

Holden Beach Property Owners Association, Inc.
HOLDEN BEACH, NORTH CAROLINA
AMERICAS BEST FAMILY BEACH

28 September 2021

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Board of Commissioners and Mayor

Town of Holden Beach
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Holden Beach, NC

Attn: Heather Finnell, Town Clerk

CERTIFIED MAIL; RETURN RECEIPT REQUESTED
Courtesy Copy by E-Mail: heather@hbtownhall.com

**SUBJECT: Opposition to Public Debt Financing for Purchase of
Property at 441 Ocean Blvd West Including Wooden Fishing Pier**

**Dear Honorable Commissioners Brown, Kwiatkowski, Murdock, Smith
and Sullivan, and Honorable Mayor Holden:**

The purpose of this letter is to notify the Town of Holden Beach ("Town"), its Officials, including the Town Manager, Clerk and Town Attorney and its elected officials, including the members of its Board of Commissioners and Mayor ("BOC") of certain serious deficiencies in the proposal and adoption of bond resolution at the Regular Meeting of the BOC relating to the authorization of the issuance by the Town of \$8.8 million of bonds ("Public Debt") for the stated purposes of funding:

- (i) \$3.3 million purchase price for property located at 441 Ocean Blvd. West, Holden Beach NC ("Bass Property" and "Bass Property Purchase," respectively) pursuant to the Purchase Contract ("Purchase Contract") that was previously authorized by the BOC; and
- (ii) \$5.5 million related to re-building of two of the Town's sewer lift stations – one completed and one to be completed ("Sewer Project").

As discussed below, these deficiencies render the BOC's authorization of both the Bass Property and Sewer Project Public Debt null and void. The purpose of this letter is not to

present a legal brief or outline a complaint for judicial relief. Down that path lies costly litigation that benefits no one.

As discussed at the Regular Meeting, the Town is in a timing box. If the Public Debt cannot be placed on the October LGC Agenda for approval, the Town will not be able to pursue its LGC application until the audit for the Town's 2020-2021 financial statement is completed sometime in 2022. This delay would cause the Town to breach the Purchase Agreement and could result in the Bass Property being sold to another purchaser likely frustrating any hope of preserving the Pier. A dispute challenging the validity of the authorization of the Public Debt and/or concerted taxpayer objections to the Public Debt at the Local Government Commission ("LGC") hearing would likely prevent the issuance or scare off the Bank.

Neither the HBPOA nor its taxpayer household members have expressed opposition to the concept of some publicly supported improvement of the Bass Property, including, if feasible, the preservation and restoration of the Pier. Therefore, preventing such an improvement, even if that requires public expenditure or incurring public debt is not our objective in pointing out these deficiencies. As discussed below, our objective is to find a peaceful resolution that respects transparency, financial prudence and participation in any planning process by the Taxpayer Households that HBPOA represents.

A. LEGAL and FAIRNESS DEFICIENCIES in the BOC APPROVAL PROCESS

In view of this objective, the deficiencies that we have identified in consultation with legal counsel are summarized below. We are, of course happy to discuss the basis for and consequences of these deficiencies in more legal detail with the Town Attorney, Bond Counsel or other legal counsel, but we believe that a practical discussion would be more fruitful.

- 1. OPEN MEETING: Some, If Not Most, of the Deliberations by the BOC Were Conducted in Violation of the Open Meeting Law. As a Result, the Actual Purpose of the Purchase of the Bass Property was Not Disclosed to the Public Until After the BOC Purportedly Authorized the Public Debt at the Regular Meeting.**

Everyone agrees that virtually all of the deliberations about the proposed purchase of the Bass Property and issuance of the Public Debt to pay for it has occurred in secret behind the veil of so-called executive sessions of the BOC. Moreover, virtually no communications, minutes, plans, inspection reports financial models or other documents have been released to the public under that same veil of official secrecy.

