

REGULAR MEETING OF THE TOWN BOARD OF COMMISSIONERS OF JULY 6, 2011

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

Also Present: Town Manager Jim Fatland, Interim Town Planner Mark Maxwell, Recreation Director Selwyn Chalker, Town Engineer Lamar Nix, Town Attorney William Coward and Recording Secretary Jane Capman.

Call to order

Mayor David Wilkes called the meeting to order at 7:01 p.m.

1. Public Comments

Bob Kieltyka of the Chamber of Commerce commented that the 4th of July fireworks display were well received and gave his thanks to the Town.

2. Special Presentation: Highlands Scholarship Golf Tournament

Mayor Wilkes presented Brian Stiehler, Chairman of the Scholarship, a plaque and gave praise for the great job at organizing the golf tournament and advised that approximately \$32,000.00 was raised.

3. Approve agenda

Prior to approval of the agenda, Commissioner Amy Patterson advised that Rebecca Shuler needed to be officially appointed as Town Clerk. Mr. Fatland advised that the same would be added to tonight's agenda.

Commissioner Dennis DeWolf moved to approve the Agenda, as revised, which was seconded by Vice Mayor John Dotson and was unanimously approved.

4. Approve minutes of June 8, June 15 and June 29, 2011

Approve minutes of June 8, 2011

Commissioner Gary Drake moved to approve the Minutes of June 8, 2011, which was seconded by Vice Mayor John Dotson and was unanimously approved.

Approve minutes of June 15, 2011

Vice Mayor John Dotson moved to approve the Minutes of June 15, 2011, which was seconded by Commissioner Amy Patterson and was unanimously approved.

Approve minutes of June 29, 2011

Commissioner Amy Patterson moved to approve the Minutes of June 29, 2011, which was seconded by Commissioner Gary Drake and was unanimously approved.

5. Reports

A. Mayor

Mayor Wilkes gave his thanks to Selwyn Chalker and others for their hard work during the 4th of July weekend events.

B. Commissioners & Committee Reports

The Sustainability Committee gave its report and further discussed the Town participating in an energy assessment of its facilities.

C. Town Manager

At the June 15, 2011 Town Board Meeting the following items were pulled and/or continued to a future Board Meeting:

Jackson County Contract for Fire Protection

The contract has been referred to legal counsels for Jackson County and Town of Highlands for language changes. Anticipate item will be presented to Town Board on July 20, 2011.

United Methodist Church Alley Configuration

Staff met with the applicant to discuss impact on Town utilities and municipal services. Applicant and staff anticipate this agenda item will be presented to Town Board on July 20, 2011.

Highlands Playhouse Improvements

Staff met with the Public Works Committee on June 29, 2011 to discuss Playhouse Improvements. Public Works Committee approved staff request to retain structural engineer to evaluate building to properly assess what improvements may be needed. Public Works Committee will report back to Town Board with recommendation at a later date. Any improvements approved by the Town Board would not commence until completion of the Highlands Playhouse Season which ends in October.

Commissioner Patterson stated that she believed that Paul Schmitt previously evaluated the building and that should be verified.

5. Noise Ordinance: Second Reading

The following Noise Ordinance was presented to the Town Board for a second reading:

Pursuant to an affirmative vote on the motion of and by Commissioner Amy Patterson and a vote of 4 to 1 by the Board of Commissioners of the Town of Highlands, at its regular meeting on the 6th day of July, 2011, and (applicable where there were less than 4 affirmative votes on said date) the subject matter hereof having been first introduced by being voted on by the Board at its regular meeting on the 15th day of June, 2011, as required by N.C.G.S. 160A-75, now therefore the following ordinances are hereby ADOPTED, AMENDED, OR REPEALED as set forth hereinbelow:

(EXISTING CODE SECTIONS ARE FOLLOWED BY CHANGES IN ITALICS)

I.

Sec. 8-8. Loud, raucous, and disturbing noise prohibited. *TO BE REPEALED*

It shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue, or cause to be made or continue any loud, raucous, and disturbing noise, which term shall mean any sound which, because of its volume level, duration, and character annoys, disturbs, injures, or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities within the limits of the town. The term loud, raucous, and disturbing noises shall be limited to loud, raucous, and disturbing noises heard upon the public streets, in any public park, in any school or public building, or upon the grounds thereof while in use, in any church or hospital, or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise or upon the grounds thereof.

(Code 1982, § 11.11; Amend. of 7-26-2006, § 1)

State Law References: Authority to regulate noise, G.S. § 160A-184.

