for both the proposed hotel development as well as the existing improvements on the gas station property.

'Article 4, Section 4 of the Unified Development Ordinance sets forth the procedures for subdivision approvals. Records reflect that the current property owner for this hotel site owns lots 32, 33, 34, 35, 36, 22, 23, 26, and 27 in their entirety and a portion of lots 24, 29, 30, and 31. The remaining portions of lots 24, 29, 30 and 31 are owned by Harrell Acquisitions, LLC. Until 1999 all these parcels were in common ownership. To date, although boundaries are referenced in transferring deeds, there has not been a formal subdivision approved pursuant to the Unified Development Ordinance for these parcels. As such, an approved subdivision or recombination plat addressing lots 24, 29, 30 and 31 must be approved and recorded prior to the issuance of any development permits for this project.

'STAFF RECOMMENDATION

With the following condition, Staff recommends approval of the Site Plan Review application as presented: An approved subdivision plat addressing the portions of lots 24, 29, 30 and 31 and a recombination plat addressing lots 32, 33, 34, 35, 36, 22, 23, 26 and 27 be approved and filed at the Dare County Register of Deeds prior to the issuance of any development permits for the proposed hotel project.

'PLANNING BOARD RECOMMENDATION – AUGUST 16, 2022

At their August 16, 2022 meeting the Planning Board voted 4 – 2 to recommend approval of the Site Plan as proposed. Following the August 16th meeting of the Planning Board, the applicant has revised their stormwater management plan to manage additional runoff and has had consultant, VHB Engineering NC, P.C. conduct a Traffic Impact Analysis."

Comr. Renée Cahoon expressed her concern about the narrow street to include traffic for the gasoline station and a hotel and should be two lanes in and out. Attorney Leidy stated that ingress/egress criteria such as expanding Lakeside Street to accommodate additional traffic could be included as a requirement for the site plan approval.

Comr. Brinkley agreed with Comr. Renée Cahoon; he questioned if any transportation is to be included by the hotel to get visitors to the beach; Ms. Wyatt said she had not heard of any but she can make this recommendation. Comr. Sanders agreed.

MOTION: Comr. Renée Cahoon made a motion to table this item concerning the Inn at Whalebone hotel until the next Board meeting. The motion was seconded by Mayor Pro Tem Siers.

Mayor Cahoon asked about the schedule if this item is tabled to next month.

Applicant Rick House of House Engineering; he said that this agenda item was to extend the application that was approved a year ago; he feels it is excessive to ask for the lane enlarging; there is no need to provide shuttle service as people will get in their own vehicles to get to the beach, he is not sure what the applicant has planned but feels like the Town is making unnecessary, excessive requests at this time and he would ask that it not be tabled so that he can get to the building permit process. He agreed to a traffic study to be done by NCDOT in a year.

WITHDRAWAL OF MOTION: Comr. Renée Cahoon and Mayor Pro Tem Siers withdrew their motion and second.

Comr. Renée Cahoon stated that the neighborhood on Lakeside Drive concerns her and the Board - not all of Dare County – a public street is the Board's responsibility to see to the safety of its residents.

MOTION: Comr. Renée Cahoon made a motion to approve the site plan as submitted by House Engineering, PC for construction of a four-story, 90-unit Hotel (Inn at Whalebone) with the condition that the existing roadway is to be expanded to accommodate three (3) lanes of traffic, and the three (3) lanes should extend to the most westward entrance of the hotel off Lakeside Street. The motion was seconded by Comr. Sanders.

Comr. Brinkley clarified that the NCDOT traffic survey is for the bypass, not for Lakeside Drive.

Mayor Cahoon expressed his concern about imposing conditions for the three-lane and the right-of-way at this late hour.

CONTINUATION OF MOTION: The motion passed unanimously.

Discussion of Beach Nourishment Master Plan – Moffatt & Nichol representatives
Time Specific 10:30 a.m.

