

REGULAR MEETING OF THE TOWN BOARD OF COMMISSIONERS OF APRIL 21, 2010

Town Board Present: Mayor David Wilkes, Vice Mayor Amy Patterson, Commissioner Dennis DeWolf, Commissioner Larry Rogers, Commissioner John Dotson and Commissioner Gary Drake.

Also Present: Town Manager Jim Fatland, Zoning Administrator Joe Cooley, Recreation Director Selwyn Chalker, Town Engineer Lamar Nix, Police Chief William Harrell, Recording Secretary Jane Capman and Town Attorney William Coward.

1. Call to Order

Mayor David Wilkes called the Town Board of Commissioners meeting to order at 7:00 p.m.

2. Public Comments

There were no public comments.

3. Approve Agenda

Commissioner Dennis DeWolf moved to approve the Agenda, was seconded by Vice Mayor Amy Patterson and was unanimously approved.

4. Approve Minutes of April 7, 2010

The Minutes of April 7, 2010 is amended as follows:

Page 13, Section 11, paragraph 4: The following lines are hereby deleted:

- ...but now there are three groups.
- Commissioner John Dotson stated that the Playhouse needs to pay “retail” for utilities and

Vice Mayor Amy Patterson moved to approve the Minutes of April 7, 2010, as amended, was seconded by Commissioner Gary Drake and was unanimously approved.

5. Reports

A. Mayor

Mayor Wilkes advised that Craig James has joined Highlands-Cashiers Hospital as its new CEO. Mayor Wilkes also discussed the Earth Day festival, painting of the lines on main street and Old Edwards Inn and Spa being voted as North America’s top spa. Mayor Wilkes also discussed with the board member the process of recusal from voting.

B. Commissioners

Vice Mayor Patterson and Commissioner Dotson discussed performance bonds.

C. Committees

The Finance Committee advised that they have not had another meeting since last meeting.

The Sustainability Committee advised the next meeting will be on May 6, 2010.

Commissioner Gary Drake reported on the EDC.

Mayor Wilkes referred to his report on the Business Committee.

Commissioner Dennis DeWolf referred to his report on the Public Works Committee.

D. Town Manager

Town Manager Jim Fatland reported that the deadlines for Scholarship and Non Profit Applications have past. He also reported that a Finance Committee has been set for April 28 to review the nonprofit applications. Last year the Town Board approved \$25,000. After discussion, the Town Board authorized an amount not to exceed \$50,000 be appropriated for non profits in FY2010-2011. The Finance Committee will report back to the Town Board with a recommendation.

The Manager also reported that Town Hall will be closed from May 3 through May 10 to facilitate the move back into Town Hall. He also reported that phone calls will be answered during this period.

6. Consent Agenda

- A. Public Services Department
- B. Police Department
- C. Parks & Recreation Department
- D. Planning & Zoning Department
- E. Treasurer's Report for Month ended March 31, 2010
- F. Monthly Calendar
- G. Grant Status Report
- H. Post Vacancies for Planning Board
- I. Set Spring Clean-Up Week for May 24 thru May 28, 2010
- J. Town Hall Move Week – May 3 thru May 10, 2010

Vice Mayor Amy Patterson moved to approve, was seconded by Commissioner John Dotson and was unanimously approved.

7. Continued Public Hearing on Stormwater Ordinance

This public hearing was continued from April 7, 2010 to clean up typographical errors, to incorporate language regarding bonds and for the determination of any civil or criminal penalties.

The Board was presented with the proposed Stormwater Ordinance, modified by JP Johns, an article by Richard Druker of the UNC School of Government regarding civil/criminal penalties and zoning, an e-mail from JP Johns regarding civil/criminal penalties and model ordinance, an e-mail from Town Attorney William Coward regarding civil/criminal penalties and Section 500 of the model ordinance as referenced in JP Johns' e-mail.

There was considerable discussion amongst the Board members regarding performance bonds, maintenance bonds and penalties.

Commissioner Gary Drake moved to approve the Stormwater Ordinance, with the language as is, was seconded by Commissioner Dennis DeWolf and was then placed on hold.

Another item of concern that was discussed was Section 408 of the Ordinance and the last sentence in paragraph 2, which states: "At the discretion of the Storm Water Administrator, performance securities or bonds may be required for storm water management facilities or practices until as-built plans are approved." Bill Nellis addressed the Board and advised that the necessity of a Performance Bond on a small matter was a bad idea and that to let the storm water administrator have the discretion. Zoning Administrator Joe Cooley advised that on any

project of any size, if there was a chance that the Town could take “a hit”, there would be the necessity of a bond. Mr. Cooley expressed his concerns regarding large and small projects. Commissioner Larry Rogers stated that he did not like the necessity of bonds for the “small business man”.

Vice Mayor Patterson moved to close the Public Hearing and was seconded by Commissioner Gary Drake.

8. Consider Adoption of Stormwater Ordinance

Below is the final version of the Storm Water Ordinance.

ARTICLE 1: AUTHORITY AND PURPOSE

100 STATUTORY AUTHORIZATION

The Town of Highlands is authorized to adopt the requirements of this Article pursuant to North Carolina law including, but not limited, to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; Chapter 160A, §§ 174, 185.

101 FINDINGS OF FACT

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from new development sites.

Therefore, the Town of Highlands establishes this set of water quality and water quantity requirements to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

102 STATEMENT OF PURPOSE

The purpose of these requirements is to protect, maintain, and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment, as well as illicit discharges into the Town of Highlands’s municipal separate storm sewer system (MS4). It has been determined that proper management of construction-related and post development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety and general welfare, and protect water and aquatic resources. These requirements establish stormwater management requirements and controls to prevent surface water quality degradation and reduce erosion and sediment transport to the extent practicable in the streams and lakes within the Town Limits and Extraterritorial Jurisdiction of Highlands. This Ordinance seeks to meet this purpose by fulfilling the following objectives:

- A.** Minimize increases in stormwater runoff from new development or redevelopment to the maximum extent practicable for the applicable design storm in order to reduce flooding, siltation, streambank erosion, increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats.
- B.** Minimize increases in non-point and point source pollution caused by stormwater runoff from development or redevelopment that would otherwise degrade local water quality. Minimize

the total volume of surface water runoff that flows from any specific site during and following development in order to replicate pre-development hydrology to the maximum extent practicable through the use of structural and nonstructural stormwater management Best Management Practices (BMPs).