Sec. 8-9. Noises specified. *TO BE REPEALED*

The following acts, among others, are declared to be loud, raucous, and disturbing noises in violation of this section, but such enumeration shall not be deemed to be exclusive, namely:

- (1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time;
- (2) The use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle;
- (3) The use or operation of any piano, manual or automatic, phonograph, radio, loud speaker, or other instrument, or sound amplifying devices so loudly as to disturb persons in the vicinity thereof, or in such a manner as renders the same a public nuisance; provided, however, that upon application to the mayor, permits may be granted to responsible organizations to produce programs in music, speeches or general entertainment;
- (4) The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort and repose of any person in the vicinity;
- (5) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling, or other noise;
- (6) The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger;
- (7) The discharge into the open air of the exhaust of any stationary internal combustion engine or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;
- (8) The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced;
- (9) The erection, including excavating, demolition, alteration or repair of any building, or any road or utility excavation, other than between the hours of 7:30 a.m. and 6:00 p.m. on weekdays,

excluding the holidays of Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, and except in the case of urgent necessity in the interest of public safety, and then only with a permit from the town clerk, which permit may be renewed for a period of three (3) days or less while the emergency continues.

(10) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while the same is in session, or within one hundred fifty (150) feet of any hospital, which unreasonably interferes with the working of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, court or hospital street;

(11) The creation of any excessive noise on Sundays on any street adjacent to any church, provided conspicuous signs are displayed in such streets adjacent to churches indicating that the same is a church street;

(12) The creation of loud and excessive noise in connection with loading or unloading any vehicle, of the opening and destruction of bales, boxes, crates and containers;

(13) The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof;

(14) The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of the neighborhood;

(15) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise;

(16) The use of any mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising purposes or other purposes except where specific license is received from the board;

(17) The conducting, operating or maintaining of any garage or filling station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p.m. and 7:00 a.m.; and

(18) The firing or discharging of squibs, crackers, gunpowder or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the board.

(Code 1982, § 11.12; Amend. of 7-26-2006, §§ 2, 3; Amend. of 8-6-2006, § 3)

Sec. 8-10. Dangerous property conditions. *TO BE RE-CODIFIED AS SEC. 8-8*

For the occupant, owner, or tenant in possession of any lot or parcel of ground to permit or have any well, excavation, or embankment remain thereon, without sufficient enclosure or covering to prevent persons or stock from injury thereby, is declared a nuisance, and all persons so offending shall, upon conviction, be fined.

(Code 1982, § 11.27)

Sec. 8-11. Firearms and pellet guns. *TO BE RE-CODIFIED AS SEC. 8-9.*

(a) No person may discharge any firearm, pellet gun, or any other mechanism or device designed or used to project a missile by compressed air or mechanical action at any time or place within the town except when used in the following specific circumstances:

(1) In defense of person or property;

(2) To destroy any rabid or marauding animal; or

(3) Pursuant to the lawful directions of any member of the town police department.

(b) This section shall not be construed to preclude the discharge of firearms, pellet rifles, or other similar devices pursuant to a competition or match conducted by any bona fide civic group, organization, or sponsoring entity provided always, however, that such organization shall first secure from the chief of police permission to conduct such competition or match and shall further assume all liability for all personal injury or property damage or both arising out of such meet.

(c) Any person violating this section shall be guilty of a misdemeanor and shall be subject to the punishment provided by section 1-5.

(Code 1982, § 11.28)

State Law References: Authority to regulate discharge of firearms, G.S. § 160A-189; authority to regulate possession and use of pellet guns, G.S. § 160A-190.

Sec. 8-12. Keeping of animal pens. TO BE RE-CODIFIED AS 8-10

For the owner or user to allow any animal pen, or other stock pen, or closet, to remain filthy or in an unsanitary condition so as to emit stench or offensive odor, or to be detrimental to the citizens within the corporate limits, is declared a nuisance, and any person so offending shall, upon conviction, be fined and shall be punished in accordance with the provisions of section 1-5.

(Code 1982, § 9.6)

State Law References: Public health, G.S. § 130A-1 et seq.; abatement of public health nuisances, G.S. § 160A-193.

Sec. 8-13. Hog pens. TO BE RE-CODIFIED AS 8-11.

No person shall be permitted to keep or maintain any hog pen, or keep any hogs, within one hundred fifty (150) feet of any dwelling within the corporate limits.

(Code 1982, § 11.33)

Secs. 8-14--8-30. Reserved.

Article II of the existing Chapter 8 (Abandoned, Nuisance and Junked Motor Vehicles) shall become Article III (sections 8-31 to sections 8-45).

New Article II shall be as follows:

Article II. NOISE ORDINANCE

Sec. 8-12. Scope. *This article shall apply to all sound and noise disturbances (defined herein) originating within the corporate limits of the Town of Highlands. Nothing in this article shall be construed to limit or prevent the Town or any person from pursuing any other legal remedies for damages or the abatement of noises in the Town under other provisions of its Code.*

Sec. 8-13. Definitions. *The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context:*

“Amplified sound” means any sound or noise, including the human voice, which is increased in volume or intensity by means of electrical power.

“Construction” means erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

“Holidays” means Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, New Years Day and Christmas Day.

