**TOWN OF NAGS HEAD**
**BOARD OF COMMISSIONERS**
**NAGS HEAD MUNICIPAL COMPLEX – BOARD ROOM**
**WEDNESDAY, DECEMBER 18, 2024; 9:00 AM**
**RECESSED SESSION**

The Nags Head Board of Commissioners met at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, December 18, 2024 at 9:00 a.m. for a Recessed Session.

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

Board members Absent: None (One Vacancy)

Others present: Town Manager Andy Garman; Attorney John Leidy; Amy Miller; Kelly Wyatt; Joe Costello; David Ryan; Perry Hale; Roberta Thuman; Karen Snyder; Brittany Phillips; and Town Clerk Carolyn F. Morris

Via the Zoom platform were representatives from lobbyist Ward and Smith, PA: Whitney Campbell Christensen, Trafton Dinwiddie, and Marley Peterson.

## CALL TO ORDER
Mayor Cahoon called the meeting to order at 9 am. He called for a moment of silence to acknowledge the recent passing of Gary Ferguson, member of the Town's Planning Board and a former Town employee.

## ADOPTION OF AGENDA
MOTION: Mayor Cahoon made a motion to approve the December 18th agenda with the addition of Consideration of bids to repave Pond and Lark Avenues. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

## PUBLIC COMMENT
No one spoke during Public Comment.

## CONSENT AGENDA
The Consent Agenda consisted of the following item:

Consideration of Personnel Policy Update
- Article VII, Section 16F: Sick Leave Bank Administration

- Article VII, Section 4F:  Vacation Leave - Retirement
- Article VIII, Section 1A:  Resignation & Section 1G: Retirement

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

The three modified sections of the Personnel Policy, as approved, are attached to and made a part of these minutes as shown in Addendum "A".

**NEW BUSINESS**

Discussion/Consideration of Lobbyist Services, Virtual Presentation

Town Manager Garman said that he researched State General Assembly lobbyist firms that provide various types of services to include advocating for direct appropriations for municipal projects.  He reached out to one of these firms, Ward and Smith, PLLC, and three representatives were present via the Zoom platform:  Whitney Campbell Christensen; Trafton Dinwiddie; and Marley Peterson.

Whitney Campbell Christensen summarized their services and explained that they focus on towns and counties where they first ask clients to prioritize their projects; she pointed out that the State legislative cycle starts in March 2025 and will likely focus on storm and flood mitigation services.  Ms. Christensen reported on having many satisfied clients in North Carolina who have been provided with a variety of things such as a new courthouse, traffic control projects, negotiation with a neighboring county re: environmental regulations, and many more projects/services.  They have numerous coastal clients; they also work for clients on day-to-day services such as getting a document in front of the governor by the end of the day; they also provide the latest information from Raleigh on legislation/bills.

At the request of Manager Garman, Ms. Christensen spoke of the problematic Senate Bill 382 – they are developing a working group to put in a body of recommendation for 2025.  When legislation like this pops up and changes are needed, people lean on in-house lobbyists and they are already engaged in a process to identify what the core problems are.  There are no guarantees as to the outcome but there is a majority of interest. She stated that the bill was not able to be amended as it was from a conference report making it unpredictable and they had no idea it was coming forward.  In response to Mayor Cahoon, Ms. Campbell said that she and her team have a lot of good relationships with various NC agencies such as the NC Homebuilders Association and the NC Dept of Transportation.

In response to Mayor Cahoon, Manager Garman said that he is looking for help with Town water projects, waterline replacements, stormwater drainage work, pathways, public buildings – all things to be pursued but his main priority is for water infrastructure.  Mayor Cahoon confirmed that at least one and more likely two years would be necessary and he pointed out being able to end the agreement with only 15 days written notice.

MOTION:  Comr. Lambert made a motion to authorize the Town Manager to execute the agreement with Ward and Smith, PLLC for lobbyist services for Town projects.  The motion was seconded by Comr. Sanders.

Comr. Lambert said that the Town would have more defense with a lobbyist; Comr. Sanders noted that their retention record is great.

CONTINUATION OF MOTION:  The motion passed unanimously.

The agreement, as approved/authorized, is on file in the Town Clerk's Office.

Consideration of Workforce Housing Development Project Construction Bids
- Consideration of associated Budget Amendment and Reimbursement Resolution

Town Engineer David Ryan discussed the summary sheet which read in part as follows:

"Staff recommends the award to the lowest responsive, responsible bidder, Todd Coyle Construction. The proposed contract amount is $1,417,992.80.

'This project was proposed to be financed in the FY 2024/25 budget. The project was budgeted at $1.275 million.