That secrecy has come to quite a shock to many people who have been told for years that the central purpose of the North Carolina Open Meeting Law was to ensure that public business was done out in the open – no more backroom deals in smoke-filled rooms. Only two years ago the Town Manager and the Mayor told members of the Board

of Commissioners that no more than two of them could attend public meetings of the HBPOA lest they secretly deliberate while sitting in their folding chairs nibbling on cookies and sipping bad coffee. Later, after consulting with the Town Attorney, this injunction was relaxed somewhat. Three or more Commissioners could attend so long as they didn't speak.

For months now all five Commissioners have been meeting in complete secrecy, together with the Town Manager, Town Attorney, and other Town employees and (amazingly enough) the real estate agent for the seller Gil Bass. As it happens, Mr. Bass' real estate agent is also the Mayor of Holden Beach. In other words, these meetings are secret from every member of the public and every taxpayer, all of the documents reviewed or produced in those meeting are guarded like state secrets, individual Commissioners are cautioned to keep it all secret from everyone except Mr. Bass who is allowed to have his own personal representative sitting in on these meeting and reviewing these documents. Not to worry, however, we are assured that this is all perfectly legal. Really?

Under North Carolina G.S. § 143-318.11, the BOC is only permitted to hold a closed session if the topic of that closed session is strictly limited to one or more of the purposes enumerated in subsection (a) of § 143-318.11, and pursuant to motion duly made and adopted that cites that purpose or purposes. It appears that in each case in which the BOC held a closed session relating to the general topic of the Bass Property, the motion based that closed session on G.S. § 143-318.11(a)(5). Indeed, no other listed purpose would conceivably be applicable. Section 143-318.11 provides in relevant part, as follows:

§ 143-318.11. *Closed sessions. (a) Permitted Purposes.* – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or ... [employment contract] ...

(b) *Repealed.*

(c) *Calling a Closed Session.* – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section.

It appears that the Town Attorney may have attended one or more of these closed sessions. However, meeting with nor the Town Attorney is not a sufficient purpose to hold a closed session, even if he or she rendered general legal advice or comment about the proposed Bass Property Purchase. Obviously, the Town Attorney regularly attends Regular Meetings of the BOC and renders legal advice or comment about the business being conducted. Section 143-318.11(a)(3), which sets forth the purpose for holding a closed session with respect to legal advice, makes it clear that the purpose is only applicable where there is a risk of breaching the attorney client privilege of the BOC. It states in relevant part:

“(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant.”

That subsection goes on to make clear that this applies almost exclusively to communications related to on-going litigation or threats of litigation involving the Town as a party. In fact, subsection (c) goes on to provide that “A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.” In short, the fact that the Town Attorney was present does not provide any legal justification for holding a closed session related to the Bass Property Purchase; certainly, no litigation or threats of litigation were involved, and no such assertion was made in the motion calling for any of these closed sessions.

Therefore, if the closed sessions relating to the Bass Property Purchase were legally justified the only permitted topics of discussion, deliberation, review or vote were “(i) the price and other material terms of a contract or proposed contract for the acquisition of ... [the Bass Property] ... Although we do not know every topic of discussion, deliberation, review or vote in these closed sessions, it is obvious from comments made by Commissions in open session that those topics were, by no means limited (or even primarily devoted to) instructing the Town’s “negotiating agents” with respect to “price and other material terms.” In fact, it is not clear whether in these sessions members of the BOC were not directly negotiating these terms with the seller’s agent, who also happens to be the Mayor and a de jure member of the BOC.

Two points are, however, clear.