“Motor vehicle” means any vehicle as defined in G.S. 20-4.01(49) including, but not limited to:

- (a) Excursion passenger vehicles as defined in G.S. 20-4.01(27)a.
- (b) Common carriers of passengers as defined in G.S. 20-4.01(27)c.
- (c) Motorcycles and mopeds as defined in G.S. 20-4.01(27)d. and d.1.
- (d) Truck tractors as defined in G.S. 20-4.01(48).
- (e) Farm tractors as defined in G.S. 20-4.01(11).

“Noise disturbance” means any sound that annoys, disturbs, injures, or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities due to its volume level, duration, location, and character, provided that such noise is heard upon the public streets, or in any public park, or in or upon the grounds of any school or public building while in use, or in or upon the grounds of any religious, medical, or convalescent facility, while in use, or upon any parking lot open to members of the public as invitees or licensees, or in or upon the grounds of any occupied residential unit which is not the source of the noise.

“Overnight hours” means between 11 p.m. and 7 a.m. Eastern Standard Time (or daylight savings time, whichever is in effect at the time).

“Person” means any individual, association, firm, partnership, corporation, or business entity.

“Residential district” means the R-1, R-2 and R-3 districts as established by the Zoning Ordinance of the Town.

“Sound” means any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by reasonable persons of normal sensibilities.

“Working hours,” in relation to construction activity, means between Monday through Friday from 7:30 a.m. 6:00 p.m.

Sec. 8-14. General prohibition and prohibition of noise in excess of 85dB(A). *It shall be unlawful for any person or group of persons, regardless of number, to willfully make, allow, or continue, any activity that is or creates a noise disturbance as defined in this article. Without limiting the foregoing prohibition, no person, corporation or other entity shall create, generate or produce, directly or indirectly, sound in such a manner as to create a sound level which at its peak exceeds the limit of 85dB(A) when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.*

Sec. 8-15. Noise producing activities; frequent sources of complaint; noise sensitive areas. *Without limiting the scope of the preceding section, the following activities are generally recognized as tending to create noise disturbances, and it shall be a violation of this article to engage in these activities if such activities create a noise disturbance as defined in this article:*

- (a) *Creation of amplified sound from any source, including, by way of example, radios, home audio systems, automobile audio systems, televisions, and musical instruments;*
- (b) *Playing of musical instruments not amplified;*

- (c) *Keeping of an animal, such as a bird or dog, which frequently or for long periods of time makes noises that are noise disturbances;*
- (d) *Operation of domestic power tools or mechanical devices, including devices using compressed air, in the overnight hours;*
- (e) *Repair or testing of any motor vehicle, however fueled or powered;*
- (f) *Operation of any motor vehicle with an improper muffler system in violation of G.S. 20-128(a) and (b);*
- (g) *Operation of any motor vehicle in such a state of disrepair, or which is loaded in such a manner as to create grating, grinding, rattling, or other noise.*
- (h) *Operation of any motor vehicle so as to cause the tires to squeal or screech;*
- (i) *Operation of model cars, boats, airplanes, go carts, mini bikes, allterrain vehicles or other unlicensed toy or recreational vehicles, or devices powered by an internal combustion engine;*
- (j) *Shouting or other noise in relation to street vending or peddling;*
- (k) *Sounding of any motor vehicle horn (including electronic horns that play music) except as a warning or danger signal, or as required by law;*
- (l) *Construction in a residential district, or within 200 feet of a residential district, unless during working hours and days that are not holidays as defined herein;*
- (m) *The use of any or siren upon any motor vehicle other than police, fire, ambulance, or other official emergency vehicle;*
- (n) *The blowing of any steam whistle attached to any stationary boiler, except as a warning of danger;*
- (o) *The operation of machinery in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates, and containers;*
- (p) *The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale or display of merchandise;*
- (q) *The firing or discharge of firearms or use of fireworks in the streets or elsewhere, except by permit from the police department, or otherwise as permitted by law.*

Sec. 8-16. Exemptions.

The following activities are exemptions from the application of this article:

- (a) *Emergency work in the preservation of public health or safety at any time.*
- (b) *Construction activities associated with street and highway construction.*
- (c) *Construction activity conducted during working hours as defined herein, provided that all equipment is operated in accordance with manufacture's specifications and is equipped with appropriate noise reducing equipment in proper condition;*
- (d) *Sound or noise of safety signals, warning devices, and emergency pressure relief valves;*
- (e) *Church bells between the hours of 7:00 a.m. and 7:00 p.m.;*
- (f) *Sound or noise emanating from street fairs, festivals, or celebrations conducted under the direct supervision by the Town, or pursuant to a permit issued by the Town;*
- (g) *Sound or noise emanating from film and video production activities for which*

permits have been issued by the Town; provided all equipment such as generators are properly muffled;

