

REGULAR MEETING OF THE TOWN BOARD OF COMMISSIONERS
OF SEPTEMBER 16, 2009

Town Board Present: Mayor Don Mullen, Vice Mayor Amy Patterson, Commissioner Larry Rogers, Commissioner Hank Ross, Commissioner Dennis DeWolf and Commissioner John Dotson.

Staff Present: Town Manager Jim Fatland, Zoning Administrator Joe Cooley, Town Engineer/
Public Services Administrator Lamar Nix, Recreation Director Selwyn Chalker and Town
Attorney William H. Coward.

1. Call to Order

Mayor Don Mullen called the Regular Meeting to order at 7:00 P.M.

2. Approve agenda.

Prior to the Board approving the agenda, Town Manager Jim Fatland stated that as to Item 6(I) (Set Board Retreat for September 23, 2009) the staff recommends that the location be the Bascom.

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

3. Approve minutes of August 12, 2009

Commissioner Hank Ross moved to approve the Minutes of August 12, 2009, was seconded by Vice Mayor Amy Patterson was unanimously approved by the Town Board.

Approve minutes of August 19, 2009

Commissioner Hank Ross stated that there was a misspelling in Section 4, 1st paragraph wherein it is stated that Bill O’Nallis spoke wherein the correct spelling is Bill Nellis. Commissioner Hank Ross further stated he wanted to clarify that under Section 9, (Municipal Agreement for NCDOT Bridge over Cullasaja River (Mirror Lake Road), the reason the pending motion was tabled was because the Mirror Lake Community requested a more pedestrian friendly and aesthetic pleasing bridge beyond the standard DOT design. As to another correction/clarification needed in the minutes, Commissioner Ross stated that in Section 12 (Macon Bank Lease Agreement) in paragraph 5, it should be noted that the Town of Highlands will be taking over part of the grounds maintenance (grass area).

Paragraph 5 is amended to read as follows:

Macon Bank, as Lessor, would be required to maintain property including landscape maintenance of the grass area.

Commissioner Hank Ross moved to approve the Minutes of August 19, 2009, subject to the above corrections/clarification made by Commissioner Hank Ross, was seconded by Vice Mayor Amy Patterson and was unanimously approved by the Town Board.

4. Public Comments

Mayor Don Mullen opened the public comment period.

There were no public comments and the public comment portion of the meeting was closed.

5. Reports

A. Mayor

Mayor Don Mullen advised that on Wednesday, September 23, 2009, there will be a Town Board Retreat from 8:00 am and 3:00 p.m. and will be at the Bascom and not at the church as previously advertised.

On October 22, 2009, Mayor Mullen advised that there will be a combined Town(s) and County meeting starting at 6:00 p.m. at the Highlands Country Club.

B. Committees

The County Planning Board has scheduled a meeting in Scaly on September 17, 2009 at 5:00 p.m. and their next meeting will be held at the Community Building in Highlands on a date still to be determined. The survey is being finalized for mailing for public input.

C. Town Manager

Town Manager Jim Fatland advised that the Parks Committee met with the consultant on the Master Plan and Recreation Director Selwyn Chalker advised that approximately 35 people were in attendance. Mr. Chalker will have a draft of the survey ready for the retreat for review, finalization and to determine whom it should be mailed to. Mr. Chalker further stated that he would have a report ready regarding the Open House meeting.

Town Manager Jim Fatland further stated that he is working with Biological Center and the Peggy Crosby Center in trying to obtain grants on energy (measures on how to save money). The Biological Center was successful in getting the State representative to come out on September 18, 2009 and Mr. Fatland will meet with the staff at the Biological Center and the Peggy Crosby Center and try to get grant money for the recreation center and the policy renovation project.

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 August 31, 2009
- F. Monthly Calendar
- G. Grant Status Report
- H. Resolution for Surplus Equipment
- I. Set Board Retreat for September 23, 2009

Commissioner Dennis DeWolf moved to accept the Consent Agenda, as stated, was seconded by Commissioner John Dotson was unanimously approved by the Town Board.