Town Engineer David Ryan summarized the agenda item summary sheet which read in part as follows:

"At the August 2, 2023, Board of Commissioner's meeting, the consulting firm of Moffatt & Nichol presented a summary of the draft Multi-Decadal Beach Nourishment Master Plan. The key aspects of this plan include the evaluation of long-term sediment sources, Levels of Protection (LoP), nourishment intervals, nourishment triggers, regulatory pathways and project timelines, and estimated future year project costs.

'A draft copy of the master plan report was presented to the board members at this meeting.

'Within the report and presentation provided, several recommendations were provided which evaluated alternatives for the frequency of the placement of sand. A 6-year "project-wide" nourishment cycle was presented in conjunction with a "phased approach" which would consider the placement of sand within Reaches 2-4 every five years and a town-wide project every ten years,

'Beth Sciaudone, Ph.D., PE from the consulting firm of Moffat & Nichol will provide a brief summary of the proposed recommendations from the Beach Nourishment Master Plan. Dr. Sciaudone and Brian Joyner will be available to answer questions from the Board on the plan recommendations or other parts of the Master Plan.

'Moffat & Nichol representatives are scheduled to present the findings of the annual beach survey at the November Board of Commissioners meeting and will be available to continue the Beach Nourishment Master Plan discussion at that time."

Engineer Ryan introduced Dr. Beth Sciaudone of Moffat & Nichol to provide an update and request Board feedback about alternatives. It was pointed out that staff has been monitoring beach conditions and has seen a lot of high wave energy from the recent storms and change in the beach profile as a result. Engineer Ryan stated that the Board may want to consider a supplemental survey that covers a fall or winter profile due to the recent storm activity and the beach changes.

Dr. Sciaudone presented slides titled as follows:

Developing the Master Plan

Alternatives

Alternative Considerations

Beach Nourishment Cycle Alternatives

Varying Cycles Discussion

Phased Beach Nourishment Alternatives

Phased Beach Nourishment Costs
Phased Approach Discussion
Recommendations

- Annual monitoring to determine volume status and compare with triggers
- Two preferred alternatives:
- 6 year nourishment cycle for nourished shoreline; can be adjusted if triggers not met
- 5/10 year phased approach

Manager Garman explained that the Board may not make a decision today but a discussion may bring up questions; he agreed with Engineer Ryan's suggestion of a fall/winter survey. Engineer Ryan also noted that the FEMA project was not built into this schedule.

Dr. Sciadone stated that a discussion is needed with other local towns to see when they are planning for nourishment as the mobilization/demobilization are significant costs. Mr. Joyner stated that a fall/winter survey would show if the sand is still there, in the system, and would also help evaluate if sand is being placed in the right locations.

Comr. Renée Cahoon also stressed to keep in mind that storms will continue to get worse over the years; Dr. Sciadone said that they tried to account for that.

In response to a question about how much time before a decision needs to be made, Mr. Joyner said that for a 2026 Beach Nourishment Project he would like to start permitting during summer 2024. They would need to know the Town's plans before that – by spring 2024 for completion of the first draft of the Beach Nourishment Master Plan. Manager Garman confirmed with Finance Officer Amy Miller that the last debt payment on the previous project has been made.

Board members spoke in favor of a winter survey.

MOTION: Comr. Brinkley made a motion to authorize staff to proceed with a fall/winter survey at an amount not to exceed \$75,000. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Engineer Ryan clarified beginning of year to report back Jan/Feb timeframe with both survey reports. By then we should know more about what the County will provide financially and be able to discuss more of the Board's intent.

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From Aug 2nd Board meeting – Public Hearing was held – Consideration of resolution to consider the permanent closing of a portion of Old Nags Head Woods Road identified as "All that portion of Old Nags Head Woods Road that crosses Lot 3 'Division for Ralph Buxton, et al' owned by Stanford M. White, south of the 15' access easement, which is approximately 130 feet north of the southern lot line, and that portion of Old Nags Head Woods Road that crosses Lot 4 'Division for Ralph Buxton, et al' owned by Louisa Farr"

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

"At the July 5th Board of Commissioners meeting, the Board voted to begin the process to permanently close a portion of Old Nags Head Woods Road. A Resolution of Intent was subsequently adopted.