First, it is apparent that there was extensive discussion and deliberation about business, development, operating and financial plans and forecasts for the Town’s ownership of the Bass Property and its Pier, Restaurant/Retail and Parking components. This was, of course, precisely the information that members of the public had been seeking in order to meaningfully participate in the Public Hearing. It is also apparent that there was extensive discussion and deliberation about the physical condition, code violation status, health and environmental conditions, prospects for renovation and restoration of the Pier and Restaurant/Retail facilities. It can also be assumed that there was discussion and consideration of public support or the lack thereof for the proposed Bass Property Purchase and the planned use, development, operation and/or disposition of the Bass Property. None of this falls within the subsection (a)(5) purpose, and, therefore, (i) at least to the extent of these discussions, deliberations, reviews or votes, these closed sessions violated the North Carolina Open Meeting Law, and (ii) any minutes, recordings, notes and reviewed documents or other materials related to these topics are Public Records available for review and copying pursuant to a public records request and should immediately be made available pursuant to the Town’s meeting protocols.

Second, since the Town has now entered into the Bass Property Purchase Contract there are no longer any price or other material terms to be discussed. It appears that the closed sessions held or to be held since the contract was signed seem to have dealt with: (i) financing of the purchase through public debt to be issued by the Town and purchased by Truist Bank; (ii) inspections and reports relating to contingencies or conditions in the contract; (iii) as discussed above, business, development, operating and financial plans and forecasts; and (iv) dealing with public opinion and public opposition to the Purchase and/or Financing. None of this fall within subsection (a)(5) and any conceivable basis for arguing that it does ended when the Contract was signed.

Unfortunately, the BOC's failure to understand and properly comply with the Open Meeting Law and the statutory closed session exceptions have created a perfect Catch-22. To satisfy the requirements for non-voted Public Debt, the BOC must give great deference to public support for incurring that Debt and the purpose of the expenditure. However, by keeping most information secret, conducting deliberation in secret and failing to articulate any business or financial plan for the Bass Property, the BOC made it virtually impossible for Taxpayer Households to express either meaningful support or opposition to the Purchase or Financing. HBPOA and others have been left to withhold support because they have no meaningful information. The Public is, in effect, asked to simply trust the decision of the 3:2 majority of the BOC arrived at in secret deliberation, despite sham Public Hearings and bait-and-switch tactics.

Like the conflicts of interest and ethics issues, this apparent violation of the Open Meeting Law may be for another time and different forum. However, what is critically important for the here and now is that everything that was held secret must now be disclosed so that the Taxpayer Households who had a right to be heard at the purported Public Hearing and who will have a right to be heard by the LGC can make informed comment. This game of "if you only knew what we know, you would agree with us" must stop.

SUMMARY. Any possible justification for secrecy is now over. The Purchase Contract is signed and the BOC has approved the Public Debt. The exception is now moot, and the Open Meeting law requires disclosure. By a separate letter to the Town Clerk, HBPOA is requesting that all of the records related to the Bass Property Purchase be made public and available for inspection of copying. The Town cannot move on to any LGC hearing until this information has been given to the public.

2. CONFLICTS OF INTEREST and ETHICS: Both the Authorization of the Purchase Contract for the Bass Property and the \$3.3 Million of Public Debt to Fund that Purchase are Tainted by the Public Perception of Conflicts of Interest and Ethical Impropriety.

The most important consideration is not whether any illegality has occurred. State and local ethics and conflict of interest laws for elected officials are notoriously confusing and difficult to apply in the real world. Cynics argue that elected officials designed them that way on purpose. However, in this circumstance there is an obvious appearance of impropriety. Otherwise, so many people wouldn't have to go to such great lengths to explain to the public why it is not a conflict of interest for the Mayor to act as the agent for Mr. Bass who is selling a multimillion dollar property to the Town, especially where the

sale is far from universally supported by the Taxpayer Households that will be obligated for the Debt.

Legal or not, this appearance of impropriety could easily have been avoided. The Mayor could have simply recused himself from all deliberations concerning the purchase and Debt. He could have handed over his gavel, sat down and said nothing. He need not have attended any executive session or unofficially discussed the matter with any Commissioner. By the same token, a majority of the BOC could have told the Mayor to recuse himself. Why that obvious solution did not happen is, perhaps, an issue for another day and a different forum.