7. Municipal Agreement for NCDOT Bridge over Callasaja River (Mirror Lake Road)

The North Carolina Department of Transportation is preparing the replace the bridge at Mirror Lake. This agreement is standard for them to proceed with this project within the corporate limits of the Town. This agreement states that they will replace the bridge and relocate all necessary utilities at their expense (6" waterline). At the last Town Board meeting, the issue was raised about the type of barrier that would be used. Town Engineer Lamar Nix contacted the North Carolina Department of Transportation and a drawing was sent showing a two bar metal rail, a 4 ft. 7" shoulder for pedestrian traffic on each side. A copy of the drawing was presented to the Town Board members for their review and consideration. As to a fiscal impact, there will be none. The work is schedule for June, 2010.

Town Manager Jim Fatland advised that this matter was continued from the previous Town Board meeting. Town Engineer Lamar Nix advised that discussion was had with the Department of Transportation regarding the use of a decorative railing rather than the standard "Jersey Barrier". Also discussed was pedestrian access to the bridge to be included in the design. Mr. Lamar advised the Town Board that all documents are ready to be executed and it is recommended that the Town Board approve the Municipal Agreement.

Commissioner Hank Ross moved to accept the Municipal Agreement for NCDOT Bridge over Callasaja River (Mirror Lake Road), as stated, was seconded by Vice Mayor Amy Patterson was unanimously approved by the Town Board.

8. FEMA Ordinance (for second vote)

This item has been reviewed by the Town Attorney William Coward. Mr. Coward advised that the vote concerning the Town of Highlands Flood Damage Prevention ordinance, from the previous Town Board meeting on August 19, 2009, requires one additional step to officially complete the adoption process.

General Statute 160A-75 requires that ordinances be adopted by a simple majority of all members of the council not excused from voting, except that **a two-thirds vote** is required to adopt an ordinance on the date of introduction. It is recommended that the Town Board vote once again on the Flood Damage Prevention Ordinance.

William Coward explained that the vote at the last meeting was 3 to 2 in favor, however, in order for the Ordinance to pass on the first reading, it would have been necessary that there would be 4 of 5 in favor of passing. Since two thirds of five equals 3.33, which is rounded up to four, a second vote is needed.

As there was no further discussion on this issue, Vice Mayor Amy Patterson moved to approve the Flood Damage Prevention Ordinance, was seconded by Commissioner Hank Ross and was approved by the Town Board. Commissioners Larry Rogers and John Dotson voted no.

9. Resolution Accepting Grant for Pine Street Stormwater Improvements

This item has been reviewed by JP Johns of McGill Associates, Macon County Emergency Management Director Warren Cabe, and the Recreation and Parks Committee on August 12, 2009.

The Town Board, at its meeting on May 20, 2009, approved the recommendation to approve the option to address stormwater problems and water quality issues by not closing Pine Street and applying for Federal Stimulus Funds for stormwater detention and FEMA funds for stormwater bypass project.

The Town of Highlands was notified by the North Carolina Department of Environment and Natural Resources on July 17, 2009 that it was awarded a grant for stormwater improvements for the Pine Street Stormwater Treatment Project. The total grant award was \$546,517.00. There is no local match requirement; however, 50% of the award is an interest free loan for twenty (20) years. This grant represents Federal Stimulus Funds under the American Recovery and Reinvestment Act of 2009 (ARRA). Under the grants program, projects must move forward in a timely matter. FEMA has notified the Town of Highlands that serious consideration will be given for the stormwater bypass project with a funding decision later this fall. The Town Board, at the regular meeting on August 19, 2009 approved design services for stormwater improvements and for Kelsey Hutchinson Park. Subsequent to the last Town Board Meeting, contract documents have been sent requesting approval of a resolution to accept grant funds.

It is recommended to the Town Board to approve the Resolution Accepting Grant Award for \$546,517.00 for Pine Street Stormwater Improvements.

