

VILLAGE OF BALD HEAD ISLAND
COUNCIL MEETING
September 16, 2011
Bald Head Association

COUNCILORS IN ATTENDANCE

Mayor Andrew Sayre
Mayor Pro Tempore John Fisher
Councilor Gene Douglas
Councilor Art Morris

STAFF PRESENT:

Calvin R. Peck, Jr., Village Manager
Chris McCall, Asst. Manager/ Shoreline
Protection Manager
Deb Straub, Finance Director
Chief Chip Munna
Deputy Chief Shaun Freeman
Stephen Boyett, Development Services
Daralyn Spivey, Tax Administrator
David Cox, Systems Administrator
Charles Baldwin, Village Attorney
Debra Talbert, Village Clerk

1. Call to Order / Approval of Agenda

Mayor Sayre called the September 16, 2011 Council Session to order at 3:00 p.m. Mayor Sayre entertained a motion to approve the amended agenda as presented. Mayor Pro Tempore Fisher made motion, with all in approval. **(MOTION CARRIED 4-0)**

2. Public Hearing

2.1 Amending Chapter 18-1(c) to Institute a No-Wake Zone for Personal Watercraft Operated in Specific Areas, Including Bald Head Creek

Mayor Sayre opened the Public Hearing. With no comments, the public hearing was closed.

3. Consent Agenda

3.1 Approval of Minutes

August 19, 2011- Council Work Session
August 19, 2011- Council Meeting

Mayor Sayre entertained a motion to approve the consent agenda as presented. Councilor Douglas made motion, with all in approval. **(MOTION CARRIED 4-0)**

4. Old Business

4.1 Proposed Ordinance to Amend Chapter 18-1(c) to Institute a No-Wake Zone for Personal Watercraft Operated in Specific Areas

Mayor Sayre entertained a motion for the adoption of the presented ordinance. Councilor Douglas made the motion, with all in approval. **(MOTION CARRIED 4-0)**

***WHEREAS**, the Village Council of the Village of Bald Head Island, North Carolina ("Village") deems it necessary, in the interest of public safety and to preserve the tranquility and environment of the Village, to amend Section 18-1. Personal Watercraft Safety. in order to address the issue of personal watercraft operation at excessive speeds in Bald Head Creek.*

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

Section 18-1(c) shall be amended as follows:

(c) Speed. In all Village waters, no person may operate a personal watercraft in excess of an idle speed or a slow speed creating no appreciable wake in the following areas:

- (1) Within 50 feet of posted waterbird sanctuaries or management areas;
- (2) Within 25 feet of the marsh or shore within the intracoastal waterway; and
- (3) Within Bald Head Creek.

Except as amended herein, Section 18-1 shall remain in effect as presently codified.

4.2 Renewal of Bald Head Club and Village Lagoon Agreement

Attorney Baldwin reviewed the proposed update and renewal agreement between Bald Head Club and Village lagoon. A Resolution was presented to Council as follows for approval. Mayor Sayre entertained a motion for approval of Bald Head Club and Village agreement and the presented resolution. Councilor Douglas made the motion, with all in approval. **(MOTION CARRIED 4-0)**

WHEREAS, the Village is the owner and operator of the water treatment plant ("WTP") and the wastewater treatment plant ("WWTP") serving Bald Head Island ("Island");

WHEREAS, wastewater effluent from the WWTP ("WWTP Effluent") and reverse osmosis concentrate from the WTP ("RO Concentrate") have been or are being disposed of in certain infiltration lagoons ("Infiltration Lagoons");

WHEREAS, the Bald Head Island Club ("Club") owns all or a portion of the Infiltration Lagoons;

WHEREAS, the Club has expressed various concerns and raised certain objections and issues relating to the use, operation and maintenance of the Infiltration Lagoons by the Village in connection with the disposal of WWTP Effluent and RO Concentrate;

WHEREAS, the Village and the Club recognize the need and requirement for the Village to expand its wastewater treatment and disposal capacity in order to serve the planned development of the Island at full residential and commercial build-out, which is currently expected to include approximately 2,459 residential equivalency units ("Full Build-Out");