- (h) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable Federal rules and regulations;*
- (i) Sound or noise from lawful fireworks;*
- (j) Non-commercial lawnmowers and agricultural equipment operated in working hours and only if operated in accordance with manufacture's specifications and with all standard noise reducing equipment in place and in proper condition;*
- (k) Musical accompaniment to parades or military ceremonies;*
- (l) Sound emanating from regularly scheduled athletic events at Town or County parks, athletic facilities, and public schools;*
- (m) Governmental emergency vehicles in the course of performing their official duties;*
- (n) Unamplified noncommercial speeches made from a fixed location in nonresidentially zoned areas;*
- (o) Sound or noise emanating from construction or repair work by public utilities; and*
- (p) Refuse collection vehicles operating during working hours.*
- (q) Activities conducted in compliance with conditions of a Permit to Exceed.*

Sec. 8-17. Permit to Exceed (PTE).

- (a) A person, firm, corporation or other entity (herein, "the Applicant") shall be exempt from the provisions of this article upon obtaining and complying with a Permit to Exceed (PTE). All applications for a PTE shall be fully completed, on a form provided by the Town, and must be submitted to the Town Manager (or designee) at least 48 hours prior to the event for which such permit is needed. A non-refundable processing fee for a PTE will be shown on the Town's schedule of fees and must be paid at the time the application is submitted.*
- (b) No PTE will be issued without payment by the Applicant of a security deposit. The amount of the security deposit shall be determined by the Town Manager on a case-by-case basis, limited to the amount shown on the Town's schedule of fees. The purpose of this deposit is to insure compliance by the Applicant with the conditions included in the PTE. Upon the satisfaction of all the conditions of the PTE, the security deposit shall be promptly refunded to the Applicant. If the Applicant fails to comply with the conditions of the PTE, the security deposit shall be forfeited.*
- (c) No PTE will be issued to an applicant that is an establishment located in a Business or Governmental/Institutional zoning district within the Town, which as part of its business activities presents live performances of music.*
- (d) The criteria for a decision to allow or deny an application for a PTE shall include, by way of example, the following:*
 - 1. The nature of the requested activity;*
 - 2. The previous experience with the applicant as to this article;*
 - 3. The time of the event;*
 - 4. The location of the event;*

5. *The number of people expected to attend the event;*
6. *Other activities in the vicinity of the proposed location; and*
7. *The effect of the activity on any adjacent residential property.*

(e) *A PTE shall specify the date, time period and location to which it applies. The permit shall also prescribe the conditions necessary to minimize the adverse effects the event may have upon the community or surrounding neighborhoods. The Town Manager may require, but shall not be limited to, the following conditions:*

1. *That the sound created by the event not create a noise disturbance;*
2. *That the sound created by the event not exceed a decibel level determined by the Town;*
3. *That the Applicant place sound speakers in such a manner as to not create a noise disturbance;*
4. *That the Applicant change the arrangement of the amplifying equipment or sound instruments upon the request of the Police Department so as to minimize the noise and the potential for noise disturbance related to the position or orientation of the amplifying equipment;*
5. *That adequate provisions be made to ensure the proper cleanup of any litter resulting from the event; and*
6. *That adequate security personnel will be at the event for the purpose of crowd and traffic-control. The adequacy of such security may be determined by the Police Department if so requested by the Town Manager, or his or her designee.*

(f) *All PTEs shall be subject to the following limitations:*

1. *Permits will only be granted for temporary purposes not to exceed eight continuous hours at any one time period;*
2. *No more than two permits shall be allowed per address (person or group of persons) during a six-month period established by the following sentence. January 1 through June 30 shall constitute one six-month period. July 1 through December 31 shall constitute the second six-month period;*
3. *No permit shall be granted for the time period between 1:00 a.m. and 10:00 a.m.*
4. *All noise created outside of the time period of the PTE shall be subject to the other (non-PTE) provisions of this article.*

(g) *Applicants shall cooperate with the Police Department in enforcing this article and shall be personally available at the site of the event during the entire time period for which a permit has been issued.*

(h) *The PTE shall be revoked and the security deposit shall be forfeited if:*

1. *The Applicant fails to be personally present during the entire time period for which the permit has been issued;*
2. *The Applicant fails or refuses to assist the police in enforcing this chapter;*
3. *Sound is created, generated, or produced, directly or indirectly by the permitted activity, that exceeds the limits set by the Town; or*
4. *The Applicant fails to comply with any of the conditions of the PTE.*

(i) Upon revocation of a PTE, the Applicant shall be subject to the other (non-PTE) provisions of this article, just as if no PTE had been granted.

Sec. 8-18. Enforcement and Penalties.

(a) The first violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of \$100.

(b) The second violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of \$200.

(c) The third violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of \$500, and a criminal citation and prosecution under G.S. 14-4. The maximum fine under that statute will be \$500.