'At the August 2nd Board of Commissioners meeting, a Public Hearing was conducted and the Board determined to take action after completion of an area survey.

'At the October 4th Board of Commissioners meeting, a resolution to consider the permanent closing of a portion of Old Nags Head Woods Road, as described above, will be considered. The area survey was completed and reflects the area to be closed. This is available at Town Hall for public inspection.

'Attached please find the following:

- Resolution of Intent adopted at the July 5th Board meeting
- Proposed Resolution to close portion of Old Nags Head Woods Road
- NCGS 160A-299 Procedure for permanently closing streets and alleys
- Map of Old Nags Head Woods Road"

MOTION: Comr. Brinkley made a motion to adopt the resolution to permanently close a portion of Old Nags Head Woods Road as identified, as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

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

"WHEREAS, on the 5th day of July 2023 the Board of Commissioners of the Town of Nags Head directed the Town Clerk to publish the resolution of intent of the Board of Commissioners of the Town of Nags Head to consider closing a portion of Old Nags Head Woods Road in the *Coastland Times* newspaper once each week for four consecutive weeks and posting said resolution in two locations along said street advising the public that a Public Hearing would be conducted in the Town Hall at 9:00 a.m. on the 2nd day of August 2023; AND

'WHEREAS, the Town's Board of Commissioners further directed the Town Clerk to notify by certified mail, all persons owning property abutting on that portion of Old Nags Head Woods Road, proposed to be closed, enclosing with such notification a copy of the resolution of intent; AND

'WHEREAS, the Town Clerk has advised the Board of Commissioners that on the date directed she sent a letter to each of said abutting property owners by certified mail return receipt requested advising them of the day, time and place of the meeting, enclosing a copy of the Board of Commissioner's resolution of intent, and advising said abutting property owners that the question as to the closing to said portion of Old Nags Head Woods Road would be acted upon; AND

'WHEREAS, the Town Clerk has advised the Board of Commissioners that none of the letters so sent has been returned undelivered; AND

'WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they might have with respect to the closing of said street; AND

'WHEREAS, it now appears to the satisfaction of the Board of Commissioners that the closing of said street is not contrary to the public interest and that no individual owning property either abutting the street or in the vicinity of said street or in the subdivision in which said street is located, will as a result of said closing be thereby deprived of a reasonable means of ingress and egress to his/her property; AND

'WHEREAS, it appears to the satisfaction of the BOC that the closing of said street will be in the public interest.

'NOW THEREFORE BE IT RESOLVED by the BOC of the Town of Nags Head, meeting in regular session, that the portion of Old Nags Head Woods Road located in Nags Head as more particularly described hereafter, is hereby ordered closed and all right, title and interest in those persons owning lots adjacent to the street; such title, for the width of the abutting land owned by them, to extend to the centerline of the herein closed street in accordance with the provision of GS 160A-299(c):

All that portion of Old Nags Head Woods Road that crosses Lot 3 "Division for Ralph Buxton, et al" owned by Stanford M. White, south of the 15' access easement, which is approximately 130 feet north of the southern lot line and that portion of Old Nags Head Woods Road that crosses Lot 4 "Division for Ralph Buxton, et al" owned by Louisa Farr.

'The Town Clerk is hereby ordered and directed to file in the office of the Register of Deeds of Dare County a certified copy of this resolution."

From Sep 6th Board meeting – Appointment of members to the Fire Staffing Analysis Working Group

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

"At the September 6th Board of Commissioners meeting, Fire Dept staff discussed a proposal to conduct a staffing analysis of the department. This will be utilized to prepare budget recommendations for FY 2024/2025. The department suggested utilizing a working group to conduct the analysis. Fire Chief Wells indicated that Bob Muller and Meade Gwinn have both agreed to serve on the working group."

