

**VILLAGE OF BALD HEAD ISLAND
COUNCIL MEETING
April 15, 2011
Bald Head Association**

COUNCILORS IN ATTENDANCE: Mayor Andrew Sayre
Mayor Pro Tempore John Fisher
Councilor Gene Douglas
Councilor Art Morris
Councilor John Pitera

STAFF PRESENT: Calvin R. Peck, Jr., Village Manager
Chris McCall, Asst. Manager/ Shoreline
Protection Manager
Deb Straub, Finance Director
Nathan McConnell, Captain of Public Safety
Charles Baldwin, Village Attorney
Debra Talbert, Village Clerk

1. Call to Order / Approval of Agenda

Mayor Sayre called the April 15, 2011 Council meeting to order at 3:00 p.m. Mayor Sayre entertained a motion to approve the agenda. Councilor Pitera made the motion, with all in approval.

(MOTION CARRIED 5-0)

2. Public Hearing

2.1- Text amendment to Section 16-1 Designating the Chief of Public Safety to make recommendation on the suitability of a person or location for an ABC Permit

Mayor Sayre entered into the public hearing of the proposed revision of Section 16-1, Designating the Chief of Public Safety to make recommendation on the suitability of a person or location for an ABC Permit.

Mayor Sayre opened the public hearing and asked for comments. With no comment, Mayor Sayre closed the public hearing.

2.2- Clarify Criminal Implications Regarding Violations of Village Ordinances

Mayor Sayre entered into the public hearing of the proposed ordinance to clarify criminal implication regarding violations of Village ordinances.

Mayor Sayre opened the public hearing and asked for comments.

Larry Lammert asked for clarification on the proposed ordinance.

Attorney Baldwin stated this is to clean up the major revisions for more clarity.

With no other comments, Mayor Sayre closed the public hearing.

3. Consent Agenda

Approval of Minutes

March 25, 2011 - Work Session

March 25, 2011 - Council Session

Mayor Sayre asked for approval of the Consent Agenda as presented. Councilor Pitera made the motion, with all in approval.

(MOTION CARRIED 5-0)

4. Old Business

**4.1 Consideration/ Adoption for for text amendment to Section 16-1
Designation for ABC Permit Recommendation**

Mayor Sayre reviewed the text amendment to Section 16-1, Designation for ABC Permit Recommendation. Mayor Sayre asked for approval of the Ordinance as presented below. Councilor Pitera made the motion, with all in approval. (MOTION CARRIED 5-0)

Ordinance 20110401

WHEREAS, Pursuant to North Carolina General Statute § 160A-175(b), unless the Village Council provides otherwise, a violation of any Village Ordinance is a misdemeanor or infraction as provided by North Carolina General Statute § 14-4; and

WHEREAS, The Village Council wishes to provide that violations of certain Village Ordinances shall not result in criminal prosecution;

NOW, THEREFORE, BE IT ORDAINED, BY THE VILLAGE OF BALD HEAD ISLAND, NORTH CAROLINA:

The following Sections of the Village Code of Ordinances shall be amended to read as follows:

Section 1-6. General penalty; enforcement of ordinances; continuing violations.

(a) Unless otherwise specifically provided, violation of any provision of this Code or any other Village Ordinance shall not be a misdemeanor or infraction, as provided by G.S. 14-4.

Section 8-43. Penalty for violation of Article.

A violation of this Article shall subject the offender to a civil fine of \$50.00 per offense. Any individual cited for violation of this Article shall pay the civil penalty at the Office of the Village Clerk within 48 hours of the issuance thereof.

Section 10-86. Penalty for violation of Article.

A violation of this Article shall subject the offender to a civil fine in the amount of \$100.00 per offense. Subsequent to the initial civil fine, the offender shall be provided with 30 days to correct the violation. Each additional day following the 30 day period, during or on which the violation is not corrected, shall be deemed a separate violation. Following the initial 30 day period for correction, a continuing offender shall not be afforded an additional 30 day period to correct the violation. Nothing contained in this Article shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 10-127. Penalty for Violation of Article.