The resolution reads as follows:

TOWN OF HIGHLANDS NC
RESOLUTION ACCEPTING GRANT OFFER
PINE STREET STORMWATER TREATMENT

WHEREAS, the North Carolina Clean Water Revolving Loan and Grant act of 1987 has authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection systems,

and water supply systems, water conservation projects, and

WHEREAS, the North Carolina Department of Environment and Natural Resources has offered a (State Revolving Loan Grant, or State Bond Loan) in the amount of \$546,517.00 for the construction of Pine Street Storm water Treatment and

WHEREAS, the Pine Street Stormwater Treatment intends to construct said project in accordance with the approved plans and specifications.

NOW, THEREFORE, BE IT RESOLVED BY THE Board of Commissioners of the Town of Highlands

That the Town of Highlands does hereby accept the (State Revolving Loan, Grant, or State Bond Loan) offer of \$546,517.00.

That the Town of Highlands does hereby give assurance to the North Carolina Department of Environment and Natural Resources that all items specified in the (loan or grant) offer, Section II – Assurances will be adhered to.

That Jim Fatland, Town Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Town of Highlands has substantially complied or will substantially comply with all Federal, State, and Local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this 16th day of September 2009 at Highlands, North Carolina.

Attest:

Approved:

TOWN CLERK

MAYOR

Date: September 16, 2009

Town Manager Jim Fatland advised that the Town Board previously approved applying for the grant and received was the Resolution regarding the same. Mr. Fatland further advised that staff is working on the grant from the Clean Water Management Trust Fund. If this award is received, it can be used towards the local share and reduce the loan.

Vice Mayor Amy Patterson questioned if FEMA was looking to mix and match or would it ~~be~~ all or nothing”. Can FEMA tell you want they want you to spend it on? Lamar

Nix advised that FEMA can pick and choose but it has been presented as a whole package.

Commissioner Hank Ross moved to accept the Resolution Accepting Grant for Pine Street Stormwater Improvements, was seconded by Commissioner Dennis DeWolf and was approved by the Town Board. The Town Board approved to accept the Resolution by a 4 to 1 vote. Commissioner John Dotson voted no.

10. Appointment to Highlands ABC Board

The Highlands ABC Board was organized under the provisions of House Bill #657 of the North Carolina Legislature, General Assembly, June 17, 1977, and implemented by Town Wide Election held August 16, 1977. The Highlands Board of Commissioners appoints three members who serve staggered three-year terms whereby one appointment occurs each year. The ABC Board Members are David Wilkes, Georgia Sanders (August 17, 2010) and Mike Thompson (August 17, 2011). The term of David Wilkes expired on August 17, 2009. Mr. Wilkes has agreed to serve another term.

It is recommended to the Town board to consider the reappointment of David Wilkes to the Highlands ABC Board for another three year term. This will be Mr. Wilkes second term.

Town Manager Jim Fatland advised the Town Board that this was continued from the last meeting and further advised that there is a policy wherein people on committees can serve two (2) terms. Mr. Wilkes previously served, left and then was reappointed and if appointed tonight, would be two consecutive terms. This was clarified by Vice Mayor Amy Patterson.

Vice Mayor Amy Patterson moved to appoint accept David Wilkes to the Highlands ABC Board, was seconded by Commissioner Dennis DeWolf and was unanimously approved by the Town Board.

After the vote, Town Attorney advised the Mayor and the Board members that a Chairman needed to be named for the Highlands ABC Board, as required. Mr. Fatland advised that that Mr. Wilkes is currently serving as Chairman of the Highlands ABC Board.

Vice Mayor Amy Patterson moved to appoint David Wilkes as Chairman of the Highlands ABC Board, was seconded by Commissioner Larry Rogers and was unanimously approved by the Town Board.

11. Resolution Authorizing Grant Application with NC Rural Center for Sewer Master Plan

Town Manager Jim Fatland advised that the deadline is September 30, 2009. The scope of services information has been given to the Town Board members for review. Town

Engineer Lamar Nix advised that this would give the Town an insight to a master sewer plan and the policies needed to implement the same as well as financial planning.

Mr. Nix advised that it also attempts to address the Town's maintenance policy specifically the grinder pump situation. A search has been done for alternative answers on how the Town will be able to install low pressure sewer mains to meet the state guidelines. As of right now, the policy in place, is that the homeowner maintains the grinder pumps while the Town maintains the line. If the Town must maintain the grinder pumps for the homeowner, a work force needs to be in place and is a big change.