- C. Establish minimum post development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality.
- D. Establish design and review criteria for the construction, function, and use of structural stormwater BMPs that may be used to meet the minimum post-development stormwater management standards.
- E. Ensure that structural and nonstructural stormwater BMPs are properly maintained and pose no threat to public health or safety.
- F. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety.

103 APPLICABILITY AND JURISDICTION

A. Applicable Lands

Beginning with and subsequent to its effective date, these requirements are applicable to all new development and redevelopment located within the Town Limits and Extraterritorial Jurisdiction of Highlands, including, but not limited to, site plan applications, subdivision applications, and grading unless exempt pursuant to sub-section B of this Section.

No building, structure, or land shall be used, occupied, or altered and no building, structure, or part thereof shall be erected, constructed, reconstructed, moved, enlarged, or structurally altered unless in conformity with all the provisions of this Ordinance and all other applicable regulations except as otherwise provided in this Ordinance.

B. Exemptions to Applicability

All development and redevelopment are subject to these requirements except those which, as of the effective date of this Ordinance fit into one of the following categories:

- 1. Cumulatively disturbs less than (1) one acre and is not part of a larger common plan of development or sale.
 - a) Development and redevelopment that disturb less than (1) one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate, or distinct activities take place at different times on different schedules.
- 2. Commercial development and commercial redevelopment which creates less than 8,000 square feet of new impervious area.
- 3. Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act as specified in 40 CFR 232 (primarily ongoing farming and forestry activities) are exempt from the provisions of this Ordinance.
- 4. Have been issued a Certificate of Building Code Compliance.
- 5. Have a valid building permit.
- 6. Are included on a valid preliminary subdivision plan.

C. No Development or Redevelopment Shall Begin Until Compliance and Permit

No development or redevelopment shall occur except in compliance with the requirements of this Ordinance unless exempted. No development for which a permit is required pursuant to

this Ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

D. Conflict of Laws

This Ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this Ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

104 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

A. Effective Date

This Ordinance shall take effect on April 21, 2010.

B. Final Approvals, Complete Applications

All development and redevelopment projects for which complete and full applications were submitted and approved prior to the effective date of this Ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this Ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions.

A phased development plan shall be deemed approved prior to the effective data of this Ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this Ordinance to that phase of development would require a material change in that phase of the plan.

ARTICLE 2: DEFINITIONS

200 TERMS DEFINED

A. Best Management Practice (BMP)

Structural BMP - A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing or other characteristics; to approximate the pre-development hydrology and runoff water quality on a developed site; or to achieve any combination of these goals. Structural BMPs include physical practices such as detention ponds, constructed wetlands, vegetative practices, filter strips, grassed swales and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment system" and similar terms used in this Ordinance.

Non-Structural BMP – Non-Structural BMPs include but are not limited to education, proper fertilizer and pesticide applications, street sweeping, maintenance of structural BMPs, litter control, and proper maintenance of developed lands.

B. Development

Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration or precipitation into the soil other than rebuilding activity that does not qualify as redevelopment.

C. Larger Common Plan of Development or Sale

Anywhere multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan includes any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales announcement, advertisement, loan application, drawing, permit application, zoning request, or design) or physical demarcation (including but not limited to boundary signs, lot stakes or surveyor markings) indicating that construction activities may occur on a specific piece of land.

D. Owner

The legal or beneficial owner of land including, but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. “Owner” shall include long-term commercial tenants, management entities, such as those charged with or engaged in the management of properties for profit, and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner unless the secured lender is included within the meaning of “owner” under another description in this definition, such as management entity. The term “Owner” also applies to a person, Association, or corporation that gains possession of the property through default of a loan or other reason.

E. Redevelopment

For the purpose of this Stormwater Ordinance, any rebuilding activity is considered redevelopment unless the rebuilding activity results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

F. Runoff

The runoff of Stormwater from lands, paved surfaces, and buildings calculated from a particular storm event using hydrologic and hydraulic equations and methodologies.

G. Storm Event

A rainfall event with a specified precipitation amount during a specified duration of time and statistical frequency of occurrence. The Town of Highlands, North Carolina rainfall data is determined from the current NOAA National Weather Service Precipitation Frequency Data Server (PFDS).

POINT PRECIPITATION FREQUENCY ESTIMATES FROM NOAA ATLAS 14 HIGHLANDS, NORTH CAROLINA (31-4050) 35.05 N 83.2 W 3802 feet (10/12/2009)										
Precipitation Estimates (inches)										
Duration		5 min	10 min	15 min	30 min	1 hr	2 hr	3 hr	6 hr	24 hr
Frequency (yr)	1	0.43	0.69	0.87	1.19	1.48	1.73	1.94	2.66	4.74
	2	0.51	0.82	1.03	1.43	1.79	2.09	2.32	3.16	5.68

5	0.60	0.96	1.21	1.73	2.21	2.57	2.84	3.81	5.26	6.99
10	0.68	1.09	1.38	2.00	2.60	3.03	3.34	4.46	6.10	8.03
25	0.78	1.24	1.57	2.33	3.10	3.61	4.02	5.35	7.19	9.47
50	0.86	1.37	1.73	2.61	3.54	4.13	4.63	6.16	8.17	10.64
100	0.94	1.49	1.89	2.89	3.98	4.67	5.28	7.02	9.17	11.86

ARTICLE 3: ADMINISTRATION AND PROCEDURES

300 GENERAL

The Town of Highlands will administer this Ordinance. The Town Board will designate a Stormwater Administrator. In addition to the powers and duties that may be conferred, the Stormwater Administrator shall have the following powers and duties under this Ordinance:

- A. To review and approve or disapprove applications for approval of plans pursuant to the requirements of this Ordinance.
- B. To make determinations and render interpretations of the requirements of this Ordinance.
- C. To establish application requirements and schedules for submittal and review of applications and appeals and to review and approve applications.
- D. To enforce the provisions of this Ordinance in accordance with its enforcement provisions.
- E. To make records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this Ordinance.
- F. To provide expertise and technical assistance to the Town of Highlands.
- G. To carry out the technical duties outlined in this Ordinance, the Stormwater Administrator may contract such services to another local government or private entity.
- H. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- I. To take necessary actions to administer the provisions of this Ordinance.