'Staff proposes to use excess fund balance from the CIF to cover the increase in cost of this project. A budget amendment to cover the additional contract amount is attached for Board approval. Please note that the impact to the FY 2024/25 budget will be an increase in the debt payment, not the total difference between the budgeted amount and the proposed contract amount.

'An additional budget amendment will be brought forward in January to include additional items such as furniture, appliances, and contingency. A new reimbursement resolution is needed to account for the new budget, and this covers both the building construction items included in the FY 24/25 budget. Note that this resolution is only a not-to-exceed borrowing amount. The Board would have to approve any construction contracts under this resolution.

'The Town of Nags Head recently solicited formal bids for the Workforce Development Housing project, for construction of a new eight-bedroom multi-story building w/attached decking, parking lot improvements, pedestrian walkways and related site and infrastructure improvements. The project was advertised in October with only one bid submitted. In accordance with NC General Statute 143.132, for construction contracts within the formal bid range, a minimum of three bids shall be received.

'If three bids are not received, the local government must re-advertise. If three bids are still not received, the local government may award to the lowest responsive, responsible bidder, even if only one bid is received. The project was re-advertised on November 21, 2024, with a re-bid due date of December 3, 2024. The re-bid resulted in a single bid received from Todd Coyle Construction, LLC in the amount of $1,490,992.80. A value engineering exercise was performed with the design team to explore opportunities for reduced pricing and negotiations conducted with the contractors representative. This resulted in a cost savings of $73,000 for an adjusted bid price of $1,417,992.80. Staff will present the bid award recommendation at the upcoming meeting."

Mayor Cahoon questioned what was value engineered to lower the cost. Engineer Ryan reported the following which were all related to the site work associated with the project: reducing septic system size, reduce cost of drainage improvements, floor construction on the second floor, and working with the contractor. Mayor Cahoon asked about the cost of the project relative to the private sector; Engineer Ryan stated that working with the government is heavy on a paper trail which could add up to $10,000 to the cost.

MOTION: Comr. Lambert made a motion to issue the Notice of Award (NOA) to Todd Coyle Construction in the amount of $1,417,992.80 and to also authorize the Town Manager to execute the construction contract, with the correction to the amount (as written out), contingent upon the Town Attorney's review/approval. The motion was seconded by Comr. Sanders which passed unanimously.

MOTION: Mayor Pro Tem Siers made a motion to approve Budget Amendment #7 to allow additional funds for the debt payment and to record the loan proceeds for the Capital Outlay for the Ocean Rescue Housing. The motion was seconded by Comr. Sanders which passed unanimously.

Finance Officer Amy Miller noted that the amount listed covers the Local Government Commission (LGC). It does not bind the Town to this specific amount – it is a not-to-exceed amount required by the LGC.

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

MOTION: Mayor Pro Tem Siers made a motion to adopt the Reimbursement Resolution to declare the intention to reimburse the cost of certain expenditures as presented. The motion was seconded by Comr. Sanders which passed unanimously.

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

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

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

'Section 1. The projects are the financing of building construction and associated professional costs (including but not limited to design, engineering, surveying, etc.) for projects identified in the fiscal year 2024/2025 adopted budget:

- Ocean Rescue/Workforce housing (located at 425 W Health Center Drive in Nags Head); and
- Phase I of a Town Hall Campus Master Plan (Fitness Center-Nags Head address to be determined)

'Section 2. The projects are to be financed. The currently expected type of financing (which is subject to change) is an installment finance contract(s). The currently expected maximum amount to be financed for the projects is $3,500,000.

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

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

Consideration of S. Virginia Dare Trail Multi-Use Path Resurfacing Construction Bids
Town Engineer David Ryan presented the agenda summary sheet which read in part as follows:

"The Town of Nags Head recently solicited formal bids for the S Virginia Dare Trail Multi-Use Path, for the resurfacing of the existing multi-use path between 7300 S Virginia Dare Trail and Lakeside St. and Epstein St. and Dune Street in conjunction with drainage improvements along the project length. This project is funded through the NC Department of Commerce, Rural Economic Development Division, Rural Transformation Grant Program. The funding is contingent upon the construction contract being executed by December 31, 2024.

'The project was advertised in early November with a bid due date of December 3, 2024. Only two bids were received at the time and a re-bid process was conducted. On December 12, 2024, two bids were submitted; one by Fred Smith Company and one by Eastern Carolina Construction, LLC. The bid was structured as a base bid with an add alternate, to extend the project length and an alternate deduct, to reduce the project length based upon the available budgeted funds. The combination of base bid price and unit price submitted by Eastern Carolina Construction was determined to be the most advantageous, permitting up to approximately 1.3 miles of additional path length to be constructed. It is anticipated that the project will extend north in the vicinity of Curlew Street.
Staff will present a recommendation to award the bid.