Mayor Cahoon asked Board members to consider community members to be a part of the Fire Staffing Analysis Working Group – Comr. Brinkley was appointed as the Board representative.

MOTION: Comr. Renée Cahoon made a motion to appoint the following to the Fire Staffing Analysis Workshop Group: Comr. Brinkley as Board liaison, Bob Muller, and Meade Gwinn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

NEW BUSINESS

Committee Reports

Comr. Renée Cahoon – Gov-Ed Committee

Comr. Renée Cahoon reported on a brief meeting held with the Gov-Ed Committee where the new chair was introduced. Mayor Cahoon complimented everyone involved on the great job with the Ash Wednesday Storm video to include the Committee and Public Information Officer Roberta Thuman.

Consideration of appointment to Septic Health Advisory Committee

MOTION: Comr. Brinkley made a motion to appoint Rob Crawford as a member of the Town's Septic Health Advisory Committee, pending his acceptance. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Consideration of award of bid for Old Nags Head Place Drainage Project

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

"On August 8, 2023, the Town of Nags Head solicited formal bids for a neighborhood-wide drainage restoration project for the Old Nags Head Place Subdivision. The scope of work entails the restoration of approximately 5,680 l.f. of vegetative swale in association with the removal, replacement, and installation of approximately 2,420 l.f. of variable-diameter drainage culvert pipe and cul-de-sac infiltration area improvements.

'The bid package was structured with a base bid and two alternate deduct bid items to permit the Town flexibility to award either the full scope of work or a portion of the scope of work if the bids exceeded the available funds. Unit pricing for individual bid items was also requested on the bid form to be utilized as a price reference for potential changes in the scope of work.

'Four formal bids were received on September 12, 2023, from the following companies: Hatchell Concrete, Inc., Fred Smith Company, Sawyer and Son Construction, Inc., and Envirotech Unlimited Construction Services, LLC. The bids ranged in value from the highest bid of \$1,093,380 submitted by Sawyer & Son Construction to a low bid of \$514,950 submitted by Envirotech Unlimited Construction Services, LLC.

'The lowest, responsive, responsible base bid of **\$514,950** submitted by Envirotech Unlimited Construction Services, LLC is within the available project funds of \$600,000. The available funding for this project is a combination of Town budgeted funds, \$255,000, Old Nags Head Place Homeowners Association funds, \$100,000, and grant funding in the amount of \$250,000 received from the Golden Leaf Foundation Flood Mitigation Program. The contributing funds by the Old Nags Head Place Homeowners Association (ONHP-HOA) are the result of a public-private partnership between the Town and the ONHP-HOA.

'Requested Board Action: Consideration of Notice of Award to Envirotech Unlimited Construction Services, LLC for the construction base bid in the amount of **\$514,950.00** and authorize the Town Manager to execute the construction contract amount contingent upon Town Attorney review."

MOTION: Comr. Brinkley made a motion to approve the bid for the Old Nags Head Place Drainage Project and to authorize the Manager to execute the contract with Envirotech Unlimited Construction Services, LLC as presented. The motion was seconded by Comr. Sanders which passed unanimously.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy requested a Closed Session at the appropriate time.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Update on Public Services Facility

Town Engineer David Ryan provided an update on the Public Services Facility construction project.

- Work continues on the Water Distribution building walls
- Construction is to start soon on the concrete pad of the Fleet Maintenance/Facilities Maintenance/Sanitation building
- The last building to be constructed is the Vehicle Storage building – constructed is expected to begin around the first of the year – 2024.

- The construction schedule remains intact – Administration Bldg fell behind schedule but all other buildings are on time.