ARTICLE 4: DESIGN STANDARDS

400 STORMWATER DESIGN AND STANDARDS

Stormwater Design Standards are established for the purpose of promoting sound development practices with respect to minimizing impacts from new development and are not intended to prohibit the use of innovative and alternative techniques that demonstrate the ability to successfully achieve the objectives of this Ordinance. Land development activities shall be performed in such a manner as to minimize the degradation of the receiving waters and protect existing developments. All activities that meet the applicability requirement of this Ordinance shall adhere to the following provisions for managing stormwater runoff as a minimum:

- A. Hydrological and Hydraulic analysis shall be performed in a manner acceptable to and with results reproducible by the Stormwater Administrator. Appropriate rainfall/runoff calculations include the TR-55 method, and HEC-1 and HEC-HMS models and other appropriate methods including the Soil Conservation Service Curve Numbers and on a limited basis the Rational Method. All models and methods should receive prior approval from the Stormwater Administrator before they are employed.

- B.** The rainfall data for the Town of Highlands shall be the latest information from the National Oceanic and Atmospheric Administration (NOAA).
- C.** The North Carolina General Statute 143-215.23 (the Dam Safety Act of 1967) and any subsequent revisions shall be adhered to when applicable.
- C.** In all instances, stormwater management facilities and devices shall be designed to compliment a development and the surrounding community. If ponds are used, they shall be incorporated into the development and landscaped as an amenity.
- D.** Temporary sediment and erosion control facilities used during construction may be converted to permanent stormwater management facilities after construction is completed.
- E.** All projects adhere to the guidelines outlined in 15A NCAC 02H .1000.

401 STORMWATER QUALITY DESIGN STANDARDS

- A.** Required for all development and redevelopment which disturbs (1) one-acre or more.
- B.** Required for all commercial development and commercial redevelopment which creates 8,000 square feet or more of new impervious area.
- C.** Stormwater quality BMPs are designed to control and treat the runoff from the 1-year, 1-hour storm event.
- D.** All stormwater quality BMPs used to meet the requirements of this Ordinance shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).
- E.** Areas designated as open space that are not or will not be disturbed, developed or redeveloped do not require stormwater runoff treatment.
- F.** Where any stormwater quality BMP utilizes a temporary water quality storage pool as a part of its designed treatment system to treat the stormwater quality volume from the 1-year 1-hour storm event:
 - 1. The drawdown time shall be a minimum of 48-hours and a maximum of 120-hours.
 - 2. The minimum draw down orifice size shall be 2-inches or equivalent.
 - 3. The post development peak flow rate of the water quality volume discharge shall not exceed the pre development 1-year 24 hour peak discharge rate.
- G.** No one water quality BMP shall receive runoff from a developed or redeveloped area greater than three (3) acres. However, the total drainage area for BMPs used in series can exceed this three (3) acre maximum.
- H.** Residential sub-divisions should utilize stormwater quality BMPs as part of the larger plan of development when applicable.
- I.** All built-upon area shall be at a minimum of 30-feet landward of all perennial and intermittent surface waters for WS-III watersheds and 50-feet landward of all perennial and intermittent surface waters for WS-II watersheds. This distance shall be measured horizontally from the top of bank. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent complete version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when site-specific determination is made using NC Division of Water Quality-approved methodology. No stormwater quality BMPs shall incorporate natural streams to provide treatment volumes.

- J. The approval of the stormwater permit shall require enforceable restrictions on the property usage that permanently resides with the land, including recorded easements, recorded deed restrictions, and protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved plans and permit.

402 STORMWATER QUALITY DESIGN MANUAL

The Town of Highlands shall utilize the latest edition of the North Carolina Department of Environment and Natural Resources (DENR) Division of Water Quality (DWQ) Stormwater Best Management Practices Design Manual as the Stormwater Quality Design Manual.

Stormwater management practices that are designed, constructed, or maintained in accordance with the Stormwater Design Manual are presumed to comply with these requirements. However, the Stormwater Administrator shall have the right to consult other engineers and duly qualified professionals and to impose any conditions or require any modifications deemed necessary to meet the purpose, intent, and requirements of this Ordinance.

403 Stormwater Quantity Design Standards

All development and redevelopment which disturbs (1) one acre or more and all commercial development and commercial redevelopment which creates 8,000 square feet or more of new impervious area, unless exempt pursuant to this Ordinance, shall adhere to the following provisions:

A. Minimum Design for Stormwater Conveyance Systems

1. Storm sewer collection systems (drainage parallel to road) shall be designed to pass the peak flows from the 2-year, 6-hour storm event.
 2. Cross drainage systems that do not convey intermittent or perennial streams shall be designed to pass the peak flow rates from the 10-year, 6-hour storm event.
 3. Cross drainage systems conveying intermittent or perennial streams, shall be designed pass peak flow rates for the 50-year, 24-hour storm event. Where practicable, use bottomless single span structures.
 4. Driveway pipes that do not convey intermittent or perennial streams shall be designed to pass the peak flow rates from the 2-year, 6-hour storm event with a minimum pipe size of 15-inches.
 5. Materials of construction and design standards for stormwater conveyance systems for North Carolina Department of Transportation roads, including culverts, pipes, inlets, junctions, ditches, and swales shall be designed to meet the guidelines outlined by the North Carolina Department of Transportation. North Carolina Department of Transportation (NC DOT) Guidelines for Drainage Studies and Hydraulic Design.
- B. Residential development control of peak discharge flow rates - The post development peak flow rates discharged from residential developments shall not exceed the pre-development peak discharge rates for the 2-year, 24-hour storm event and the 10-year, 24-hour storm event.
 - C. Residential sub-divisions should utilize water quantity control BMPs as part of the larger plan of development when applicable.
 - D. Non-residential development control of peak discharge flow rates - The post development peak flow rates discharged from non-residential developments shall not exceed the pre development peak flow rates for the 2-year, 10-year and the 25-year, 24-hour storm event.
 - E. Stormwater management facilities, structures, devices, and methods used shall be planned, designed, constructed, and maintained so as to provide effective protection from peak runoff rates.