A violation of this Article shall subject the offender to a civil fine in the amount of \$500.00 per offense and any continuing violation thereof shall be deemed a separate offense for each day during or on which the violation shall continue. Any civil penalty shall be paid at the Office of the Village Clerk within 48 hours of issuance of a civil citation. Additionally this article may be enforced by injunction and orders of abatement, together with all other remedies available to the Village under G.S. 160A-175(e) or other State law.

Section 12-52. Penalty for violation of Division.

A violation of this Division or failure to comply with any of its requirements, including violation of conditions, special exemptions, and safeguards included in an approval permit shall subject the offender to a civil fine in the amount of \$500.00 per offense. Any individual cited for violation of this Division shall pay said civil penalty at the Office of the Village Clerk within 48 hours of the issuance thereof. Nothing herein shall prevent the Village from taking such other lawful action as necessary to prevent or remedy any violation.

Section 14-43. Penalty for violation of Article.

A violation of this Article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall subject the offender to a civil fine in the amount of \$500.00 per offense. Each day such violation continues shall be considered a separate offense. Nothing herein shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 16-102. Discharge of firearms prohibited.

(d) A violation of this Section shall subject the person violating this section to a civil fine in the amount of \$50.00 per offense. Any individual cited for a violation of this Section shall pay the civil penalty at the Office of the Village Clerk within 48 hours of the issuance of the citation.

Section 22-6. Penalty for violation of Chapter.

A violation of this Chapter shall subject the offender to a civil fine in the amount of \$500.00 for each offense and any continuing violation thereof shall be deemed a separate offense for each day during or on which the violation shall continue. Any civil fine shall be paid at the Office of the Village Clerk within 48 hours of issuance of a civil citation. Nothing herein shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 24-36. Penalty for violation of Article.

A violation of this Article shall subject the offender to a civil fine of \$50.00. Any individual cited for violation of this Article shall pay the civil penalty at the Office of the Village Clerk within 48 hours of the issuance of the civil citation.

Section 30-1. Violations; penalties.

(a) Upon a violation of any provision of this Chapter, the Village may enforce this Chapter through civil proceedings, or by any other remedy provided for under G.S. 160A-175 or as otherwise specifically set forth in this Chapter, except that a violation of this Chapter shall not result in criminal proceedings.

Section 30-1(g) shall be deleted.

Section 30-36. Violation and penalty.

A violation of this Article shall subject the offender to a civil fine in the amount of \$50.00 for each offense, and a separate offense shall be deemed committed for each day during or on which the violation shall continue to occur. Any civil penalty imposed by the Village for a violation of this Article shall be issued in the form of a citation payable to the Office of the Village Clerk within 48 hours of issuance. In addition to the penalties in this Section, the Building Inspector shall post written notice of the violation on any real estate which is noncompliant with this Article and ten days thereafter shall have the authority to order the disconnection and removal of any and all poles, overhead wires and associated overhead structures supplying utility service to the property, and the cost of doing so shall be recoverable by the Village by civil action against the person owning, operating, or leasing the property serviced by non-complying utility service.

Section 32-62 shall be deleted.

Section 32-63. Civil remedies.

(c) In addition to the civil remedies set forth herein:

(1) A person who fails or refuses to stop work on any structure immediately upon issuance of a stop order; or

(2) A person who occupies a structure overnight without issuance of a certificate of occupancy;

shall be liable for a civil fine in the amount of \$2000.00. In addition to this amount, which shall be payable to the Village, the violator shall pay all court costs and all reasonable attorney's fees required to produce a civil judgment to enforce this provision, this provision being enacted in accordance with the provisions of G.S. 160A-175(b).

Section 32-340. Enforcement and remedies.