WHEREAS, the Club is willing to allow the Village to continue to use the Infiltration Lagoons for disposal of WWTP Effluent, and may be willing to allow the use of additional Club-owned lagoons for the disposal of WWTP Effluent or of dewatered groundwater, all on certain terms and conditions;

WHEREAS, the Village and the Club agree that it is in their mutual interest for wastewater effluent generated on the Island, and the use of the Infiltration Lagoons, to be managed in a manner that minimizes any negative impact to the environment, the Club, and the community;

WHEREAS, the Village and the Club have reached certain agreements, terms and conditions with regard to (i) the use, operation and maintenance of the Infiltration Lagoons by the Village in connection with the Village's disposal of WWTP Effluent, and (ii) the development of a plan for meeting the wastewater treatment and disposal capacity needs of the Village at Full Build-Out, and wish to set forth those agreements, terms and conditions in a binding agreement;

WHEREAS, the Village and the Club entered into that certain agreement relating to the use of the Infiltration Lagoons by the Village for WWTP Effluent disposal dated July 10, 2008 ("Original Agreement"), and subsequently amended the Original Agreement on March 9, 2009 and November 9, 2009;

WHEREAS, on November 20, 2009, the Village and the Club entered into a separate agreement relating to improvements to and the use of Lagoon 3 ("Lagoon 3 Agreement");

WHEREAS, the parties now desire to amend and restate the Original Agreement, as previously amended, without effect on the Lagoon 3 Agreement, which remains in full force and effect;

WHEREAS, the Amended and Restated Agreement requires certain studies and work by the Village ("Work");

WHEREAS, the Work is recommended by the Village's engineering consultant, McKim & Creed, P.A.;

WHEREAS, the Village Council believes the Work to be in the best interests of the Village, water and wastewater management, and the environment;

WHEREAS, the Work and Village expenditures are in three phases, with the Phase I Work to be completed by July 1, 2012;

WHEREAS, the Village Council wishes to approve the Agreement and authorize funding for the Phase I Work;

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

1. The Village Manager and Village Attorney are authorized to negotiate and finalize the Amended and Restated Agreement with the Bald Head Island Club on terms substantially the same as the draft Agreement, Exhibit A hereto.
2. The Mayor is authorized to execute the Agreement on terms substantially the same as the draft Agreement, Exhibit A hereto.

3. *The Village Council shall adopt a Budget Ordinance Amendment authorizing necessary funds for the Phase I work required under the Agreement and to be completed by July 1, 2012.*

Mayor Sayre reviewed the proposed amend budget ordinance. The purpose of amendment is to fund Wastewater Treatment Plant improvement costs not included in the FY 11-12 Utilities budget approved on June 23, 2011 for the amount of \$225k.

Mayor Sayre entertained a motion for approval. Councilor Douglas made the motion, all voted in favor.

(MOTION CARRIED 4-0)

5. **New Business**

5.1 1st Reading/ Set Public Hearing for Amendment to Utility Ordinance

Calvin reviewed the proposed utilities ordinance changes to make to Section 30-48(f). Mayor Sayre entertained a motion to set a Public Hearing for October 21, 2011. Councilor Douglas made the motion, all voted in favor.

(MOTION CARRIED 4-0)

5.2 Timber Bridge and Harbor Roads Approval

Calvin reviewed the Bald Head Island Limited's amended Timber Bridge plan on power point. The Timber Bridge plan is modified to include a pedestrian walkway. The Village has dropped the requirement for a cart barn and will pay for the cantilevered walkway. The cost will be \$93,600 with reimbursement to Limited over three year period beginning FY 2012-13.

Mayor Sayre entertained a motion to approve. Councilor Morris made the motion, all voted in favor.

(MOTION CARRIED 4-0)

5.3 NBHW/ WBHW Intersection Approval

Calvin reviewed the NBHW/WBHW intersection plan for Village roads and to fund the improvements. The cost for the Village will be \$41,652 with reimbursement to Limited over three year period beginning FY 2012-13..

Mayor Sayre entertained a motion to approve. Councilor Morris made the motion, all voted in favor.