F. Stormwater Management Facilities designed to control peak discharge flow rates.

1. Stormwater management facilities shall be utilized to mitigate the pre-development and post development peak flow rate difference.
2. The calculated difference in the peak runoff rate from the post development peak flow rates, less the pre-development shall determine the size of detention structures.
3. The temporary storage capacity shall be restored within 72 hours.
4. Requirements of the Dam Safety Act shall be met when applicable.
5. The emergency overflow outlet must be designed to safely pass the 100-year, 24-hour storm event peak discharge.
6. No one stormwater management facility shall receive runoff from a developed or redeveloped area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.

G. The impoundment of stormwater runoff may be incorporated in the design of stormwater conveyance structures, engineered stormwater BMP's, and ponds. These structures may be located on or off site. All off-site areas must be secured through proper easements or title documents as appropriate.

H. In all instances engineered stormwater management facilities and devices shall be designed to complement a development and the surrounding community. If ponds are used, such areas shall be landscaped as amenities or hidden from view.

404 Uniform Watershed Development Analysis For Peak Discharge Control

A. The requirements, or portions thereof, for stormwater detention to control peak discharge may be waived by the Stormwater Administrator if it can be shown by detailed engineering calculations and analysis which are acceptable to the Stormwater Administrator that one of the following exists:

1. The installation of stormwater management facilities would have insignificant effects on reducing downstream flood peak flow rates and water surface elevations.
2. Stormwater management facilities are not needed to protect downstream developments and the downstream drainage system has sufficient capacity to receive any increase in runoff for the design storm.
3. It is not necessary to install stormwater management facilities to control post development peak discharge rates at the exit to a proposed development and installing such facilities would increase flood peak flow rates and or water surface elevations at some downstream locations.
4. The Stormwater Administrator determines that stormwater management facilities are not needed to control post development peak discharge rates and installing such facilities would not be in the best interest of the Town.

5. No waiver shall be allowed for Stormwater quality treatment requirements in Article 4, Section 401.

B. The requirements, or portions thereof, of Section **403** may not be waived if the Stormwater Administrator determines that not controlling peak flow rates would increase known flooding problems, or exceed the capacity of the downstream drainage system.

- C. A waiver shall only be granted after a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate the proposed development or redevelopment. A separate written waiver request shall be required if there are subsequent additions, extensions, or modifications which would alter the approved stormwater runoff characteristics of the development or redevelopment receiving a waiver.
- D. For all stormwater management facilities, a hydrologic/hydraulic study shall be done showing how the drainage system will function with and without the proposed facilities. For such studies the following land use conditions shall be used. Existing land use data shall be taken from the most recent aerial photograph and field checked and updated.
- E. For the design of the facility outlet structure, use developed land use conditions for the area within the proposed development and existing land use conditions for upstream areas draining to the facility.
- F. For any analysis of flood flows downstream from the proposed development, use existing land use conditions for all downstream areas.

405 Steep Slope Requirements

Slope Development Standard for Slopes > 30%

- A. No increase of surface runoff to adjacent or surrounding property for the 2-year and 10-year, 6-hour storm event as a consequence of development.
- B. Control surface runoff on-site with one or more NCDWQ approved BMPs or alternative BMP approved by the Town of Highlands.
- C. The owner shall include both temporary and permanent site specific BMPs on the plan.
- D. Post development velocity and shear stress of the 10-year 6-hour storm runoff to adjacent or surrounding properties should not exceed the greater of the following:
 1. Maximum permissible velocity and shear stress for the receiving soil type.
 2. The velocity and shear stress of the runoff from the 10-year 6-hour to the adjacent or surrounding property prior to the development.
 3. All discharge channels or conveyances shall be designed to withstand the expected post construction 10-year 6-hour velocity and shear stress.

406 STORMWATER PERMIT, PLAN SUBMITTAL AND REVIEW

A. Stormwater Permit

1. A stormwater permit is required for all development and redevelopment which disturbs (1) one acre or more and for all commercial development and redevelopment which creates more than 8,000 square feet of new impervious area, unless exempt pursuant to this Ordinance. For all activities which are subject to this Ordinance, no person shall initiate, proceed, or undertake any land disturbing or development activity for which a permit is required without first being issued a written stormwater control permit.
2. All required applications must be received and permits must be obtained prior to the start of the work. These may include, but are not limited to, Soil Erosion and Sedimentation Control, Flood Damage Prevention, Subdivision, Building Permits and Inspections, NC Department of Transportation, NC Division of Water Quality, US Army Corps of Engineers, and NC DENR-Dam Safety.

3. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site including structural and non-structural BMPs and elements of site design for stormwater management.
4. The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for development or redevelopment consistent with the requirements of this Ordinance, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this Ordinance.
5. The approval of the stormwater permit shall require an enforceable restriction on the property usage that permanently resides with the land including but not limited to recorded drainage and utility easements and/or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved plans.

B. Stormwater Permit Application

1. Content

The Stormwater Administrator shall establish requirements for the content and form of all Stormwater Permit Applications and establish submittal checklists.

At a minimum, the stormwater permit application shall describe in detail how post development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this Ordinance.

The submittal shall include all of the information required in the submittal checklists established by the Stormwater Administrator.

2. Preparer

The stormwater permit application and stormwater design plans pursuant to this Ordinance shall be prepared by a qualified registered North Carolina professional engineer or landscape architect and the engineer or landscape architect shall perform services only in their area of competence and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual and other standards of the Town, and that the designs and plans ensure compliance with the requirements of this Ordinance.

C. Fees

The Town Board shall establish permit review fees applicable to the specific new development, or redevelopment. Additional permit reviews fees may be required for permit reviews that are contracted to another local government or private entity.

D. Schedule

The Stormwater Administrator shall establish a submission and review schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications and that the various stages in the review process are accommodated.

E. Submittal

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fees established pursuant to this Ordinance.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this Ordinance, along with the appropriate fees. If the

Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

F. Review

The Stormwater Administrator shall review the application for completeness and determine whether the application complies with the requirements of this Ordinance.

