

## **SPECIAL MEETING OF THE TOWN BOARD OF COMMISSIONERS OF DECEMBER 8, 2011**

Town Board Present: Mayor David Wilkes, Vice Mayor Gary Drake, Commissioner John Dotson, Commissioner Amy Patterson, Commissioner Brian Stiehler and Commissioner Eric Pierson.

Also Present: Town Manager Robert Frye, Planning Director David Clabo, Police Chief Bill Harrell, Town Clerk Rebecca Shuler, Recreation Director Selwyn Chalker, MIS/GIS Director Matt Shuler, Town Attorney William Coward, and Recording Secretary Jane Capman.

### **1. Meeting Called to Order**

Mayor Wilkes called the meeting to order at 7:00 p.m.

### **2. Appointment to Zoning Board of Adjustment**

Mayor Wilkes advised that John Underwood had been nominated to the Zoning Board of Adjustment.

Vice Mayor Gary Drake made a motion to appoint John Underwood to the Zoning Board of Adjustment, which was seconded by Commissioner Eric Pierson and the vote was unanimous.

### **3. Discuss Form of Government with Carl W. Stenberg, III, Professor of Public Administration and Government with the University of North Carolina School of Government**

Mayor Wilkes explained that the Town of Highlands changed from a Mayor-Council with Administrator form of government to a Council-Manager form of government approximately three (3) years ago. The Board voted to change an Ordinance so that the Zoning Administrator and Police Chief would serve under the Town Board, with the other department heads serving under the Town Manager. Mayor Wilkes stated that the Ordinance and the Town's Charter do not match, and by default, the Charter states that all employees report to the Town Manager with the exception of the Town Attorney and possibly the Town Clerk. Mayor Wilkes wanted someone from the North Carolina School of Government to come to Highlands and make all information available as to the different forms of government before making any further changes to the Charter or Ordinances.

Mayor Wilkes introduced Carl W. Stenberg, III of the North Carolina School of Government.

Mr. Stenberg advised that when the Town changed its form of government to Council-Manager, it brought the Town Charter under the North Carolina General Statutes provisions describing that form.

Mr. Stenberg presented charts and explained the Mayor-Council, Mayor-Council with Administrator and Council-Manager forms of government.

Mayor-Council: The voters elect the Mayor and Council, which in turn appoint the City Clerk, City Attorney, Police Chief, Fire Chief, Public Works Director and other Department Heads.

Mayor-Council with Administrator: The voters elect the Mayor and Council who then appoint the City Attorney, City Clerk, some Department Heads and the Administrator. The Administrator would then appoint the other Department Heads.

Council-Manager: The voters elect the Mayor and the Council who then appoint the City Attorney, City Manager and City Clerk. The City Manager appoints the Utilities Director, Fire Chief, Police Chief, Finance Director, Public Works Director and Recreation Director.

Mr. Stenberg explained that in the Mayor-Council form of government without an Administrator, the Council is responsible for policy, administrative duties, setting up committees, and/or member duties, and that the elected officials may be employees or department heads if the town has less than 5,000 people.

In the Mayor-Council form of government with an Administrator, the Council retains policy responsibilities but delegates some or all of the administrative duties to the Administrator. The Administrator's duties are set by Ordinance, not by statute. In this form of government, elected officials may be employees or department heads if the town has less than 5,000 people.

In the Council-Manager form of government, the Council sets policy and delegates all administrative duties to the Manager, whose duties are set by state law. In this form of government, the elected officials may not serve as employees or department heads.

Mr. Stenberg explained that in the Council-Manager form of government, the Town Board hires, fires and directs the Manager in his/her duties while the Manager, who is professionally trained, carries out the Board's directives "faithfully" and is an at-will employee.