Consideration of Interlocal Agreement with Dare County for proposed EMS Station

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

"At the August 2nd Board of Commissioners meeting, Town Manager Andy Garman reviewed a proposed joint project with Dare County to construct an EMS/Fire station on Town-owned property at 105 W Seachase Drive. Attached is a draft interlocal agreement which establishes a cooperative agreement between the Town and Dare County to work together on the project. Also included is a draft lease for the property. Below is a summary of the arrangement:

- The project will include design of a Fire and EMS station at 105 W. Seachase Drive.
- The county would pay the design cost for both projects in exchange for use of the property. The Town would receive construction drawings that could be used to bid the project at a future date (6-7 years) when the Town is ready. The County's intent is to build the EMS station as soon as next fall.
- The County would finance and construct the EMS station and would be responsible for maintenance of the facility.

"If approved, the County and the Town would begin the design process utilizing input from County and Town staff. The architect for the project would be Oakley Collier, the same firm that designed the Town's Public Services complex. It is anticipated that site plan review and permitting would occur in the Spring of 2024."

MOTION: Comr. Brinkley made a motion to authorize the Manager to execute the Interlocal Agreement with Dare County to work together on the EMS/Fire Station Project – and to execute the Lease Agreement at the appropriate time when a site plan has been prepared. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Consideration of Earl Murray Jr. Employee of the Year Policy

Human Resources Director Jan Mielke summarized her memo detailing the proposed policy which read in part as follows:

"Overview

The purpose of this policy is to capture the general spirit of our current practices and formalize a policy to aid the Board of Commissioners in the selection of the Earl Murray Jr. Employee of the Year.

Highlights of the Proposed Employee of the Year Policy

1. Incorporates a peer recognition component that allows for staff to nominate individuals both inside and outside of their departments.
2. Provides a consistent approach across all departments in how the Employee of the Year nominations are determined.

3. A Department Employee of the Year will be named in each department. The Department Employee of the Year will then be nominated to the Board for consideration for the townwide Employee of the Year.
4. The Board will be provided with specific examples about how the nominee has gone above and beyond in their work, and the impact their contributions have on their team or greater community. The nominations will also include examples of how the nominee has demonstrated Town values; highlighting that while we recognize results, we also understand how we achieve results matters.
5. The department heads will present their Employee of the Year nominees during the November Board meeting. The Board will consider the nominations, then select and announce the final Employee of the Year during the November Board meeting."

Comr. Brinkley expressed concern about those employees without computer access – Ms. Mielke agreed and indicated that she would make sure employees were aware of paper and email input being allowed also.

MOTION: Comr. Brinkley made a motion to approve the Earl Murray Jr. Employee of the Year Policy as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Attorney Leidy confirmed with Ms. Mielke that email/paper nominations will be forwarded to Board members in the agenda backup the Friday before the November 1st Board meeting.

Update on bulk collection

Public Services Director Nancy Carawan summarized the Town's bulk collection program – the agenda summary sheet read in part as follows:

"The Town of Nags Head offers year round bulk / brush drop-off on Lark Ave. This facility is open to Nags Head residents on Mondays and Thursdays 9 AM to 3:30 PM and Saturdays 9 AM to 3:00 PM.

'Public Service begins annual curbside bulk collections on October 2, 2023. This service will run until May 1, 2024, with the last day to put out bulk being April 30, 2024.

'The town is sectioned into four sweep zones. Each sweep cycle begins in the northwest zone and continues through the other zones. Once a sweep cycle is complete, we will repeat the cycle again, starting with the northwest zone.

'We ask that the materials be separated into separate piles (please don't combine vegetative debris, white goods, and other materials in the same pile). Please place piles at least 3 feet apart and 3 feet from obstacles such as fences and mailboxes, etc.

'Please visit the Public Services' web site for more information."

Community Cleanup Day – Saturday, October 28, 2023

Public Services Director Nancy Carawan summarized the upcoming Community Cleanup Day which is scheduled for Saturday, October 28, 2023 and starts at Dowdy Park at 9 a.m. The agenda summary sheet read in part as follows:

"I would like to present to you on behalf of our Public Services Department our Town's Fall Community Clean Up Event of 2023. I would like to thank Karen Heagy, Administrative Supervisor for all of her hard work in putting this together.