(MOTION CARRIED 4-0)

5.4 Remove Bald Head from Phase 1 Voluntary Water Conservation

Calvin stated the Village of Bald Head Island is currently under a Phase (1) Voluntary Water Conservation condition. Recommendation to return to normal condition due to resent rainfall and that Brunswick County has returned to non-restrictive water use on September 1, 2011.

Mayor Sayre entertained a motion to remove the Phase 1 Voluntary Water Conservation.

Councilor Douglas made the motion, all voted in favor.

(MOTION CARRIED 4-0)

5.5 August Financial Statement Report

Calvin reviewed the July and August financial report with Council. The Accommodation tax collections exceeded projections. The General Fund expenditures are on target. The Utility Fund revenues slightly exceeds prior year. The tap fees and surcharges are ahead with new construction on the island. The Utility Fund expenditures are higher due to equipment maintenance. The Utility Fund balance was \$670k with a transfer of \$225k to the Utilities Construction Fund. This will leave a 75% Fund Balance.

5.6 Request for Release of Interest Only on Delinquent Taxes

Daralyn Spivey reviewed the request by Robert Marcus for release of interest only that was accrued on 2007 delinquent taxes. Daralyn reviewed the Machinery Act of NC 105-273(15) Tax Definitions as follows:

Tax or taxes- The principal amount of any property tax or dog license tax and costs, penalties and interest.

The Machinery Act of NC 103-380(a) reads: The governing body of a taxing unit is prohibited from releasing, refunding or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided by this subchapter.

The Machinery Act of NC 103-380 (1)(a-c) ... a valid defense shall include the following:

(a) a tax imposed thru clerical error

(b) an illegal tax or

(c) a tax levied for an illegal purpose

Machinery Act of NC 105-381 (2) Taxpayers Remedies:

If a tax has not been paid the taxpayer may make demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for the release of the tax at any time prior to payment of the tax

Machinery Act of NC 105-381(b)

Upon receiving a taxpayer's written statement of defense and request for release or refund the governing body of the taxing unit shall within 90 days after receipt of such request determine whether the taxpayer as a valid defense to the tax imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct tax liability or notify the taxpayer in writing that no release or refund will be made.

After reviewing the above Machinery Acts, Daralyn stated this is recommendation of non- refund for the interest only on the 2007 delinquent taxes of Mr. Marcus.

Mayor Sayre entertained a motion to deny the request for nonpayment on interest only for 2007 delinquent taxes for Mr. Marcus. Councilor Douglas made the motion, all voted in favor.

(MOTION CARRIED 4-0)

5.7 Authorize Director of Human Resources & Communication Position Grade 23

Calvin spoke to Council on the staff positions eliminated approximately 18 months ago. There was a recommendation to Council which was approved to eliminate 3 administrative positions and transfer duties to existing staff. The Human Resource position was transferred and job is too big to be done by existing staff. Calvin reviewed the requested position for a Director of Human Resources and Communication with the Village of Bald Head Island. This position will be a dual position to plan, organize, direct and participate in difficult administrative and professional work in managing the human resources system and communications programs for the Village. The attempt is to locate someone who has knowledge in both positions. Calvin recommendation is for Council to authorize this position. Mayor Sayre entertained a motion to approve the position to be added. Councilor Morris made the motion, all voted in favor.

(MOTION CARRIED 4-0)

6. Committee Reports

6.1 Shoreline Protection- No Comment

6.2 Finance- Will be meeting on September 19, 2011

6.3 Public Safety & Transportation- Will be meeting on September 19, 2011

6.4 Public Works & Utilities- No comment

6.5 Communication- No comment

6.6 Parks & Recreation- No comment

7. Monthly Reports

7.1 Manager's Report- Calvin gave an update on the results of Hurricane Irene to building, debris and equipment. Category G(Parks, Recreation and other) includes beaches. A before and after survey on the engineered beach was completed and the results conclude 160k cubic yards of sand lost. Calvin discussed groin damage and over wash on East Beach. There is a meeting with FEMA on Thursday, September 22, 2011 for public assistance.