There was much discussion amongst the Board members and Town Engineer Lamar Nix as to lines, pumps, gravity systems verses low pressure system and the change in work force, and the need to sit down with the governmental officials on what needs to be handled now. Commissioner Hank Ross asked if there could be the accommodation of an exemption and Commissioner Dennis DeWolf questioned if easements would have to be in place and giving the example of Mirror Lake. Commissioner Larry Rogers advised that it would be of considerable costs to hook up houses with grinder pumps and that is a lot of money. Town manager Jim Fatland advised that the application is for \$64,000.00 and shared 50/50 between the Town and State.

Vice Mayor Amy Patterson moved to authorize the Town Manager to apply for the Resolution Authorizing Grant Application with NC Rural Center for Sewer Master Plan, was seconded by Commissioner Hank Ross and was unanimously approved by the Town Board.

12. United Methodist Church Request for Conditional Zoning District

Zoning Administrator Joe Cooley advised the Town Board that this matter has come before the Town Board before and has now before the Town Board again in an effort to address the concerns that the Town Board previously had, primarily B-III zoning but now the Church has come back with a conditional B-I zoning. The Planning Board has stated that conditions need to be adopted for the use of the property. Presently before the Town Board is the conditional use zoning request along with an existing survey showing all of the church's property and a conceptual drawing, which is part of the planning process. Mr. Cooley encourages to go with the B-I conditional zoning and suggests that it would be beneficial to have a work session to discuss this matter and get the concerns out and work with the property owners. Commissioner Hank Ross advised that a work session is not really in the procedures right now and Mr. Cooley concurred with that statement but stated that the work session would be open to the public, with the property owners present.

Commissioner Dennis DeWolf stated that it was a great suggestion and to set up a work session. It was questioned by the Board members why the church was doing this now and was advised that the church wanted to get started with fund raising, etc. Vice mayor Amy Patterson questioned what within the B-III zoning will not work and Mr. Cooley advised parking and set backs, among other things. Jeff Weller of Summit Architecture,

PA addressed the Town Board and advised that the limit of the property within the B-III zoning is the parking lot. The plan for the property is to develop the same to house a fellowship hall and to provide parking for daily use. Vice Mayor Amy Patterson questioned if there were time frames in place and if the same would have to be adhered to.

Commissioner Dennis DeWolf moved to send the United Methodist Church Request for Conditional Zoning District to the Planning Board for review and for the request for conditional zoning, was seconded by Commissioner Hank Ross and was unanimously approved by the Town Board.

13. Big Creek Arm of Lake Sequoyah Dredging—Q & A

Town Attorney William Coward mailed to the property owners along the Big Creek arm of Lake Sequoyah detailed correspondence regarding the dredging of Big Creek along with an Easement Agreement to be signed. Of the approximately 30 that were mailed, only 5 were returned executed.

Town Engineer Lamar Nix handed out questions posed by many of the property owners, with answers, as follows:

1. Besides dredging, does the Town of Highlands have another option to address water quality issues for its drinking water supply?

Another option would be to relocate the Town's intake to the dam. This plan may be more cost effective since the Town of Highlands owns the lake bottom in this area.

2. What is the estimated cost for dredging the Big Creek Arm of Lake Sequoyah?

The estimated cost is \$2.0 Million.

3. Does the Town have funds to do this project?

The Town has set aside \$500,000 toward this project which represents the required 25% local share on a grant with the Army Corps of Engineers. However, the Army Corps of Engineers does not have available funds for this project at this time.

4. Has the Town applied for Federal Stimulus Funds?

Yes. The Town has applied for Round One and Round Two and has been turned down for Federal Stimulus Funds.

5. What will this dredging mean for the overall depth of the lake?

The lake bed would be restored to its original contour as closely as possible.

- 6. Can owners have a copy of the overlay mapping that shows the 1925 depths they've talked about restoring to?**

Yes

- 7. If the lake is to be restored to the 1925 condition, does this mean that only the Fenton/Long Island Garden will be removed or will additional currently vegetated spoil areas on other properties be removed as well?**

Areas that are protected by the Wetlands Act may not be removed. The Island can be removed as requested by NCDENR.