What is clear is that this blatant appearance of impropriety, combined with this perplexing failure to take simple steps to avoid it and the veil of secrecy and lack of public disclosure surrounding this transaction have irreparably tainted it. Public trust is near zero. Any attempt to discuss the pros and cons of benefits, costs, risks and business plans almost inevitably devolves to questions of who is benefitting; to such an extent that the Mayor was recently forced to proclaim at the HBPOA meeting that he wasn't making any money on this deal, which simply raised more question about what exactly his statement meant and what escape hatches were built into it.

SUMMARY. This embarrassing problem could have been so easily avoided. It was not, and now it will inevitably impact the LGC review of issues, including particularly the critical issue of public support for a non-voted Public Debt issue.

3. PRETEXTUAL PURPOSE: The Town Does Not Have the Authority to Issue Public Debt to Purchase the Bass Property for the Actual Purpose of that Purchase.

For months, both before and after the Purchase Contract, the Taxpayer Households of Holden Beach have been led to believe that: (i) the primary purpose for the purchase of the Bass Property was to preserve and restore the historic wooden Fishing Pier beloved by many residents, vacation homeowners and visitors; and (ii) the secondary purposes were paid public parking and emergency beach access. Discussion focused almost exclusively on the benefits, costs, risks and feasibility of these purposes.

Only after this public debate, the aborted public hearing sponsored by Commissioner Kwiatkowski, the vote at the HBPOA meeting on September 2, the extensive on-line poll by HBPOA, the purported Public Hearing on the Debt, and the BOC vote to approve the Debt, was it finally disclosed to the public that these stated purposes were, in fact, mere pretext to justify the Town's purchase of the Bass Property.

In fact, as Commissioner Murdock candidly acknowledged (with the acquiesce of Commissioners Brown and Smith) after they had forced a 3:2 vote on a materially altered Public Debt authorization, the Actual Purpose is simply for the Town to acquire seven well-located ocean front building lots to be available for whatever purpose the Town later decides, including the re-sale of the building lots for a profit. Commissioner Murdock made clear (again with the acquiesce of Commissioners Brown and Smith) that the historic Pier and Restaurant Building may not be salvageable and that the Town may end up doing something entirely different with the Bass Property; essentially, the property was "just too good a deal to pass-up," regardless of what ultimate use the Town decided upon.

Whatever the wisdom of this shrewd strategy and regardless of what purpose the Town and the BOC ultimately settle on for the Bass Property, this was not the “deal” that has been “pitched” to the Taxpayer Households of Holden Beach. In not a single public forum did any individual stand-up and say “I remember when my Grandpa took me fishing on the Pier and I want to be able to show my grandchildren the condos, beach houses, event pavilions or trendy restaurants where the Pier used to be.”

It is now clear that the Taxpayer Households of Holden Beach who will be obligated for the \$3.3 million purchase price (the Public Debt) have been sold a pretext not a pier. The “Actual Purpose” to which the Bass Property will be put by the Town is officially “Unknown” or “Speculative.”

SUMMARY. Such a Pretextual Purpose does not satisfy the requirements of North Carolina law.

4. INADEQUATE NOTICE: The Notices for the Public Hearing and Regular Meeting Are Inadequate Because They Misrepresent the Actual Purpose of that Purchase.

Since the purpose presented for the \$3.3 million component of the Public Debt is false or pretextual, it necessarily follows that the Notice of the Public Hearing was inadequate.

Taxpayer Households were invited by the BOC to comment as witnesses as at a Public Hearing; the Notice of the meeting was the invitation that was supposed to establish the subject matter and explain the ground rules.