'The Community Clean-Up held in 2019 was a success as we had over 70 participants show up.

'Our goal this year is 100 or more volunteers!

'The Event is scheduled for Saturday, October 28, 2023 - with a rain date of Saturday, November 4, 2023.

'We will meet at Dowdy Park at 9 am. Volunteers may park at Dowdy Park and walk to the Virginia Dare Trail multi-use path or drive to any beach access they would like. They can go in either direction, North or South, on the beach, or the multi-use path and also between the highways at Memorial and Wrightsville Avenues.

'All participants will be supplied with safety vests, gloves, buckets, bags and trash picker-uppers. We will meet back at Dowdy Park at 12 pm for a pizza lunch. We look forward to seeing everyone."

Consideration of Jockey's Ridge State Park access Memorandum of Understanding (MOU)

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

"Since 1991 the Town of Nags Head (the Town) has operated an estuarine access site within the boundaries of Jockey's Ridge State Park through a lease agreement with the North Carolina Department of Cultural Resources, Division of Parks and Recreation. This arrangement allowed the Town to acquire state grant funds to construct the access. The Town and the State also established an operations plan which set out specific responsibilities for each party in maintenance and daily operations of the site. Through time this arrangement has evolved, and duties were shifted between the parties. The access has become a popular attraction which has created management pressure to maintain the access with limited resources. Through ongoing discussions with the Town and the State, it has been agreed that the Town should take a limited role in the maintenance and operations of the site in the future. However, both parties agree that there should continue to be a cooperative working relationship and a common understanding of the operations of the site.

'At its June 7, 2023 meeting, the Board of Commissioners requested that staff work with the State to develop a Memorandum of Understanding which would outline site operations and the working relationship between the parties moving forward. Attached is a draft MOU which has been reviewed by Town as well as Division staff. Staff would like the Board's comments on the MOU before proceeding with further review by the State. As stated previously, the maintenance and daily operations of the site shift primarily to the State with this new agreement. The Town would continue to support the state with limited services as needed and would seek to be consulted on specific activities, to include any future expansions of the site before any action is taken by the State. The intent is to adopt an MOU and terminate the lease that has been in place since 1991."

Comr. Sanders clarified with Manager Garman that the Park has no initial plans for regulating the number of people that can park at the access.

Comr. Brinkley appreciates the input from staff; he feels that Jockey's Ridge needs to find an alternative means to get to that street as Soundside Road is overwhelmed.

Comr. Renée Cahoon suggested speaking to the State Director of Parks concerning an alternative route to get to the soundside access.

MOTION: Comr. Sanders made a motion to move the Jockey's Ridge Memorandum of Understanding forward, as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

Update on Community Survey results

Town Manager Garman provided an update on the results of the recent Community Survey. He reported that between 1,074 and 1,136 responses to the Town's Community Survey have been received – an approximate 36% response rate. A draft report from the consultant is to be presented to the Board at its November 1st meeting.

Adoption of CFS amendment related to Agenda Item F-1

Earlier in today's meeting, a Public Hearing was held to consider text amendments to Sections 6.5, Classification and Review of Unlisted Uses, Section 66, Table of Uses and Activities, and Article 7, Supplemental Regulations as it pertains to listing Pawn Shops and Pawn Brokers as expressly prohibited uses within the Town and listing the appraisal and purchase of precious metals as an acceptable accessory use to retail jewelry shops. The consideration of an updated Consolidated Fee Schedule was overlooked when this item was discussed.