1. Approval

If the Stormwater Administrator finds that the application complies with the requirements of this Ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this Ordinance. The conditions shall be included as part of the approval.

a) Effect of Approval

Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities. Proper design is the responsibility of the engineer or landscape architect that submits the plans irrespective of any approval of the Stormwater Administrator.

b) Time Limit/Expiration

An approved plan shall become null and void if the applicant has failed to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

2. Failure to Comply

If the Stormwater Administrator finds that the application fails to comply with the requirements of this Ordinance, the Stormwater Administrator shall notify the applicant in writing and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

3. Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator after its re-submittal and shall be approved, approved with conditions, or disapproved. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

4. Concept Plan and Pre-submittal Meeting

Before a Stormwater Permit Application is deemed complete, the Stormwater Administrator or developer may request a pre-submittal meeting on a concept plan for the stormwater management system to be utilized in the proposed development or redevelopment project. This pre-submittal meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities, and potential approaches to stormwater management designs before formal site design engineering is commenced.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- a) Existing conditions / proposed site plans.
- b) Natural resources inventory.
- c) Stormwater management system concept plan.

407 VARIANCES

A. Conditions

The Town of Highlands may impose reasonable and appropriate conditions and safeguards upon any variance it grants. Additional fees may be required for the technical evaluation of variances that are contracted to another local government or a private entity.

B. Applicability

Any person may petition the Town of Highlands Zoning Board of Adjustment for a variance granting permission to use the person’s land in a manner otherwise prohibited by this Ordinance. To qualify for a variance, the petitioner must show all of the following:

1. Unnecessary hardships would result from strict application of the requirements of this Ordinance.
2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
3. The hardships did not result from actions taken by the petitioner.
4. The requested variance is consistent with the spirit, purpose and intent of this Ordinance and will insure public safety and will preserve substantial justice.

C. Statutory Exceptions

Notwithstanding Subsection 103 B (Exemptions to Applicability) of this Ordinance, exceptions from the 30-foot WS-III and 50-foot WS-II landward location of built-upon area requirement of all perennial and intermittent surface waters as well as the deed restrictions and protective covenants requirements of this Ordinance (Subsection 401 J) may be granted in any of the following instances:

1. When there is a lack of practical standard alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, prevent contamination of surface waters, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
2. When there is a lack of practical implementation for standard stormwater treatment measures:
 - a) Alternative measures shall be located, designed, constructed, and maintained to minimize disturbance, prevent contamination of surface waters, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable.
 - b) The implementation of the alternative stormwater treatment measures shall not disturb existing vegetation to the maximum extent possible.
 - c) Minor understory may be disturbed in order to accommodate these alternative measures. Trees and shrubs shall be placed to maximize screening where the encroachment causes negative visual impacts.
3. When there is a lack of practical standard alternatives for utilities including, but not limited to, water, sewer, electric, or gas construction including a maintenance corridor:
 - a) Locate, design, and construct the utility to minimize disturbance, prevent contamination of surface waters, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

- 4. A lack of practical standard alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in other adverse impact to surface waters.

408 AS-BUILT AND FINAL PLAT REQUIREMENTS

A. As-Built Requirements

Upon completion of a project and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and shall submit actual “as built” plans for all stormwater management measures after final construction is completed.

The “as built” plans shall show the final structural configuration for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The engineer or landscape architect responsible for the design of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this Ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities as may be required. At the discretion of the Storm Water Administrator, performance securities or bonds may be required for storm water management facilities or practices until as-built plans are approved.

B. Final Plat Requirements

The exact location of all stormwater management BMPs and drainage and utility easements shall be shown on final plats prepared by a registered surveyor. These plats shall contain the following statement: “This plat contains a stormwater management measure that must be maintained by the owner(s) of this land in accordance with the recorded Operations and Maintenance Agreement.”

409 FLOODPLAIN REQUIREMENTS

Floodplain management in the Town of Highlands is regulated by the Town of Highlands Flood Damage and Prevention Ordinance.

ARTICLE 5: MAINTENANCE AND INSPECTIONS

500 OPERATIONS AND MAINTENANCE AGREEMENT

A. Private Development

Prior to the conveyance or transfer of any private lot or building site to be served by a structural BMP pursuant to this Ordinance and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this Ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the completion of all structural BMPs and final approval of the Stormwater Administrator, the original owner or applicant shall have full responsibility for the provisions of the maintenance agreement. As property, sites, or lots are transferred in ownership the responsibility for carrying out the provisions of the maintenance agreement shall be shared on an equal basis based on an equitable distribution of the land to all owners.

B. Public Development

BMPs that are constructed on public land or within public rights-of-way or within public easements shall be maintained by the public body with ownership/ jurisdiction of the subject land or public rights-of-way according to standards set by this Ordinance and administered by the Stormwater Administrator.

C. Agreement Requirements

A standard form of the “Operations and Maintenance Agreement” shall be developed by the Stormwater Administrator and Town Attorney adequate to be used as the base agreement for all such maintenance agreements. The operation and maintenance agreement shall require the owner or owners to maintain, repair, and, if necessary, reconstruct the structural BMP(s) and shall state the terms, conditions, and schedule of maintenance for the structural BMP(s). In addition, it shall grant the Town of Highlands a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, provide maintenance, provide emergency repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, maintenance, emergency repair, or reconstruction confer an obligation on the Town of Highlands to assume responsibility for the ongoing operations and maintenance of the structural BMP.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval and it shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator after being recorded.

D. Construction of Stormwater Management Measures

Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The applicant/ property owner is responsible for ensuring that the construction of stormwater drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications.

Inspections which may be performed by the Town of Highlands during construction will not relieve the applicant/ property owner of the responsibility to install stormwater management and drainage facilities in accordance with the approved plan.

Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Stormwater Administrator.

501 INSPECTIONS

A. Function of BMP(s) as Intended

The owner of each structural BMP installed pursuant to this Ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed. If upon inspection by the Stormwater Administrator, it is determined that structural BMPs are not being properly maintained by the owner or maintainer of public or private lands, a written report by the Stormwater Administrator outlining the needed corrective action shall be delivered to the owner or maintainer of public or private lands requesting corrective action. Failure to respond shall result in enforcement action according to Article 6 of this Ordinance.

B. Right of Entry for Inspection

All public and private property owner(s) within the Town Limits and Extraterritorial Jurisdictions of the Town of Highlands, shall grant to the Stormwater Administrator the right to enter the property at reasonable times and in a reasonable manner for the purpose of structural BMP inspection.