The general statutes are very clear as to the roles and responsibilities of the Manager who hires and fires all employees, supervises all departments, upholds city and state laws and regulations, prepares and submits an annual budget, reports on the finance and administrative activities and performs other duties designated by the Council. In this form of government, the Mayor presides at council meetings, calls special meetings, votes to break a tie, and other powers as conferred by the Council. The Council governs and oversees management of the city, confers power to the Mayor and employees, decides the organization of the municipal government and appointments the Manager, who serves at the Board's pleasure.

The general conclusions of the Council-Manager form are that it is more "business-like" and more "efficient" in that the city would be more likely to have sounder finances and stronger management performance. Council-Manager cities are more likely to pursue long-term goals, use strategic planning, base service delivery on need and other professional standards, have ethics codes and boards, and adopt innovative management practices.

As to when a municipality decides to move to a Council-Manager form of government, Mr. Stenberg stated that having an Administrator is often a "first step" and would also depend upon how heavily involved the Board wants to be in the day-to-day operations of the Town. The Council must be willing to make policy and leave the implementation to the Manager. In other words, "entrust" the Manager while the Board gives up control. The city should not move to the Council-Manager form of government until it is ready to give up personnel authority. As to the legal distinction, the Board must revise the Charter, either through the "home rule" procedure or through a local act.

In comparing the differences between a Manager and an Administrator, Mr. Stenberg stated that the Manager's duties are set by state law (G.S. 160A-148) and by Ordinance. The Administrator's duties are set by Ordinance.

As to the Council's role in personnel management, Mr. Stenberg reviewed with the Board the pros, cons, and provided hypothetical cases for the Board's review and consideration.

At the conclusion of the presentation, the Town Board and Town Attorney William Coward discussed with Mr. Stenberg the present Ordinances in place and amending the Town's Charter.

The question of "What is a Local Act?" was asked and Mr. Stenberg stated that Frayda Bluestein of the North Carolina School of Government had a blog, which in part provides the following explanation:

*The North Carolina General Assembly enacts legislation in one of two ways: Either by general law, or by local act. General laws apply, in the context of local government law, across all local governments or specific categories of local governments. Most of the sections of Chapters 160A (cities) and 153A (counties) are general laws. A local act is a law that applies to one or more specific local governments. Although the name might suggest that a local act is something that is done by a local government, that's not the case. The legislative acts of local governments are ordinances. A local act refers to an act of the General Assembly that relates to one or more specific local governments.*

Mayor Wilkes explained that the reasoning of the Board to have the Planning and Police departments report directly to the Board was because they deal with laws. Mr. Stenberg stated that he understood that reasoning but continued by stating that they are not the only department heads that deal with laws. The Parks and Recreation department head deals with laws. Public Works deals with laws. Mr. Stenberg stated, "Why stop with the planning and zoning and police departments?"

Mr. Stenberg stated that the alternative would be to "entrust" the Town Manager. The Town Board is to state to the Town Manager what is expected of him/her. The form of government for the Town will depend upon how much the Town Board wants to be involved.

Robert Frye, Highlands' new Town Manager, stated that he has worked under both forms of government and stated that a "good" Manager gives recommendations and works closely with the Town Board.

Commissioner John Dotson stated that the relationship with the Town Manager is important and raised his concern of the need of an alternative form of government, and whether if the Board does not want to release its authority, it would be considered a "hybrid form", to which Mr. Stenberg advised yes, but that the hybrid form could not be done by Ordinance and that the matter would have to go before the General Assembly to pass a local act.

Mayor Wilkes stated, "We have to have trust in the position and the personality of the Town Manager".

#### **4. Adjournment**

As there were no further matters to come before the Board of Commissioners, Commissioner Amy Patterson moved to adjourn, which was seconded by Vice Mayor Gary Drake and upon unanimous vote, the Town Board adjourned at 8:30 p.m.

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Mayor David Wilkes

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Jane J. Capman  
Recording Secretary

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Robert A. Frye, Jr.  
Town Manager

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Rebecca Shuler  
Town Clerk