The Notice the BOC published was, in fact, a bait and switch designed to comply in form, but not in substance, with the requirements and self-evident purpose of North Carolina law. The Notice got the starting time and location correct; but not much else. **FIRST**, as discussed above, the Notice did not actually tell the public the actual purpose of the Bass Property Purchase component of the Debt; in presented instead a pretext. Had the Notice described the Actual Purpose, witnesses could have been prepared to address the fact that the actual purpose was not within the authority of the BOC. **SECOND**, the Notice did not tell the public that it had put itself in an extreme “timing box,” that it would default on the Bass Purchase Contract and forfeit its deposit if it did not approve the Public Debt and rush it onto the LGC October agenda. If it had, witnesses could have been prepared to testify in that context. **THIRD**, the Notice did not tell the public that the amount of the Public Debt was subject to material modification at authorization. In fact, the Town knew or should have known about the bid issue and could foresee that the Sewer component might be reduced. This deprived witnesses the opportunity to testify about this material aspect – the Sewer component went from being the significantly larger to the significantly smaller component of the Public Debt. The BOC seemed to forget that the Public Hearing was about the Town incurring up to \$8.8 million of Public Debt; not whether the Pier should be preserved and restored, or whether the Town needed a 70-space ocean-front parking lot. **FINALLY**, the Notice did not tell potential witnesses that (i) they would be limited to only 3 minutes regardless of how many witnesses signed up or how large a group those witnesses ended up being, or (ii) that the BOC had no interest in receiving written material and no facility to display or share such materials. Nothing in North Carolina municipal law, the Town’s ordinances or the BOC’s Procedural Rules

contemplates such arbitrary and capricious limits for a Public Hearing. As noted, it appears that the Clerk and Mayor failed to distinguish between the conduct of a Public Hearing and the conduct of the “public comment” agenda item at a Regular Meeting of the BOC. They are, in fact, two different requirements under North Carolina law.

In short, the Notice did not tell potential witnesses that the Public Hearing was a sham. If it had, it is unlikely that anyone would have shown up or bothered to prepare evidence and testimony.

SUMMARY. Such an “all-for-show Notice” of a required Public Hearing falls far short of satisfying North Carolina law much less the dictates of common sense and fair play.

5. IMPROPER PUBLIC HEARING: As a Result of Arbitrary and Capricious Limits Imposed on Witnesses by the Clerk and Mayor (and acquiesced to by the BOC) Purported Public Hearing Did Not Satisfy the Legal Requirement for a Non-Voted Issue of Public Debt.

Not to belabor the point, the Clerk and Mayor placed a strict 3-minute time limit on each witness, regardless of whether that witness was speaking only for his or her household or was representing 1,400 Taxpayer Households. Such an extreme and arbitrary time limit is neither required nor permitted by North Carolina municipal law, Town ordinances or BOC procedural rules (as noted, the BOC’s public comment rules do not and cannot apply to a Public Hearing. This restriction is so far at odds with the purpose of a Public Hearing and common practice as to be laughable, if it were not so sad an indictment of the BOC’s respect for the residents and taxpayers of Holden Beach. Unfortunately, the disrespect did not end with this arbitrary and capricious time limit.

FIRST, during his or her allotted three minutes, each witness was treated to at least two Commissioners who persistently chatted, joked and laughed between themselves.

SECOND, as previously noted, no provision was made for the BOC to view or even receive written materials, which at least the HBPOA witness had prepared, and offers to deliver such materials to members after the hearing and meeting were brushed aside.

FINALLY, no Commissioner asked any witness a single question about his or her testimony. Why should they? They were all in on the joke – the Public Hearing was a sham designed to check a box, not evaluate public support. The witnesses were merely the chumps, the straight men who had to be endured for 12 whole minutes, before the BOC could get on to its important business.