Inspections may be conducted by the Stormwater Administrator or his/her representative, on any reasonable basis including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual dischargers of contaminants or pollutants; inspections of discharges of a type which are more likely than the typical discharge (including illicit discharges) to cause violations of state or federal water quality standards; and joint inspections with other agencies inspecting under environmental and safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater and material or water in BMPs; and evaluating the condition of BMPs and stormwater management practices.

C. Annual Maintenance Inspections

Inspections shall be conducted as prescribed by the “Operations and Maintenance Agreement.” The person, association, or agency responsible for maintenance of any structural BMP installed pursuant to this Ordinance, shall submit to the Stormwater Administrator an annual inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer or landscape architect; or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

1. The name and address of the land owner.
2. The recorded book and page number of the plat showing all structural BMPs.
3. A statement that an inspection was made of all structural BMPs.
4. The date the inspection was made.
5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved “Operations and Maintenance Agreement” required by this Ordinance.
6. Signature and seal of a registered engineer or landscape architect, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance.

All inspection reports shall be on standard forms developed by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of the as-built certification and each year before the month and day of the as-built certification. If upon inspection it is determined that improvements need to be made prior to certification, improvements shall be made by the property owner to bring the structural BMP: back into compliance with the approved plans. After improvements are made and the certification is completed, the Stormwater Administrator may field verify that the site does comply with the approved plans.

502 **PERFORMANCE SECURITY FOR BMP INSTALLATION**

A. Requirement

The Stormwater Administrator, at his or her discretion, may require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are installed by the permit holder as required by the approved stormwater management plan and permit.

B. Amount

The amount of an installation performance security shall be the total estimated construction cost of the structural BMPs approved under the permit, plus 25%.

C. Uses of Performance Security

1. Forfeiture Provisions

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this Ordinance, approvals issued pursuant to this Ordinance, or an operation and maintenance agreement established pursuant to this Ordinance.

2. Default

Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Highlands shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

3. Costs in Excess of Performance Security

If the Town of Highlands takes action upon such failure by the applicant or owner, the Town of Highlands may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

4. Refund

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping, installation, and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

ARTICLE 6: ENFORCEMENT AND VIOLATIONS

600 **GENERAL**

A. Authority to Enforce

The requirements and provisions of this Ordinance shall be enforced by the Stormwater Administrator, his or her designee or any authorized agent of the Town of Highlands

B. Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other development or

redevelopment approval or authorization granted pursuant to this Ordinance, is unlawful and shall constitute a violation of this Ordinance.

C. Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense

601 REMEDIES AND PENALTIES

The remedies and penalties provided for violations of this Ordinance shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

A. Remedies

The Stormwater Administrator or other authorized agent may implement the following enforcement actions until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein:

1. Issue a stop work order to the person(s) violating the requirements of this Ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order shall not prevent the person from taking the necessary remedial measures to cure such violation or violations.
2. Refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on the site and served by the stormwater BMPs in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
3. Disapprove or withhold subsequent permits and development applications, as long as a violation of this Ordinance continues and remains uncorrected.
4. Institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of the requirements of this Ordinance. Any person violating this Ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
5. Upon refusal of the property owner to comply with the required remedial measures, the Town of Highlands may take necessary corrective action and assess a lien against the property to correct the stormwater BMP deficiency.

602 CIVIL PENALTIES

Violation of this Ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt. The maximum civil penalty amount that the Town of Highlands may assess per violation is five thousand dollars (\$5,000.00). Civil penalties may be imposed as follows:

- A.** Any person, association, corporation, or public or private agency who violates any of the provisions of this Ordinance, or rules and orders adopted or issued pursuant to this Ordinance, or who initiates or continues development or redevelopment for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty.
- B.** No penalty shall be assessed until the violator has been notified of the violation by registered or certified mail, return receipt requested or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable clarity, specify a reasonable time period within which the violation can be corrected, warn that failure to correct the violation within the time period will result in the assessment of a civil penalty, and what that penalty may be, or other enforcement action.

- C. If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.
- D. Refusal to accept the notice or failure to notify the Stormwater Administrator of a change of address shall not relieve the violator's obligation to pay such a penalty.
- E. It is unlawful for a property owner to fail to meet the requirements of the "Operations and Maintenance Agreement" or to otherwise fail to conform to the requirements of this Ordinance. Any person, association, corporation, or public or private agency that fails to meet the requirements of the "Operations and Maintenance Agreement" or fails to bring property and lands under conformance with this Ordinance shall be subject to a civil penalty assessed by the Town of Highlands up to the full amount of penalty allowed by law.

603 CRIMINAL PENALTIES

Violation of this Ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

ARTICLE 7: ILLICIT DISCHARGES

700 GENERAL

A. Prohibited Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State unless permitted by an NPDES Permit. Prohibited substances and discharges include, but are not limited to:

1. Wastewater lines (such as from washing machines)
2. Sanitary sewer lines
3. Food waste
4. Oil
5. Grease
6. Household, industrial, and chemical waste
7. Anti-freeze
8. Animal waste
9. Paints
10. Paint wash water
11. Garbage
12. Litter
13. Swimming pool discharges
14. Leaves
15. Grass clippings
16. Dead plants
17. Sediment

B. Allowable Discharges

Non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:

1. Drinking water line flushing
2. Discharge from emergency fire fighting activities
3. Irrigation water
4. Diverted stream flows
5. Uncontaminated ground water
6. Uncontaminated pumped ground water
7. Discharges from potable water sources
8. Residential foundation/footing drains
9. Air conditioning condensation

10. Uncontaminated springs
11. Uncontaminated water from crawl space pumps
12. Individual non-commercial car washing operations
13. Flows from riparian habitats and wetlands
14. Street wash water
15. Other non-stormwater discharges for which a valid NPDES discharge permit has been authorized and issued by the U.S. Environmental Protection Agency or by the State of North Carolina, provided that any such discharges to the municipal separate storm sewer system (MS4) shall be authorized by the Town of Highlands.

C. Illicit Connections

Connections to any public or private stormwater conveyance system that allows the discharge of non-stormwater, other than the exclusions described in this Ordinance, are unlawful. Prohibited connections include, but are not limited to, industrial/commercial floor drains, waste water or sanitary sewers, wash water from commercial vehicle washing operations or steam cleaning operations and waste water from septic systems.