(d) The Town Police Department shall issue notices of violation and criminal citations for violations of this article. The notice of violation shall set forth the violated provision(s) of this article, and shall be issued to the owner, or lessee, or other person in charge of the property where the noise disturbance originates, or the person responsible for creating the noise disturbance.

(e) All civil penalties must be paid within 30 days after the receipt of the notice of violation. If the violator does not pay the penalty within 30 days, the Town may recover such penalty, and all subsequently accruing penalties, in a civil action. In the event that it is necessary for the Town to institute a civil action to collect such penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the Town.

Commissioner Amy Patterson moved to approve the Noise Ordinance (second reading), which was seconded by Vice Mayor John Dotson. The vote was 4 to 1 with Commissioner Larry Rogers voting against.

7. Consider Change in Town Board Meeting Day

The Highlands Town Board has traditionally held its regularly scheduled meetings on the first and third Wednesdays of each month. At the last Town Board meeting held on June 15, 2011 it was suggested to seek additional information before making a decision on changing meeting days. On concern was conflicts with other dates. A list of other meetings is shown below:

- The Highlands Fire Department holds its weekly drills every Tuesday at 7PM.
- Appearance Commission meets on first Monday of the month at 5:30PM
- Planning Board meets on fourth Monday at 5:30 PM
- Zoning Board meets on second Wednesday of each month at 5:30PM
- Bingo is held at the Community Building on the first Thursday of the month.
- The Town of Franklin has one meeting per month which is held on the first Monday at 7PM
- Macon County Board of Commissioners has one meeting per month on the second Tuesday at

6PM

- Macon County Economic Development Commission meets on the third Tuesday every quarter.
- The County-Town Meeting is held every four months on the third Thursday
- Thursday's have been consistently been busy nights with other organizations events and meetings. The Highlands Small Town Main Street Program has been struggling with attendance on Thursday meetings due to conflicts with other events and has now moved their meeting date to second Tuesday of each month at 6PM.

It is recommended that the Board consider one Town Board Meeting a month to be held on the first Tuesday at 7PM

There was considerable discussion on this matter in addition to conducting the Town Board meeting once a month, as mentioned by Commissioner Gary Drake, setting special meeting when needed and whether or not Tuesday would work. Commissioner Patterson stated that the Board had tried to have one meeting a month but it did not work. Discussion was had as to public attendance and Mayor Wilkes advised that the public would show up if there was a matter of interest to them. Commissioner DeWolf stated that he was not opposed to the idea of one meeting a month but would prefer two and not on Tuesday because of other meetings being held at 4:00 pm.

Vice Mayor John Dotson moved to change the Town Board meeting day to the first and third Tuesday of the month, beginning August, 2011, was seconded by Commissioner Larry Rogers and the vote was 4 to 1. Commissioner Gary Drake voted no.

8. Resolution to Continue Participation in NC Small Town Main Street Program 2011-2012

The following resolution was presented to the Town Board for review, consideration and approval:

**RESOLUTION
ADOPTING AN AGREEMENT TO CONTINUE PARTICIPATION IN THE
NORTH CAROLINA SMALL TOWN MAIN STREET PROGRAM**

2011-2012

WHEREAS; the North Carolina Department of Commerce, Community Development Office of Urban Development has established a Small Town Main Street Program to provide technical assistance in downtown revitalization, utilizing the Main Street Four-Point Approach™ of Organization, Design, Promotion and Economic Restructuring, to selected small towns in North Carolina; **and**

WHEREAS; towns which were selected to receive a more detailed level of service incorporating all of the Main Street Four Points; **and**

WHEREAS; the Department of Commerce selected the Town of **Highlands** to participate in the program and the Town wishes to continue its participation for an additional year; **and**

WHEREAS; both parties agree that a high level of community participation and commitment is required on the part of the Town and community in order to ensure that the program is as successful as possible: **and**

WHEREAS; reimbursement for travel related expenses will be required of the Town when Small Town Main Street staff travels to **Highlands;**

THEREFORE, BE IT RESOLVED; that the Town agrees to continue its participation in the Small Town Main Street Program and to abide by the following conditions:

1. The Town will actively participate in the Small Town Main Street Program for an additional period of no less than twelve (12) months beginning July 1, 2011.
2. The Town will designate a contact person in the community for the technical assistance team to coordinate with and who will report **required** annual statistical information as well as provide continuity and leadership for the effort.
3. The Town will continue to maintain a volunteer committee and working subcommittees that are representative of the entire community, to provide focus for the program.
4. The Town will continue its support for the volunteer committee and will assist the committee and team in conducting community projects and any other necessary activities.
5. The Town will cooperate with the technical assistance team and support the community vision and plan of action.
6. The Town will continue to implement the plan of action to the fullest extent possible.
7. The Town will continue to develop and actively participate in local and regional partnerships and networks, and share resources and information gained through the Program with other communities in the region.
8. The Town agrees to reimburse the Office of Urban Development for travel related expenses on a monthly basis as submitted when staff travels at the request of the town.