Any violation or attempted violation of this Article or of any condition or requirement adopted pursuant hereto may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceedings pursuant to State law. In the case of a violation of this Article, the remedies available to the Village shall include the following:

(1) Issuing a stop work order for any and all work on any signs in the same lot or lots;

(2) Seeking an injunction or other order of restraint or abatement that requires the removal of the sign or the correction of the nonconformity;

(3) Issuing a civil citation to cause the violation to be corrected and imposing a penalty for failure to do so;

(4) Seeking in court the imposition of any additional penalties that can be imposed by such court under this Chapter; and

(5) In the case of a sign that poses an immediate danger to the public health or safety, taking such measures as are available to the Village under the applicable provisions of this Article and the building code for such circumstances.

The Village shall have such other remedies as are and as may from time to time be provided for or allowed by State law for the violation of this Article, except that a violation of this Article shall not result in criminal proceedings.

Section 32-341. Citation.

(a) If the offender does not correct the violation set forth in the citation within 72 hours after being cited, a second citation subject to a \$25.00 civil penalty for the same violation shall be issued.

Except as specifically amended herein, all subsections of the following Sections shall remain as they are presently codified. Passed and adopted by the Village Council, this the 15th day of April, 2011.

**4.2 Consideration/ Adoption to Clarify Criminal Implications
Regarding Violations of Village Ordinances**

Mayor Sayre reviewed the Ordinance to Clarify Criminal Implications Regarding Violations of Village Ordinances. Mayor Sayre asked for approval of the Ordinance as presented. Councilor Pitera made the motion, with all in approval. **(MOTION CARRIED 5-0)**

Ordinance 20110402

WHEREAS, Pursuant to North Carolina General Statute § 160A-175(b), unless the Village Council provides otherwise, a violation of any Village Ordinance is a misdemeanor or infraction as provided by North Carolina General Statute § 14-4; and **WHEREAS**, The Village Council wishes to provide that violations of certain Village Ordinances shall not result in criminal prosecution;

NOW, THEREFORE, BE IT ORDAINED, BY THE VILLAGE OF BALD HEAD ISLAND, NORTH CAROLINA:

The following Sections of the Village Code of Ordinances shall be amended to read as follows:

Section 1-6. General penalty; enforcement of ordinances; continuing violations.

(b) Unless otherwise specifically provided, violation of any provision of this Code or any other Village Ordinance shall not be a misdemeanor or infraction, as provided by G.S. 14-4.

Section 8-43. Penalty for violation of Article.

A violation of this Article shall subject the offender to a civil fine of \$50.00 per offense. Any individual cited for violation of this Article shall pay the civil penalty at the Office of the Village Clerk within 48 hours of the issuance thereof.
Section 10-86. Penalty for violation of Article.

A violation of this Article shall subject the offender to a civil fine in the amount of \$100.00 per offense. Subsequent to the initial civil fine, the offender shall be provided with 30 days to correct the violation. Each additional day following the 30 day period, during or on which the violation is not corrected, shall be deemed a separate violation. Following the initial 30 day period for correction, a continuing offender shall not be afforded an additional 30 day period to correct the violation. Nothing contained in this Article shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 10-127. Penalty for Violation of Article.

A violation of this Article shall subject the offender to a civil fine in the amount of \$500.00 per offense and any continuing violation thereof shall be deemed a separate offense for each day during or on which the violation shall continue. Any civil penalty shall be paid at the Office of the Village Clerk within 48 hours of issuance of a civil citation. Additionally this article may be enforced by injunction and orders of abatement, together with all other remedies available to the Village under G.S. 160A-175(e) or other State law.

Section 12-52. Penalty for violation of Division.

A violation of this Division or failure to comply with any of its requirements, including violation of conditions, special exemptions, and safeguards included in an approval permit shall subject the offender to a civil fine in the amount of \$500.00 per offense. Any individual cited for violation of this Division shall pay said civil penalty at the Office of the Village Clerk within 48 hours of the issuance thereof. Nothing herein shall prevent the Village from taking such other lawful action as necessary to prevent or remedy any violation.

Section 14-43. Penalty for violation of Article.