MOTION: Comr. Brinkley made a motion to approve the amendment to the Consolidated Fee Schedule as presented in agenda item #F-1 re: appraisal and purchase of precious metals as an accessory use to retail jewelry shops. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

The Fee Schedule amendment, as approved, read in part as follows:

"Precious Metal Dealer permit, Employee Requirements, and Special Occasion permit. In accordance with Town Code Ch. 12, Article IX, Sec. 12-283"

BOARD OF COMMISSIONERS AGENDA

Comr. Brinkley – National Night Out

Comr. Brinkley thanked the Police Dept for an outstanding job at last night's annual National Night Out event which was very well attended.

Comr. Brinkley – Jockey's Ridge Mountains To Sea Trail

Comr. Brinkley reported that he recently attended the dedication of the Jockey's Ridge State Park Mountains To Sea Trail.

Comr. Brinkley – Dare County meeting on Monday, October 2nd

Comr. Brinkley said that after viewing the Dare County Board meeting on Monday, October 2nd, he was excited to hear Chairman Woodard speak of a Task Force to be formed to address the affordable housing issue. He commended the County Board for this action.

Comr. Renée Cahoon also thanked the Dare County Board for the creation of the Task Force – she would like the Mayor and Mayor Pro Tem to both be a part of that Task Force.

MAYOR'S AGENDA

Mayor Cahoon - Discussion of the State Appropriation Bill of 2023

Mayor Cahoon summarized the process of the State's Appropriation Budget Bill of 2023; he became aware that the Sec 24.8(a) re: Dare County Affordable Housing was added to the budget two days before the budget was voted on.

Mayor Cahoon said that he and Manager Garman spoke to other municipalities and were quickly able to obtain a consensus that something needed to be done and they are in the process of pushing back hard on the State.

Manager Garman also noted that the Board held a Special Meeting to discuss this issue and is in ongoing communications with other towns to take some type of collective action.

Comr. Renée Cahoon expressed her disappointment in the actions taken and asked legislators to not blindsides the local towns/county in the future.

Mayor Cahoon – from Dare County's Monday, October 2nd meeting

Mayor Cahoon reported that he attended the Dare County Board meeting on Monday, October 2nd; Chair Bob Woodard said that his Board had tried to work with the towns on the affordable housing issue but Mayor Cahoon is not aware of that ever taking place. He said that he was also incorrectly quoted by Chair Woodard at the meeting concerning taking actions on behalf of his Board yet that is something he would never do – make promises on behalf of his Board without receiving consensus of all his Board members.

As to transparency to his conversations with Woda Cooper, Mayor Cahoon stated that he addressed this last year at the Nags Head September Board meeting – He always recuses himself when his firm is involved in any Town business. He also pointed out that he has not and will not work for Woda Cooper.

CLOSED SESSIONS

MOTION: Mayor Cahoon made a motion to enter Closed Session, pursuant to GS 143-318.11(a)(3) to preserve attorney/client privilege in discussion of the State Appropriation Bill of 2023 and, pursuant to GS 143-318.11(a)(5), to discuss the potential acquisition of a portion of the property located at 111 W Seachase Drive and to discuss the lease of Town property located at 105 W Seachase Drive (former BB&T bldg). The motion was seconded by Comr. Brinkley which passed unanimously. The time was 12:11 a.m.

OPEN SESSION

The Board re-entered Open Session at 12:41 p.m. Mayor Cahoon noted that Comr. Brinkley has been excused.

Attorney Leidy reported that in Closed Session the Board did discuss attorney/client privilege items as well as the potential acquisition of property. The Board did give instructions to the Town Manager but no other actions were taken.

Amendment to lease of former BB&T building by Village Realty

MOTION: Mayor Pro Tem Siers made a motion to amend the Village Realty building lease of the former BB&T building terminating the lease on October 6, 2023. The motion was seconded by Comr. Sanders which passed unanimously.

ADJOURNMENT

MOTION: Mayor Pro Tem Siers made a motion to recess to a mid-month meeting on Wednesday, October 18, 2023 at 9 am in the Board Room. The motion was seconded by Comr. Renée Cahoon which passed unanimously. The time was 12:42 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: **November 1, 2023**

Mayor: _____
Benjamin Cahoon