ADOPTED BY THE TOWN BOARD of 6th THIS JULY, 2011.

_____(SEAL)_____
Mayor Clerk

Town Manager Fatland advised that the Resolution for the Small Town Main Street Program, needs to be adopted each year.

Commissioner Gary Drake moved to approve the Resolution Adopting an Agreement to Continue Participation in the North Carolina Main Street Program, which was seconded by Vice Mayor John Dotson and was unanimously approved.

9. Proposed Sidewalk Improvements at New Post Office

This agenda item was reviewed by the Public Works Committee on June 29, 2011. The Board of Adjustment for the Town of Highlands approved on May 11, 2011 the application for a Special

Use Permit for the construction of a new post office on the former site of Wachovia and Furniture South. Jane Woodruff purchased the property and has contracted to design and build a post office to donate to the United States Postal Service. Jane Woodruff has made a stipulation that if the US Postal Service no longer needs the building, the property ownership would revert to the Town of Highlands. The Town Master Plan for Sidewalks requires that a concrete sidewalk be constructed at that location. The Appearance Commission has suggested that a brick sidewalk be constructed. In addition, the Downtown Main Street Program has recommended that the intersection of 106 & Main Street be the welcome entrance to Downtown and having a brick sidewalk would be consistent with Downtown sidewalks. Staff will coordinate the design improvements with the Main Street Committee.

It is recommended that the Board approve the installation of brick sidewalks, curb and gutter and Drainage improvements at the new post office location at an estimated cost of \$45,000 and further direct Town Attorney to prepare language for the stipulation that if the US Postal Service no longer needs the building, the property would revert to the Town of Highlands.

As to the fiscal impact, funds have been included in the FY12 Street Department for Downtown Streetscape Improvements (Line item 10-5600-7300 - \$100,000).

Discussion was had as to the property reverting back to the Town of Highlands, the Town's Master Sidewalk Plan, the public use of the building and brick sidewalks.

Commissioner Dennis DeWolf stated that this is a gift to the Town, that good public access should be provided and the Town should do something more than just the sidewalk as it is the entrance to the Town.

Discussion was also had as to the wording of the restrictions to be placed within the deed.

Vice Mayor John Dotson, reading from the Zoning Ordinance, read the following: *Whenever a new commercial building is constructed on property that adjoins a segment of "The Town of Highlands Master Sidewalk Plan" identified as "Future Commercial," it shall be the responsibility of the owner of the property to construct that segment of said sidewalk which adjoins his property.* Vice Mayor Dotson made no other comment.

Commissioner Dennis DeWolf moved to approve the proposed sidewalk improvements at new Post Office and was seconded by Commissioner Gary Drake. The Motion passed 3 to 2 with Vice Mayor John Dotson and Commissioner Amy Patterson voting against.

10. Planning Board Response to Conditional Zoning Request

The Town Board requested that the Planning Board discuss the Conditional Zoning request from TRI Investment, Inc. for property located at 780 Dillard Road. The Planning Board reviewed the application, and decided not to support the request due to the fact that it could not meet the minimum lot size requirements for a multifamily use.

As a result of the discussion, the Planning Board voted to request the Town Board give them direction to formulate a new zoning district that would allow for multifamily as a conditional use. The Board has no particulars to present at this time, but would start working on the new

district at their July meeting. It is recommended that the Town Board forward the request that the Planning Board to formulate a new zoning district that would allow multifamily as a conditional use.

There was considerable discussion as to multifamily and affordable housing and if they were one and the same. Commissioner Amy Patterson stated that there was already a multifamily zone established and if the matter at hand was affordable housing and inquired if there was something more than “multifamily” zoning.

Mayor Wilkes stated that affordable housing was a good thing to look into and there could be other buildings available.

When asked by the Town Board as to tenants and the amount rent that would be charged, Richard Delany advised that the apartments would be for his workforce and the public. The rent would be between \$500 to \$600 per month, including utilities.

Vice Mayor Dotson stated that the Planning Board needs to consider the number of vacancies of apartments within the Town of Highlands.

Commissioner Gary Drake made a motion to send this matter back to the Planning Board in order for it to explore affordable housing and workforce housing within the Town of Highlands, which was seconded by Commissioner Amy Patterson and the vote was unanimous.

11. Purchase of IPADs

This items was included in the approved FY12 Budget to purchase of IPADs for elected officials and department heads. Staff recommends that IPADs be provided to elected officials as compensation and therefore not be returned to the Town of Highlands upon leaving office. The Town will save significant staff time along with material costs in processing agendas and back-up material by processing electronically.

It is recommended that the Town Board approve purchase of IPADs for elected officials and department heads. It should be noted that elected officials IPADs will be treated as income and will be reflected as W-2 wages.