D. Grace Period

Where such connections exist in violation of this Ordinance and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within (1) one-year following the effective date of this Ordinance.

However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat. Illicit connections shall be immediately stopped by property owners that:

1. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat, or
2. Was made in violation of any applicable Federal or State regulation or code other than this Ordinance.

E. Time Period for Removal

The Stormwater Administrator shall designate the time period within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

1. The quantity and complexity of the work.
2. The consequences of delay.
3. The potential harm to the environment, to the public health, and to public and private property.
4. The cost of remedying the damage from the connection due to delay.

F. Spills/ Accidental Discharges

Accidental spills or leaks of illicit polluting substances released, discharged to, or having the potential to be released or discharged to a stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition. Persons in control of the illicit polluting substances immediately prior to their release or discharge, and persons owning the property on which the illicit substances were released or discharged, shall immediately notify the Town of Highlands of the release or discharge, as well as making any required notifications under state and federal law. The notification shall include the location of the discharge, type of pollutant, volume or quantity discharges, time of discharge, and the corrective actions taken.

Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

G. Notice of Violation

When the Town Manager, Stormwater Administrator, or authorized Town representative finds that a discharge or disposal violates any provisions of this Ordinance, the Town Manager, Stormwater Administrator, or authorized Town representative may issue a Notice of Violation. The Notice of Violation shall identify the nature of the violation, amount of penalty (if applicable), set forth the measures necessary to comply with this Ordinance, and provide a specific time period for compliance. The Notice may be served by registered or certified mail, hand delivery, or any other means determined to give actual notice. Refusal to accept the notice shall not relieve the violator's obligation to comply with this Ordinance or to pay such penalty.

701 ENFORCEMENT AND PENALTIES

Any person that violates the Illicit Discharge provisions of this Ordinance is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs.

- A.** No penalty shall be assessed until the person alleged to be in violation has been notified of the violation.
- B.** Any person who violates any of the provisions of the Illicit Discharge provisions of this Ordinance, or rules and orders adopted or issued pursuant to this section of the Stormwater Ordinance is subject to a civil penalty. The maximum civil penalty amount that the Town may assess per violation is five thousand dollars (\$5,000.00).
- C.** Each day of violation shall constitute a separate violation.
- D.** The Town Manager, Stormwater Administrator, or authorized Town representative shall consult with the Town Attorney and determine the amount of the civil penalty assessment. In determining the amount of a civil penalty, all relevant mitigating and aggravating factors shall be considered including, but not limited to, the following:
 - 1. Degree and extent of harm caused by the violation.
 - 2. Cost of rectifying the damage.
 - 3. Whether the violator saved money through non-compliance.
 - 4. Whether the violator took reasonable measures to comply with this Ordinance.
 - 5. Whether the violator voluntarily took reasonable measures to restore any areas damages by the violation.
 - 6. Whether the violation was committed willfully.
 - 7. Whether the violator reported the violation.
 - 8. Prior record of the violator in complying or failing to comply with this Ordinance or any other local, State, or Federal water pollution control rule or regulation.
- E.** In addition to the civil penalty, penalties for costs to restore damaged property may be assessed based on restoration costs, which include, but are not limited to, clean up costs, devaluation of the property, and value of animal and plant life damaged.
- F.** If an alleged violator does not pay a civil penalty assessed within 30 days after it is due or does not appeal a civil penalty assessment as provided in the Appeals Process of this Ordinance, the Stormwater Administrator shall request the State of North Carolina Division of Water Quality to

administer the penalty or take appropriate court action including assessing liens on the property.

- G. Violation of this Ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

702 APPEALS PROCESS

Any person who desires to appeal a demand for payment of the civil penalty shall have thirty (30) days from said demand of payment to appeal in writing to the Town Manager, Stormwater Administrator, or authorized Town representative.

- A. The Town of Highlands shall then grant an appeal hearing before the Town Board within thirty (30) days after receipt of the appeal.
- B. The Town of Highlands shall provide the appellant a minimum of ten (10) days notice of the time and place of the hearing.
- C. Thereafter, the appellant shall have thirty (30) days to comply with the final decision of the Town Board at the appeal hearing.

Commissioner Gary Drake made an amended motion to approve the Stormwater Ordinance, with the elimination of the maintenance bond language, to include both civil and criminal penalties and to change the verbage on page 24 of the Ordinance (change Town of Highlands to Stormwater Administrator), was seconded by Vice Mayor Amy Patterson and was unanimously approved.

9. Change Order for Pine Street Stormwater Improvement Project

JP Johns of McGill Associates addressed the Board and advised that the construction is proceeding well. Mr. Johns presented the Board with maps/plats/mock-ups for their review. Mr. Johns advised that they have allowed a space for the future pavilion and that the gazebo presently across the street will be put into place at the pavilion site, the use of pavers, the mound, and space allocated for the restrooms. The plans have been modified so that there will be no sidewalk on the park side of Pine Street, only a curb, and the restrooms are being moved closer to the sidewalk. Discussion was had as to the pavilion size, types of dirt to be used. Mr. Johns advised that the Board needed to approve the change order.

Commissioner Dennis DeWolf moved to approve the change order (removal of mound, removal of sidewalk and installation of the curb, was seconded by Commissioner Larry Rogers and was unanimously approved.

15. Resolution in Support of NC Current ABC System (This Agenda Item was moved up in the agenda)

Mayor Wilkes advised the Board and the public that the ABC Board was asking for the below resolution be passed:

**RESOLUTION IN SUPPORT OF NORTH CAROLINA’S CURRENT PUBLIC ALCOHOLIC
BEVERAGE CONTROL SYSTEM**

WHEREAS, Chapter 18B of the North Carolina General Statutes addresses the regulation of alcoholic beverages in our state; and

WHEREAS, current North Carolina law establishes a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina; and

WHEREAS, local government control is central to the current alcoholic beverage control system; it is a local decision to establish and operate ABC stores, and local government, acting through

an appointed local ABC Board, balances the control, profits, and availability of spirits in its jurisdiction; and

WHEREAS, when local voters approved liquor sales for off-premises consumption, the voters did not vote to allow liquor to be sold in private retail establishments, but only through publicly controlled ABC store; and

WHEREAS, current law provides that the profits from ABC store sales are returned to local government, this revenue stream is a critical source of local government funding; and

WHEREAS, it is a priority to maintain current sources of revenue, especially in the current economic times; and

NOW, THEREFORE, BE IT RESOLVED that the Town of Highlands does hereby support the continuance of the Alcoholic Beverage Control System, and opposes any efforts to privatize the ABC system, diminish local control or to diminish the local government revenue stream afforded from local ABC store profits.