Calvin spoke on a meeting with all rental agencies on the island to discuss issues with hurricane mandatory evacuations and other concerns. Surrounding beach municipalities have issued mandatory evacuations with visitors and voluntary with residents with success. Possible action will be taken with next State of Emergency proclamation to modify the evacuation wording and price gouging restrictions. Calvin reviewed the water quality issues due to the loss of power and how it affects the gravity's sewer system. At 9:15, a decision was made to turn off water to avoid sewer problems. Once water is turned off, a mandatory boiling notice is issued.

Calvin reviewed various meetings he would be attending.

Public Safety Department is applying for a FEMA Fire Grant to purchase a thermal camera and 15 sets of turnout gear. This grant will cover 95% of cost and the remaining 5% is in the Public Safety budget.

7.2 Department of Public Safety Report

Chief Munna reviewed the schedule for flu vaccination clinic on October 20, 2011. This will be given by the Health department. Call the Public Safety department to reserve your vaccine.

7.3 Development Services Monthly Report

Stephen Boyett reviewed the building inspection monthly report for August. The final inspection on the Harbor Groins has not occurred yet. McKim & Creed will finalize when work order is processed.

7.4 Shoreline Protection Manager Report

Chris McCall reviewed the work process at the point. The work on the sand revetment wall is 30% complete. The approved work is for 1200 bags.

There has been notification sent to surrounding property owners concerning Village intent to perform an East Beach sand push.

Chris stated he has requested a CAMA modification increase in the cubic yards of sand removal with the Bald Head Creek dredging project. He will notify when received.

8. Comments, Reports and Questions

8.1 Bald Head Association- No Comment

8.2 Bald Head Island, LTD- Chad Paul spoke on the upcoming island construction project with BHI Limited and the Village. Mr. Paul reviewed the operation of Limited due to the water cut-off during Hurricane Irene. There are concerns with water cut-off and guest on the island with no food service provided. The issues have been discussed and addressed on the voluntary and mandatory evacuation procedures.

Jim Henry stated the heavy equipment for the construction project will be seen on the island beginning next week. Limited's intent for completing construction is 2 months.

Mayor Sayre stated this area is a high traffic area and has requested Limited to meet with Public Safety and Stephen to meet on a regular basis.

8.3 Bald Head Island Conservancy- No Comment

8.4 Bald Head Island Club- Robert Norton spoke on the boiling water advisory the Village issued. Mr. Norton reviewed the concerns and the operation of service. Time concerns due to stopping the ice maker and boiling of water. Staff and Council discussed the concerns and timeliness and feel the problem has been addressed.

8.5 Citizens- Larry Lammert asked if Mayor Sayre was still the broker in charge Wilmot properties. Mayor Sayre stated yes. Mr. Lammert stated in the future, if there is a conflict of interest, the matter should be handled by the Mayor Pro Tempore. Attorney Baldwin stated this has been discussed with the Mayor. This particular issue there was no motion or action taken by the Council only a discussion.

8.6 Mayor and Council- Mayor Sayre reviewed the meetings attended concerning the shoreline issues with NC representatives. There are meetings scheduled to meet with Senators to ask for assistance with the beach erosion.

Councilor Douglas spoke on an email received on Save the Cape. There were complaints on DOT not scheduling meetings with Public Hearings. The committee is asking surrounding beach municipalities to intervene. The committee is saying DOT is having private meetings and should serve as public hearings for this area. Councilor Douglas asked if the Council should take formal action to support this complaint. Calvin stated there was a notice in the Wilmington paper of a public meeting being held in Wilmington. Councilor Douglas stated there has not been a meeting scheduled in Southport. Mayor Sayre stated Harry Simmons has a proposal for a resolution from the County commissioners to support the port. This will be discussed September 19, 2011 at the County Commissioners meeting.

9. **Adjournment** -

Mayor Sayre entertained a motion to adjourn at 3:58 p.m., with Councilor Douglas made the motion with all in favor. **(MOTION CARRIED 4-0)**

Mayor Andy Sayre

ATTEST:

Debra C. Talbert, Village Clerk