As to the fiscal impact, funds have been included in the FY12 MIS/GIS Budget.

The Town Board discussed the cost of a base model IPAD (approximately \$600) and the cost of upgrades. It was ultimately decided that the Town would issue checks so that IPADs could be purchased independently and if any upgrades were wanted, that official could then pay for it themselves.

Commissioner Gary Drake made a motion to approve the issuance of checks to the elected officials for the purchase of an IPAD, that will be treated as income and reflected as W-2 wages, which was seconded by Commissioner Dennis DeWolf and was unanimously approved.

12. Discussion of Ordinance Revision and/or Policy Regarding Appearance Commission

Town Attorney William Coward advised the Town Board that presently Section 801 of the Town’s Zoning Ordinance states that the members of the Appearance Commission “shall consist of the

members of the Town of Highlands Planning Board". Mr. Coward also advised that a public hearing would be necessary. Discussion was also had as to the Chairman of the Planning Board not being the Chairman of the Appearance Commission.

The Town Board directed Town Attorney William Coward to draft the Ordinance Revision, presenting the same to the Town Board for review on July 20, 2011 and then set a public hearing.

13. Appointment(s) to Boards and Committees

The Town of Highlands has established several Boards and Committees to assist and advise the Town Board of Commissioners on various topics including, but not limited to, the Zoning Board, Planning Board, Appearance Commission, ABC Board, Scholarship Committee, Advisory Committee for Scholarship Endowment Fund, and the Cemetery Committee.

There have been ordinances and policies created in regards to the appointment, reappointment, terms, etc. The Town has current and upcoming vacancies for the following Town Boards and Committees:

Zoning Board: Alan Fredrick - Re-app 08/04/10 - 07/01/13 (Resigned as of 07/01/11)

Appearance Commission: Thomas Craig - Re-app 05/16/07 - 06/01/10

ABC Board: Mike Thompson - Re-app 06/04/08 - 08/17/11

Scholarship Committee: Susie Schiffli - Re-app 05/16/07 - 07/01/10
Jack Calloway - Re-app 06/07/06 - 07/01/09

Cemetery Committee: Bob Houston - Re-app 06/04/08 - 08/04/11
Jack Mayer - Re-app 05/16/07 - 08/04/10
Mildred Wilson - Re-app 06/07/06 - 08/04/09

Also, the entire advisory committee for the scholarship endowment fund has expired terms. However, with all the current changes with the scholarship fund there is uncertainty that this committee exists or has met or has been replaced with the Scholarship Fundraising Committees for Golf Classic and Fly Fishing Tournaments.

The Town has received the following applications for the vacancies:

Zoning Board: Michael Rogers - 07/06/11 - 07/01/13 (Alan Fredrick's unexpired term)

Appearance Committee: J. Mason Neil - 07/06/11 - 06/01/14

Cemetery Committee: Mallory Phillips - 07/06/11 - 08/04/14

The Town Board was also provided with a current board and committee list.

It is recommended that the Town Board consider and appoint new applicants at will.

Tony Potts, Chairman of the Zoning Board of Adjustment, advised that due to health reasons, David Rohrer resigned from the Zoning Board effective July 6, 2011.

The Town Board directed staff to run more advertisements for vacancies in the local newspapers. Town Manager Fatland advised that the vacancies and applications are on the Town's website.

Commissioner Amy Patterson moved to appoint J. Mason Neil to the Appearance Committee for the term of July 6, 2011 through June 1, 2014, which was seconded by Vice Mayor John Dotson and was unanimously approved.

Commissioner Amy Patterson moved to accept the resignation of David Rohrer from the Zoning Board of Adjustment, move the present two alternates of the Zoning Board of Adjustment to full time members, and appoint Michael Rogers as an alternate, which was seconded by Vice Mayor John Dotson the vote and was unanimous.

14. Proposed Ethics Policy for Town Employees

The Town Board was provided with the following for review and consideration:

CODE OF ETHICS POLICY

Purpose: To establish conduct guidelines for all Town employees in accordance with the following principles:

1. The proper operation of democratic government requires that public employees be independent, impartial and responsible to the people;
2. Governmental decisions and policies shall be made through the proper channels of governmental structure;
3. Public office or employment shall not be used for personal gain; and,
4. The public shall have confidence in the integrity of its government. It is the responsibility of everyone covered by this policy to act in the best interests of the Town at all times and to make certain that s/he refrains from placing himself or herself in positions that may produce conflicts of interest.

Definitions: For the purposes of this policy, the following definitions shall apply:

Business Entity means any business, proprietorship, firm, partnership, person in representation or fiduciary capacity, association, venture, trust or corporation which is organized for financial gain or profit.

Immediate Family Member means a spouse, mother, father, legal guardian, child, sister, brother, grandparent, grandchild and the various combinations of half, step, inlaw and adopted relationships regardless of marital status.