- 8. When will we be given concrete information about the Randall Lake issues? Since the Randall Lake sediment was proven to have generated 4 feet of silt in Big Creek, what provisions are being made in the event that the very unstable Randall Lake Dam has a permanent failure in the future?**

Staff has contacted the owner of Randall Lake and obtained permission to evaluate the dam. The Board will be given information and recommendations about Randall Lake as we progress through our evaluations. The Owner of Randall Lake has indicated a desire for the Town to assume ownership.

- 9. Will we be able to use the lake for boating, skating, etc. and have access to the big lake during the dredging process?**

Yes, but not to point of interference with the work.

- 10. How close to the shore will the dredging occur?**

The contour will slope to the shore, but not undermine it.

- 11. Will the dredging take place all of the way up Big Creek to the spillway at the water treatment plant?**

Yes, within the lake.

- 12. If we sign a permanent easement, will any type of equipment be left in the lake permanently?**

No.

- 13. When the sediment is removed on the Sequoyah Ridge Town property, how long will it stay there before being hauled off? Will sediment barriers be placed on Town property to protect adjoining properties from run off? Will property boundaries be clearly defined so that heavy equipment is ONLY on the Town property and public roads?**

The sediment will be removed as it is dredged. The Town can only work on property that the Town owns or has permission to work on.

14. Regarding Town owned Sequoyah Ridge property used for sediment storage: Will the Town be removing all of the trees on their parcels? If so, will the Town lots be restored to their original state?

The clearing limits have not been defined as of yet. The lots would be restored with grass and possibly with trees.

15. Will we be allowed to re-build our docks if they are damaged?

Yes

16. Can we expand them while we're at it?

No

17. ~~If the lake is made much deeper than it's been since most of us have owned our properties, our grandchildren may not be able to safely launch our boats from shore anymore. If they deepen Big Creek, they need to lift the dock moratorium so that we can at least build a small platform dock to keep people safe~~.

There are no plans to lift the moratorium.

18. What should we do to secure our shorelines during the process? Will they give us this kind of information well before they start?

The shoreline will not need to be protected; the dredging will not undermine the shoreline.

19. Knowing how sounds amplify on the waterfront in general, just how noisy will the machinery be and for how long? Can we have a link to a website or access to a video that will show us the process and let us hear a sample of what we're in for?

This project has been estimated to last 6-8 months. I am not aware of a video that can accurately reflect the dredge, centrifuge, loader and other various pieces of equipment that would be used in this project.

20. Has a study been done on the affects of dredging to fish and wildlife?

The comments that we have received is that the fish move away from the machinery as the work is performed and that the long term benefits of the dredging exceed any impacts that may occur.

21. **Will they be lowering the lake level during this dredging? Will they give us notice so that we can work or have work done on our shorelines?**

The lake will not be lowered.

22. **Since we are in a critical watershed area and our legal built upon space is 12% of our property, would a permanent easement (where we give up a portion of our property) alter our built upon rights for home additions?**

This is an easement to maintain the lake bed, not a change in ownership.

23. **Will our property taxes be lowered if we give up a portion of our land?**

No. This is not a change in ownership.

24. **Can we stipulate that the work cannot be performed between Memorial Day and Labor Day? (This was expressed by a few people with homes for sale and those who utilize properties as summer vacation rentals.)**

The project cannot be performed in freezing weather. Therefore, it may be necessary to work during this time frame.

25. **What if a current owner with a property for sale is not opposed to the easement and has signed the agreement, but the property sells and the new owner is opposed. Can the easement agreement by the prior owner be voided?**

No.

26. **There are numerous concerns about the road traffic on Sequoyah Ridge and Road regarding the transport of silt (road damage and will it be properly repaired, traffic delays and how lengthy will they be, damage by large trucks to existing trees and foliage, the fact that walking to the spillway will not be a peaceful act for many months).**

The roadway will be repaired when the project is complete. The project is expected to take 6-8 months for completion. As expected with any construction project, there will be delays in traffic and inconveniences that are hard to predict at this point.