A violation of this Article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall subject the offender to a civil fine in the amount of \$500.00 per offense. Each day such violation continues shall be considered a separate offense. Nothing herein shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 16-102. Discharge of firearms prohibited.

(d) A violation of this Section shall subject the person violating this section to a civil fine in the amount of \$50.00 per offense. Any individual cited for a violation of this Section shall pay the civil penalty at the Office of the Village Clerk within 48 hours of the issuance of the citation.

Section 22-6. Penalty for violation of Chapter.

A violation of this Chapter shall subject the offender to a civil fine in the amount of \$500.00 for each offense and any continuing violation thereof shall be deemed a separate offense for each day during or on which the violation shall continue. Any civil fine shall be paid at the Office of the Village Clerk within 48 hours of issuance of a civil citation. Nothing herein shall prevent the Village from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 24-36. Penalty for violation of Article.

A violation of this Article shall subject the offender to a civil fine of \$50.00. Any individual cited for violation of this Article shall pay the civil penalty at the Office of the Village Clerk within 48 hours of the issuance of the civil citation.

Section 30-1. Violations; penalties.

(b) Upon a violation of any provision of this Chapter, the Village may enforce this Chapter through civil proceedings, or by any other remedy provided for under G.S. 160A-175 or as otherwise specifically set forth in this Chapter, except that a violation of this Chapter shall not result in criminal proceedings.

Section 30-1(g) shall be deleted.

Section 30-36. Violation and penalty.

A violation of this Article shall subject the offender to a civil fine in the amount of \$50.00 for each offense, and a separate offense shall be deemed committed for each day during or on which the violation shall continue to occur. Any civil penalty imposed by the Village for a violation of this Article shall be issued in the form of a citation payable to the Office of the Village Clerk within 48 hours of issuance. In addition to the penalties in this Section, the Building Inspector shall post written notice of the violation on any real estate which is noncompliant with this Article and ten days thereafter shall have the authority to order the disconnection and removal of any and all poles, overhead wires and associated overhead structures supplying utility service to the property, and the cost of doing so shall be recoverable by the Village by civil action against the person owning, operating, or leasing the property serviced by non-complying utility service.

Section 32-62 shall be deleted.

Section 32-63. Civil remedies.

(d) In addition to the civil remedies set forth herein:

- (3) A person who fails or refuses to stop work on any structure immediately upon issuance of a stop order; or
- (4) A person who occupies a structure overnight without issuance of a certificate of occupancy;

shall be liable for a civil fine in the amount of \$2000.00. In addition to this amount, which shall be payable to the Village, the violator shall pay all court costs and all reasonable attorney's fees required to produce a civil judgment to enforce this provision, this provision being enacted in accordance with the provisions of G.S. 160A-175(b).

Section 32-340. Enforcement and remedies.

Any violation or attempted violation of this Article or of any condition or requirement adopted pursuant hereto may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceedings pursuant to State law. In the case of a violation of this Article, the remedies available to the Village shall include the following:

- (6) Issuing a stop work order for any and all work on any signs in the same lot or lots;
- (7) Seeking an injunction or other order of restraint or abatement that requires the removal of the sign or the correction of the nonconformity;
- (8) Issuing a civil citation to cause the violation to be corrected and imposing a penalty for failure to do so;
- (9) Seeking in court the imposition of any additional penalties that can be imposed by such court under this Chapter; and
- (10) In the case of a sign that poses an immediate danger to the public health or safety, taking such measures as are available to the Village under the applicable provisions of this Article and the building code for such circumstances.

The Village shall have such other remedies as are and as may from time to time be provided for or allowed by State law for the violation of this Article, except that a violation of this Article shall not result in criminal proceedings.

Section 32-341. Citation.

(b) If the offender does not correct the violation set forth in the citation within 72 hours after being cited, a second citation subject to a \$25.00 civil penalty for the same violation shall be issued.

Except as specifically amended herein, all subsections of the following Sections shall remain as they are presently codified. Passed and adopted by the Village Council, this the 15th day of April, 2011.