Interest means any direct or indirect pecuniary or material benefit accruing as a result of a contract or transaction which is or may be the subject of an official act or action by or with the Town of Highlands.

Official Act or Action means any legislative, administrative, appointive or discretionary act of any appointed Board or Commission member or elected official, or any action passed by a majority vote of the Highlands' Board of Commissioners.

Employee means any full-time, part-time, regular, probationary, or any temporary employee as defined under Article II, Section 3 of the Town of Highlands Personnel Policy.

Standards of Conduct:

A. Scope. This policy shall apply to all Town employees and may be amended from time to time by official action of the Highlands' Board of Commissioners.

B. Interest in Contract or Agreement. No Town employee shall have or thereafter acquire an interest in any contract or agreement with the Town if s/he will privately benefit or profit from the contracting or undertaking.

C. Use of Official Position. No Town employee shall use his or her official position for private or political gain for themselves or other persons, including serving as an employee, officer, director, or consultant with or on behalf of a competitor or supplier of materials or services; or holding or acquiring any financial interest in the business of any competitor or supplier. They must conduct themselves in such a manner that there is no suggestion of the extracting of private advantage from their employment with the Town. In addition, no Town employee shall misuse their status in such a way as to require, expect, or accept favors from subordinate employees.

D. Disclosure of Information. No Town employee shall use or disclose confidential information gained in the course of or by reason of his or her official position for the purposes of advancing:

1. His or her financial or personal interest;
2. A Business Entity of which s/he is an owner(in part or in whole), an officer or a director;
or
3. The financial or personal interest of an Immediate Family Member or that of any other person.

E. Incompatible Service. The work of the town will take precedence over other occupational interest of employees as pursuant to Article VI, Section 8 of the Town of Highlands Personnel Policy.

F. Gifts. No Town employee shall solicit, accept or receive any gift pursuant to Article VI, Section 5 of the Town of Highlands Personnel Policy. Employees shall not use their positions in any way to coerce, or give the appearance of coercing, another person to provide financial benefit to themselves or to other persons. They shall not accept or offer bribes, kickbacks, payoffs, or other improper incentives or payments to obtain, influence, and/or maintain any transaction or relationship.

G. Unlawful Act. An employee who witnesses another employee engaging in an unlawful act on the job shall report that employee to his/her supervisor. No employee shall engage in off-duty personal conduct which affects an employee's job performance or adversely affects the public trust and confidence placed in town employees. Such conduct includes, but is not limited to, acts of domestic violence and child abuse or neglect.

After the Board reviewed the above, Vice Mayor John Dotson stated that paragraph G could be eliminated. After further discussion, the Board concluded that the majority of the above was already in the personnel manual. Commissioner Amy Patterson discussed ethics training and ethics for public officials.

After further discussion, it was decided that certain employees of the Town would be sent for ethics training, namely the Town Manager, Planning Director/Administrator, all department heads and all new hires for those positions. For existing employees in those positions, ethics training would take place every four years. It was further agreed that Section 18 of the personnel manual would be amended to include this new information.

The Town Board directed Town Attorney William Coward to draft a Resolution and present the same to the Town Board at its next regular meeting on July 20, 2011 for their review and consideration.

15(a). Set Public Hearing for Financing Radio Read Water Meters for July 20, 2011

Commissioner Amy Patterson moved to set July 20, 2011 as the public hearing for Financing Radio Read Meters, which was seconded by Vice Mayor John Dotson and was unanimously approved.

15(b). Appoint Rebecca Shuler as Town Clerk and Secretary to Town Manager

Commissioner Dennis DeWolf moved to appoint Rebecca Shuler as Town Clerk and Secretary to the Town Manager, which was seconded by Commissioner Gary Drake and the vote was unanimous.

16. Closed Session for Personnel and Bowery Road Litigation Matters

Commissioner Amy Patterson moved the Town Board of Commissioners into Closed Session, which was seconded by Vice Mayor John Dotson which was unanimously approved.

The Town Board discussed the remaining Bowery Road litigation case and gave directions to the Town Attorney.

The Town Board discussed the Town Manager Jim Fatland's position.

No action was taken.

Commissioner Amy Patterson moved the Town Board of Commissioners back into Open Session, which was seconded by Vice Mayor John Dotson which was unanimously approved.

Vice Mayor John Dotson moved to terminate the employment of Town Manager Jim Fatland, with cause, effective immediately, which was seconded by Commissioner Amy Patterson and the vote was unanimous.

Mayor Wilkes directed the Town Attorney to set forth the causes in a letter to be placed in Mr. Fatland's personnel file.

16. Adjourn

As there were no further matters to come before the Board of Commissioners, Commissioner Gary Drake moved to adjourn, which was seconded by Vice Mayor John Dotson and upon unanimous vote the Town Board adjourned at 10:30 p.m.

Mayor David Wilkes

Jane J. Capman
Recording Secretary