Ironically, a significant part of that “important business” was a proposal by Commissioners Murdock and Brown to put a two-and-one-half hour timer on all BOC meetings. Apparently, taxpayers and residents do not appreciate how tiresome conducting the Town’s business can be; particularly when one is forced to listen to the ramblings, suggestions and complaints of the people who actually pay for everything. This idea died aborning when the Town Attorney pointed out that the BOC was free to recess any time their weary ears, brains or bottoms, empty stomachs or full bladders demanded and resume a few minutes or a few days later. Crisis averted, but it is worth noting that the

discussion and resolution of this agenda item took longer than the entire time allotted to the Public Hearing and Taxpayer Household comments on \$8.8 million of Public Debt.

6. MATERIAL ALTERATION of PROPOSED BOND AMOUNT: The Purported Adoption of the Bond Order by the BOC was Fatally Flawed Because of Material Alterations to the Purpose, Terms and Amount of the Public Debt. There Must be a New Public Hearing with an Opportunity for the Public to Object.

The Public Debt Resolution that was ultimately approved by a 3:2 vote of the BOC was materially different from the anticipated Resolution because the maximum amount of the approved Public Debt was reduced by \$2.5 million or about 28% of the anticipated amount. This modification was the result of issues, including increased costs, with the bid for work on one of the lift stations.

The alteration is instructive because it demonstrates the misleading way the Board has addressed the Public Debt approval for the Bass Property Purchase, an approval that clearly lacks public support at this time. Rather than vote separately on Public Debt for the Bass Property Purchase (\$3.3 million) and Sewer Project (\$5.5 million) the two very different borrowings were combined. Whatever the intent, this had the effect of forcing Commissioners to vote not to approve the Sewer in order to vote not to approve the Bass Property.

To avoid this dilemma, Commissioner Kwiatkowski asked to separate the Bass Property and Sewer for purposes of voting for Debt approval. Bond Counsel acknowledged that the separate votes would be legal. By a 3:2 vote Commissioners Murdock, Brown and Smith denied this request. Their stated reason was that the lender, Truist Bank, might back out if the Debt was only \$5.5 million if the Sewer was approved but not the Bass Property.

While this is technically true, as the Financial Advisor confirmed, the argument was disingenuous. At that point it was obvious that there were 3 votes for Bass Property and 5 votes for the Sewer; both components of the \$8.8 million Public Debt were going to be approved. The majority was simply scoring cheap political points. Ironically, a few minutes later, that same majority quickly agreed to cut the Debt for the Sewer by \$2.5 million when it was reported that bids came in unexpectedly high. In other words, the Debt amount ended up at \$6.3 million rather than the proposed \$8.8 million. Truist Bank would have to approve a modification after all, but somehow none of the majority Commissioners seemed at all concerned this time around.

What all of this demonstrates is that the Public Hearing and the solicitation of input from taxpayer homeowners was a sham. The approval process was orchestrated to use the non-controversial Sewer as a shield for the very controversial Bass Property Purchase. It was implied to taxpayer homeowners that objecting to Public Debt for the Bass Property might jeopardize the Public Debt for the Sewer. If that were true, it was a dilemma of the Town's own making, but as events played out, it clearly wasn't true; it was another pretext to ram the Bass Property Purchase through at all costs.

Ironically, the majority Commissioners who professed such great concern that Truist Bank might back out if there was a material alteration in the aggregate amount of the Public Debt and did not question the Bank's absolute right to do so, did not think that the Taxpayer Households should have any right at all to a second look when the proposed deal was cut by \$2.5 million at the very last minute after the 15 minute Public Hearing was in the rearview mirror.

SUMMARY. This material alteration in the Public Debt amount is just one more way in which the BOC approval process was fatally flawed. If the legal requirement for meaningful public support is to be respected, there must be a do over.

B. COMPLETE LACK of PUBLIC SUPPORT for PROPOSED \$3.3 MILLION OF PUBLIC DEBT and BOC's PLAN to BUY BASS PROPERTY WITHOUT ANY BUSINESS PLAN or PLAN to PRESERVE and RESTORE the WOODEN PIER.