'Staff recommends the award to Eastern Carolina Construction, Inc. who was deemed the lowest responsive, responsible bidder. This item was budgeted as fully grant funded and no budget amendment is necessary. There is $600,000 remaining under the grant contract. The construction award will be in an amount not to exceed $575,000. The remaining $25,000 will be for engineering services, which does not require Board approval as it is already included in the budget.

'Award the bid to the lowest responsible, responsive contractor as presented and authorize the Town Manager to execute the construction contract not to exceed $575,000 contingent upon Town Attorney review."

In response to Mayor Pro Tem Siers, Engineer Ryan said that the project is expected to start after the first of the year and is be completed (up to Dune Street) by mid-May 2025. In the fall the additional length will be constructed.

MOTION: Mayor Pro Tem Siers made a motion to issue the Notice of Award (NOA) to Eastern Carolina Construction in the amount of $575,000 and to authorize the Town Manager to execute the construction contract for the Multi-Use Path Resurfacing Project contingent upon the Town Attorney's review/approval. The motion was seconded by Comr. Sanders which passed unanimously.

Consideration of Bids for the repaving of Pond/Lark Avenues
Town Engineer David Ryan summarized the bid process for the project to repave Pond and Lark Avenues.

The project was bid out recently and two bids were received. One from Barnhill Construction and one from Fred Smith Co. The lowest responsible bid was $177,678.20 from Barnhill Construction. A timeline for the project financing has to be met.

MOTION: Mayor Pro Tem Siers made a motion to issue the Notice of Award to Barnhill Construction Co. in the amount of $177,678.20 for the repaving of Pond and Lark Avenues and to authorize the Town Manager to execute the associated construction contract, contingent upon Town Attorney approval, as presented. The motion was seconded by Comr. Lambert which passed unanimously.

**ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY**
Nothing new was presented from the Town Attorney.

**ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER**
Nothing new was presented from the Town Manager.

**BOARD OF COMMISSIONERS AGENDA**

Mayor Pro Tem Siers – Dare County Housing Task Force

Mayor Pro Tem Siers reported that the Dare County Housing Task Force has completed and released their 2024 report which incorporates the Task Force's research, findings, and recommendations. He anticipates discussion with the Task Force Chair at the February 5th Board of Commissioners meeting.

**MAYOR'S AGENDA**

Mayor Cahoon - Discussion of Senate Bill 382

Mayor Cahoon stated that when the General Assembly goes back into session, there is anticipation that the section of Senate Bill 382 re: down-zoning will be removed. With the lobbyist, Ward and Smith, PLLC pursuing action, he hopes there will be a full strike of these provisions.

Town Attorney Leidy noted that the ability to adopt and initiate zoning regulations are removed with this bill which is his main concern. He wants to make sure the Town doesn't initiate while the bill is in effect.

Town Manager Garman said that the Town's new relationship with the lobbyist will help as they will put together a strategy and build a coalition to best attack this bill.

Mayor Cahoon suggested that the Planning Board's actions continue as normal; Board members agreed. Manager Garman said they should continue to work on upzoning amendments and to not bring forward to the Board anything that may not be adopted because of the bill.

Mayor Cahoon - Consideration of voting delegate for NCLM Legislative Goals
Mayor Cahoon reported that the NCLM has completed its Legislative Goals development process and has asked each Town to appoint a voting delegate to review the proposed goals and cast their votes.

MOTION: Mayor Pro Tem Siers made a motion to appoint Mayor Cahoon as the Town's voting delegate for the NCLM Legislative Goals process. The motion was seconded by Comr. Sanders which passed unanimously.

**CLOSED SESSION**

MOTION: Mayor Pro Tem Siers made a motion to enter Closed Session to confer with the Board re: matters related to attorney/client privilege and to preserve that privilege pursuant to GS 143-

318.11(a)(3) and to confer with the Town Attorney re: a personnel matter pursuant to GS 143-318.11(a)(6). The motion was seconded by Comr. Sanders which passed unanimously. The time was 10:20 a.m.

**OPEN SESSION**

The Board re-entered Open Session at 11:10 a.m. Attorney Leidy reported that during Closed Session the Board did consult with the Town Attorney re: matters of attorney/client privilege as well as a personnel matter but no actions were taken.

**ADJOURNMENT**

MOTION: Comr. Sanders made a motion to adjourn. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 11:11 a.m.

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Carolyn F. Morris, Town Clerk

Date Approved: **January 8, 2025**

Mayor: ____________________________
Benjamin Cahoon