5. New Business

5.1 Consideration of Harbour Timber Groins Renovation Project

Calvin reviewed the Timber Groinfield Renovation Project proposed bids that were open on April 12, 2011. There were four responsive bids and one withdrawal prior to the deadline. The lowest bid was received from Atlantic Diving Marine contract for \$215k.

Mayor Sayre reviewed the Resolution for Authorizing Harbour Village Timber Groins Renovation Project. Mayor Sayre asked for approval of the Resolution as presented. Mayor Pro Tempore Fisher made the motion, with all in approval.

(MOTION CARRIED 5-0)

WHEREAS, the Village of Bald Head Island ("Village") has undertaken an Integrated Shoreline Protection Project, under which it has adopted an overall strategy to deal with certain of the consequences brought about by erosion and other threats to the beach and estuarine resources within the boundaries of the Village;

WHEREAS, Bald Head Island Limited, LLC ("Limited") has constructed and historically maintained a series of four timber and rock groins ("Groins") located on property it owns on the riverside beach adjacent to the northwest side of Row Boat Row and a portion of Turk's Head Court within the Bald Head Island Harbour Village;

WHEREAS, the Village, Limited and the Harbour Association of Bald Head Island ("Association") wish to enter into an agreement setting out the terms and understandings under which the current repair and maintenance of all four Groins shall take place and transferring to the Village certain non-exclusive easements for maintenance and beach access;

WHEREAS, pursuant to subsequent discussions, the parties plan to negotiate the terms, timing and mechanisms under which all or portions of North Carolina Department of Environment and Natural Resources and Coastal Resources Commission Permit Number 2-95, providing for the maintenance of the Groins, may be transferred to the Village;

WHEREAS, pursuant to subsequent discussions, the parties also plan to negotiate the terms for future transfer of two existing Harbour Village beach accesses to the Village;

*WHEREAS, a copy of the draft agreement among the parties is attached hereto as **EXHIBIT A**;*

WHEREAS, the Village received and opened on April 12, 2011 certain bid proposals from contractors for the work to renovate the Groins;

*WHEREAS, the Village's Coastal Engineering firm, Olsen Associates, Inc., made recommendations to the Village regarding the project scope of work and award of the contract to the lowest, responsive and responsible bidder, as set forth in that Memorandum of April 15, 2011, **EXHIBIT B** hereto;*

WHEREAS, the Village Council believes the project cost to be reasonable and the project to be in the best interests of the Village, erosion control, and public safety;

WHEREAS, the Village Council wishes to approve the expenditure of funds for the project and to authorize Staff to finalize and execute the necessary Agreement and contractor's contract;

NOW, THEREFORE, BE IT RESOLVED by the Village Council of the Village of Bald Head Island that:

1. The Village accepts the bid proposal of Atlantic Diving and Marine Contractors, Inc. ("ADMCI") and awards the project to ADMCI, in accordance with the terms of the recommendation and scope of work of Olsen Associates, Inc., **Exhibit B** hereto, and subject to the below contingency.
2. The Village Council authorizes the expenditure of funds in a sum not to exceed \$245,000.00 on the project, subject to the below contingency.
3. Staff is authorized to finalize and execute the timber groins renovation project Agreement among Limited, the Harbour Association and the Village, on terms substantially the same as the draft Agreement, **Exhibit A** hereto.
4. Staff is authorized to negotiate and enter into a written agreement with ADMCI for its work, consistent with the Limited, Harbour Association, and Village Agreement and approved project scope of work.
5. Provided, however, the foregoing award of the project to ADMCI and expenditure of funds expressly is contingent upon the entry of Limited, the Harbour Association, and the Village into the Agreement, **Exhibit A**, hereto, and the negotiation of an agreeable contract for the work between the Village and ADMCI.

Adopted by the Village Council of the Village of Bald Head Island on this the 15th day of April, 2011.