Adopted this _____ day of _____, 2010.

David Wilkes, Mayor

Attest:

Jim Fatland, Town Manager

Commissioner Gary Drake moved to approve the Resolution in Support of the NC Current ABC System, was seconded by Commissioner Larry Rogers and was unanimously approved.

10. **Parks, Recreation & Greenway Master Plan**

The Town of Highlands Parks, Recreation & Greenway Master Plan has been developed over the last 12 months and involved public input through open house meeting and mailed survey. An executive summary was presented to the Board in March, 2010 and the Master Plans were distributed to the Board for this meeting.

Mayor Wilkes advised that the Board needed to approve the concept of the Master Plan and if there were to be any significant changes or expenditures, it would have to come back before the Board for approval. Commissioner DeWolf stated that he appreciated all of the work done.

Vice Mayor Amy Patterson moved to accept the Parks, Recreation & Greenway Master Plan, was seconded by Commissioner Larry Rogers and was unanimously approved.

11. **Performing Arts Center lease**

Rick Siegel read a statement to the Board. There was considerable discussion amongst the Board members as well as the public regarding this issue and whether or a Board member should be on the PAC board. Stewart Manning of PAC read the language of the proposed lease and advised that he would have to take the matter up with the PAC Board for their May 9, 2010 meeting. Mr. Manning also requested that the Board consider changing the expiration date of the lease. Town Attorney William Coward requested a close session to discuss legal aspects of the lease.

After further discussion, this matter was continued to the next meeting.

12. **Highlands Community Theatre Lease Amendment**

This matter was initially tabled until the Performing Arts Center lease was finalized. However, after further discussion, it was the Board's consensus to eliminate the lease amendment for the Highlands Community Theatre unless the theatre wished to amend the lease.

13. Engineering Proposals for Intake Relocation & Dam Repairs

The Town Board, at their budget work session held on February 11, 2010, directed staff to obtain an engineer proposal to relate the water intake to the base of Lake Sequoyah Dam. McGill Associates submitted a proposal for the relocation of the intake from Big Creek Arm of Lake Sequoyah to the base of the dam and the Lake Sequoyah dam repairs. The Board was presented with a proposal.

The Public Works Committee recommends the approval of the engineering proposal from McGill Associates for the relocation of the water intake to the base of lake Sequoyah Dam, at a cost not to exceed \$105,000.00 and approve the engineering proposal from McGill Associates for repairs to Lake Sequoyah Dam at a cost not to exceed \$32,500.00.

As to the fiscal impact (water intake proposal), the Town has spent \$15,000.00 of the \$65,000.00 appropriated for the permitting process for dredging of the Big Creek Arms of Lake Sequoyah. The staff recommends that \$50,000.00 of unspent funds be applied toward the intake relocation and \$65,000.00 from electric reserves be appropriated for the total \$105,000.00 cost. As to the fiscal impact (dam repairs), staff recommends that the \$32,500.00 needed for the engineering proposal for the dam repairs be funded from the current operating budget of the Water Plant.

Town Engineer Lamar Nix addressed the Board and answered questions regarding moving the intake, water supply, water quality, the amount of water needed to supply the Town and the amount of water used by the Town. Vice Mayor Amy Patterson suggested this items be deferred until the FY2011 budget is presented to the Board.

Commissioner Dennis DeWolf moved to approve the Engineering Proposals for both the Intake Relocation & Dam Repairs, was seconded by Commissioner Gary Drake and was approved. Vice Mayor Amy Patterson voted no. The motion passed 4 to 1.

14. Award Stone & Sand Bid

Annually the Town requests informal bids from local contractors on providing stone and sand. The Town has implemented this procedure for approximately 15 years with the bids going to the lowest bidder each year. Sealed bid were received on March 26, 2010 from the following contractors: Bryson Grading & Trucking and McNeely Companies.

This matter was continued from the last Board meeting for staff to calculate the estimated annual costs based on quantities used in prior years.

Town Attorney William Coward has advised that for anything over \$30,000.00 but under \$90,000.00, the following is applicable:

All contracts for construction or repair for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of \$30,000.00 or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be award to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bid for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

It is recommended by Staff to award the stone and sand bid to McNeely Companies.

As to the fiscal impact, the Town spent \$56,715.99 in calendar year 2009 for stone and sand. The Street Department budget incurs most of this expense.

Commissioner Dotson stated that in awarding the bid, it was just not the money, but the quality. Commissioner Larry Rogers concurred and preferred that the Town purchase locally.

Vice Mayor Amy Patterson moved to award the Stone and Sand Bid to McNeely Companies, was seconded by Commissioner Gary Drake. Commissioner Larry Rogers voted no. The motion passed 4 to 1.

16. **Architectural Services for Renovation of Former ABC Store for Police Department**

It was reported that a meeting was held with Summit Architecture, PA regarding services for the renovation. Town Manager Jim Fatland advised this was for merely professional services only. There were no bid. Discussion was had as to costs per square foot in which Summit calculated its fee at \$15.00 per square foot of heated space. Commissioner Larry Rogers stated that it was good to keep this matter local.

Commissioner Larry Rogers moved to award the Architectural Services for Renovation of Former ABC Store for Police Department, was seconded by Commissioner John Dotson and was unanimous.

Commissioner Gary Drake moved the Board to closed session and was seconded by Vice Mayor Amy Patterson.

The Board moved to closed session to discuss the PAC lease and legalities as to the bidding process.

Vice Mayor Amy Patterson moved the Board back into open session and was seconded by Commissioner Gary Drake.

17. **Adjourn**

Vice Mayor Amy Patterson moved to adjourn and was seconded by Commissioner Gary Drake and the Town Board meeting adjourned at 9:40 pm.

James R. Fatland, Town Manager

Jane J. Capman, Recording Secretary

David Wilkes, Mayor