Because the proposed Public Debt to fund the purchase of the Bass Property will not be subject to approval by the voters of Holden Beach, the Town will be required to demonstrate substantial public support to the LGC. The purported Public Hearing conducted by the BOC immediately before it voted to approve the Public Debt was supposed to be an important component of demonstrating that public support. In fact, in the 15-minutes allotted by the BOC to this important consideration, exactly the opposite was demonstrated. All four witnesses opposed the Public Debt funding as it related to the Bass Property Purchase.

In the brief 3-minutes allotted to the HBPOA, our witness testified that:

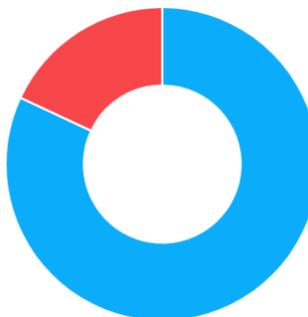
- According to public records there are about 2,400 Taxpayer Households in Holden Beach.
- HBPOA is a nonprofit membership organization that supports and represents all Taxpayer Households in Holden Beach.
- About 1,400 or 60% of Holden Beach taxpayers are listed on our membership rolls.
- At its September 2 Meeting HBPOA adopted a Resolution advising the BOC that it could not support incurring Public Debt for the Bass Property Purchase unless and until the BOC has presented a feasible business and plan for the restoration, development, operation and disposition of the Bass Property. This Resolution was adopted by a near unanimous vote of the members presently.
- Subsequently, HBPOA contacted each of the approximately 925 members for whom it has current email addresses and gave them the chance to vote for or against the same Resolution using a third-party voting application. There was not time to contact other members so that they could vote by mail.
- As shown below, the response was over-whelming. In just three days before the Public Hearing, about 35% of the members contacted by e-mail voted 82% to support the HBPOA Resolution.
- Seemingly, three of the Commissioners were uninterested.

HBPOA - \$3.3 Million Public Debt to Purchase Pie... Completed

▢ Results

SUPPORT/DON'T HBPOA Resolution re Town Incurring \$3.3 Million Public Debt to Purchase Pier Property

Option	Votes	
■ YES - SUPPORT HBPOA RESOLUTION TO BOC	82%	(268)
■ NO - OPPOSE HBPOA RESOLUTION TO BOC	18%	(59)



Despite HBPOA inhospitable reception at the BOC’s purported Public Hearing, we are in the process of gathering additional evidence of public opposition and support for the proposed Public Debt to present to the LGC at its hearing, assuming the Town is able to get on the October agenda.

Since the Commissioners who supported the Public Debt have now made it clear that none of the frequently mentions preservation of the pier, 70-space parking lots and leased restaurant/retail plans are actually necessary components of the plan for the Bass Property, it may be possible for the HBPOA to expand the scope of its membership polling.

C. OFFER TO WORK TOGETHER TO ACHIEVE A SHARED COMMUNITY GOAL FOR THE PIER AREA

It should be obvious that trying to cram the Bass Property Purchase that was developed in secret with any meaningful input from these Taxpayer Households is doomed to failure, despite the vote on Tuesday. Even assuming that (A) Truist Bank: (i) is not discouraged by the \$2.5 million reduction, (ii) is not scared-off by media attention and public controversy, including ethics and conflict of interest issues; or (iii) is not blocked by legal action (apparently a taxpayer group has already formed to pursue injunctive relief); and (B) the Town is actually able to “beat the clock” and get the Debt Approval Package on the agenda for the October LGC meeting, the LGC will be inundated with evidence of public opposition. The LGC hearing is not a sham; there will not be a “three-minute clock” and offers of written materials will not be shunted to one side. HBPOA owes it to its membership to supplement its e-vote with a mail-in opportunity and HBPOA is already preparing to supplement its Fall newsletter with information about the Public Hearing and Commissioner statements about the real prospects for restoring the Pier. We all know that the chances that the LGC will not either reject or defer approval for the Public Debt are somewhere between slim and none.