5.2 Wounded Warriors Sponsorship

Mayor Pro Tempore Fisher requested sponsorship of \$2500.00 from the Village to the Wounded Warrior program. Mayor Sayre asked for a motion to approve sponsorship of \$2500.00. Councilor Douglas made the motion, with all in approval. **(MOTION CARRIED 5-0)**

5.3 Appointment of Committee Member

Mayor Sayre asked for a motion to appoint John Jelinek to the Shoreline Protection Committee. Councilor Douglas made the motion, with all in approval. **(MOTION CARRIED 5-0)**

5.4 March Financial Statement Report

Deb Straub reviewed the March financial balances. The total operating revenue is within budget. The budget amendments in July of \$60k and in January of \$550k were from additional legal services for the rate case and the revaluation. The general fund operating expenditures are within budget after the budget amendments. The utility fund service revenue is slightly below budget and the Village anticipates an increase for the in-season. The total utilities revenue is slightly below budget and are in line with expenditure levels.

The Beach fund balance at EOM is \$519k. The Village facilities construction/ expansion is less than \$1000k. Stormwater Management fund balance at EOM is \$76k. And the Infiltration Pond System fund balance at EOM is \$213k.

6. Committee Reports

6.1 Shoreline Protection- None

6.2 Finance- None

6.3 Public Safety & Transportation- None

6.4 Public Works & Utilities- Councilor Pitera stated the committee discussed the condition of the roads and will be recommending paving to be done in the fall.

6.5 Communication- None

6.6 Parks & Recreation - None

7. Monthly Reports

7.1 Manager's Report- Calvin reviewed the Senate Bill 182- Email list. The NC Wildlife Resource Commission will be conducting training for the Conservancy interns and staff on nuisance alligators. This will be conducted in May. Calvin stated David Cox graduated from the UNC School of Government in Municipal Administration.

7.2 Department of Public Safety Report- Captain McConnell spoke on Deputy Chief Freeman hospitalization with his current condition.

Captain McConnell stated Julie Piner, Administrative Assistant has withdrawn her resignation and will continue to work for Public Safety.

7.3 Development Services Monthly Report- Stephen Boyett reviewed the March building inspection report. There were 33 minor permits issued with 2 certificate of occupancy for March. The year to date uncollected balance is \$70,0861. Stephen spoke on the Stormwater update and improvements.

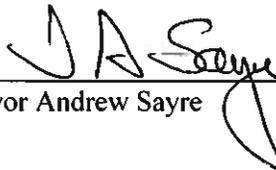
7.4 **Shoreline Protection Manager Report** - Chris McCall spoke on the attended NCBIWA conference. Chris stated Stephen Boyett will be receiving training and certification on the Institute of Home Building Safety with the North Carolina Department of Insurance. Chris stated the Corps of Engineers has filed a motion to dismiss the complaint between Corps and the Village of Bald Head Island. The Village legal representatives are filing a response to this dismissal.

8. **Comments, Reports and Questions**

- 8.1 **Bald Head Association** - No Comment
- 8.2 **Bald Head Island, LTD**- No Comment
- 8.3 **Bald Head Island Conservancy**- Suzanne Dorsey reviewed the Conservancy sequence of events for March.
- 8.4 **Bald Head Island Club**- No Comment
- 8.5 **Citizens**- Larry Lammert asked if property owners would be notified on possible insurance discounts with the completion of Stormwater maintenance for the island. Mayor Sayre stated he was unaware of discounts for Stormwater maintenance and suggested the National Flood Insurance Program. Larry stated the insurance in question is Pure Insurance. Calvin stated this will be reviewed by staff.
- 8.6 **Mayor and Council** – Councilor Douglas asked if there has been any replies on the spraying for bagworms on personnel property. Chris McCall replied there have been more than 50 owners who have replied out of 86 letters that were sent.

9. **Adjournment** -

Mayor Sayre entertained a motion to adjourn at 3:22 p.m., with Mayor Pro Tempore Fisher made the motion with all in favor. **(MOTION CARRIED 5-0)**



Mayor Andrew Sayre

ATTEST:



Debra C. Talbert, Village Clerk