27. **Several have commented about potential traffic issues on Hickory Hill Road and would like a clearer picture of how Hickory Hill will play into the clean-up effort.**

The proposed "launch area" for the dredge is at Town property on Hickory Hill.

28. **"I will not sign any type of easement until they figure out how to properly engineer the run-off from Azalea Circle".**

Azalea Circle storm drainage plans have been designed. The project is waiting funding and ROW.

29. **Those in favor of a temporary easement rather than a permanent one want some assurance that the time frame for dredging was specified with a “not to exceed” time period and that property owners are notified well in advance of any start date. There is a fear that if there were budget over runs or contractor problems or mechanical failures during the process, that owners could be stuck with machinery in the lake for unreasonable, extended periods of time.**

The reason for wanting a permanent easement is for the Town to maintain the lake bottom for decades in the future. Budget over runs, contractor problems and mechanical failures are short term problems that can occur with temporary or permanent easements.

Many landowners, in attendance and via communications, raised concerns about the Town of Highlands having a permanent easement access after this project is completed. Only one landowner has objected to the dredging of the lake. The lake, since being built in 1925, has never been dredged. The majority of the landowners will accept a temporary easement.

The Big Creek arm of Lake Sequoyah is the location of the intake for the town’s water supply. Silt has collected in that portion of the lake compromising the quality of the water, and Town officials have stated that it will eventually threaten the water supply as a whole.

Town Engineer discussed with the Town Board and members of the public present about the effects of shallow water and the formation of Total Trihalomethanes (TTHMs), a bi-product of the disinfectant chemical-chlorine. TTHMs are caused by the reaction with the organic matter and chlorine. Shallow water promotes algae growth and provides the opportunity for TTHM to form. The silt also creates high levels of turbidity, which causes increased costs for maintenance and premature replacement of our pumps. Discussion was had as to moving the intake for the water supply and distance. Several property owners and/or their representative present at the meeting mentioned that Randall Lake must be a part of the project and much discussion was had regarding this issue and the dam at Randall Lake. Vice Mayor Amy Patterson voiced her concern in getting the Town’s authority as to Randall Lake.

One question posed and responded to by Mayor Mullen was if it is necessary to have easements in place from all of the landowners in order to obtain funding. Mayor Mullen advised no. The process of obtaining funding has been on going. Mayor Mullen advised that he would like to have the permanent/temporary easement before the funds are available. Unfortunately, there is no money presently by the state. Lamar Nix discussed the documentation contained in applications for grant money that includes certificates of ownerships, which advise of ownership of the property or easements in place.

After being questioned by the Board members regarding Randall Lake damn, Lamar Nix advised that he has spoken to the owner who has given permission for the inspection of the damn by Town personnel and will supply engineering reports that he has obtained. Mr. Nix has advised that the damn is leaking.

Commissioner Hank Ross stated that he has had contact with many landowners who have voiced their concerns that it is not worth-while dredging Big Creek arm without having control of the damn.

Mayor Mullen suggested that the Town moved forward and obtain temporary easements but further stated that it would be up to the Town Board to make that determination. Vice Mayor Amy Patterson stated that the Town should have all of the easements in hand (either permanent or temporary) and go after the money and advise “we are ready to go”.

Town Manager Jim Fatland stated that when he meets with the Army Corp of Engineers, that possible package the projects for a \$3M project and will check with the Army Corp if temporary easements will be sufficient.

Commissioner Larry Rogers acknowledged that the landowners were agreeing to a temporary easement but wanted to know how many would be in favor of a permanent easement.

Town Attorney William Coward raised a concern regarding the temporary easement and the necessity of proper language as to time frames and a definition of the scope of the project.

As this was merely a question and answer session, no vote was taken and the Town Board directed its attorney to seek temporary easements from Big Creek area property owners.

14. Adjourn

Commissioner John Dotson moved to adjourn, was seconded by Commissioner Larry Rogers and the Town Board meeting adjourned at 8:28 p.m.

James R. Fatland
Town Manager

Jane J. Capman
Recording Secretary

Don Mullen Mayor