It is time for everyone on Holden Beach to climb down from their separate sandcastles, take a collective deep breath and make a realistic plan. Most Taxpayer Households either want or, at least, would not object to some community-oriented development of the ocean front area around the old pier, whether that includes restoration of the pier, paid parking and facilities for off-island visitors, restaurants or retail space, a pavilion, board walk, etc. However, there is something that should be discussed with primary input from the people who will ultimately pay for it.

Let us stop shouting at each other and come up with a plan that works for, if not everyone, at least most of the stakeholders on the Island. Commissioner Murdock worries that if we take the time to do this right, we may lose the chance to buy the Bass Property at a favorable price. That is a fair point, but it is the reason that “purchase options” were invented. The Town has already given Gil Bass a \$25,000 deposit that it will lose if the Town does not close by the end of October. What if the Town offered to pay for an option for say six-months to take the time pressure off and get its audit done so we aren’t playing beat the clock with the LGC. By all accounts, Mr. Bass is a friend of Holden Beach and wants to see Holden Beach control the Pier area. Moreover, the property has already been for sale for a long time. Surely, a creative solution can be found.

It should be clear, that it is time to end the secrecy surrounding the deal. The Taxpayer Households who are going to end up being obligated deserve to know the facts. If the Pier is too old and structurally unsound to restore, tell us; we are adults we can take bad news. If paid parking, fishing passes and a hypothetical restaurant lease will only cover a fraction of the Public Debt service, insurance and maintenance costs, which seems likely, just tell us; we are not stupid; we can add and subtract and will figure it out anyway.

In that same vein, perhaps it is time to “send in a new quarter back.” Despite the best of intentions, the Mayor’s obvious conflicting loyalties, deep love for Holden Beach’s past and close friendship with Gil Bass make him exactly the wrong person to orchestrate a creative solution. It should go without saying, that despite their collective skills, including the considerable real estate experience and expertise of Commissioners Murdock and Brown, the old adage about “too many cooks and spoiled stew” applies equally to boards and real estate deals. Perhaps it is time for the Mayor to concentrate on representing his client, Mr. Bass. The Town should have its own, independent real estate advisor to work out a purchase option arrangement that will slow things down and give the rest of us a chance to catch-up.

On Tuesday, HBPOA came to the purported Public Hearing in good faith to tell the BOC what our members – 60% of the Taxpayer Households on the Island (and a similar percent of register voters) – told us in a poll. Overwhelmingly (by 82% to 18%) they said they wanted to BOC to slow down and make a real plan before they obligated taxpayers for a \$3.3 million down payment on a new public facility that might or might not include the restoration of an historic wooden pier, the restoration (or more likely replacement) of a currently unusable restaurant building, perhaps 70 paid and/or unpaid parking spaces for off-island visitors and retaining use of an emergency beach access easement. We were made to feel as welcome as the proverbial “skunk at a garden party.” That is “OK;” we are adults. We learned a lot that night and have already gotten over the inhospitable welcome.

D. CONCLUSION

HBPOA stands ready to work with the Town, the BOC and the Town's professionals. We are all on the same team or should be. HBPOA has a lot of business, legal, community development and other resources it could bring to bear; not the least of which is the ability to mobilize and assess the opinions and support of our 1,400 Taxpayer Household members. We would much prefer to use these resources in a positive way in support of a shared community goal, rather than in a negative way to block what our members view as a "cram down."

Please feel free to contact any one of the following HBPOA Board Members who have made themselves available to work on this matter. We recognize that time is of the essence.

Respectfully submitted,

Holden Beach Property Owners Association, Inc.

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Thomas Myers, President

By [John P Witten](#)
John Witten, Vice President

By [Peter Freer](#)
Peter Freer, Board Member

By [Beverly Compton](#)
Beverly Compton, Board Member

By [Tracy Thomas](#)
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