

Regular Meeting Minutes of the Town of Highlands Board of Commissioners Meeting of December 13, 2018, at the Highlands Community Building, 71 Poplar Street, Highlands, North Carolina

Town Board Present: Commissioner John Dotson, Commissioner Amy Patterson, Commissioner Brian Stiehler, Mayor Pro Tempore Eric Pierson and Mayor Pat Taylor

Town Board Absent: Commissioner Donnie Calloway

Also Present: Town Manager Josh Ward, Town Attorney Jay Coward, Finance Director Rebecca Shuler, Public Works Director Lamar Nix, MIS/GIS Director Matt Shuler, Police Chief Bill Harrell, Parks & Recreation Director Lester Norris, Planning & Development Director Andrew Bowen, GIS Field Technician Carlton Wheatley and Town Clerk Gibby Shaheen

1. Meeting Called to Order

Mayor Taylor called the meeting to order at 7:00pm.

2. Public Comment Period

There were no comments.

3. Adjust and Approve the Agenda

Mayor Taylor asked to add Ran Shaffner discussing a historical marker as number 12. Commissioner Patterson made a motion to approve the agenda as amended, which was seconded by Mayor Pro Tempore Pierson and the vote was unanimous.

4. Approval of the November 15th, 2018, Regular Meeting Minutes

Commissioner Patterson made a motion to approve the November 15th, 2018, regular meeting minutes as presented, which was seconded by Commissioner Dotson and the vote was unanimous.

5. Reports

A. Mayor

Mayor Taylor stated he and Commissioner Dotson had attended the annual Christmas Dinner and he wanted to thank all of the town crews, including public safety and the office for their hard work during the winter storm.

Mayor Taylor reported he, Town Manager Josh Ward and Police Chief Bill Harrell had met with North Carolina Highway Patrol officer Sergeant Dills and are working with them to reduce tractor trailers on the gorge.

Mayor Taylor stated he had met with the Attorney General's office and expressed concerns regarding the hospital transaction. Mayor Taylor continued that the Attorney General will be concerned with the interest of the smaller hospitals and consider protection. Mayor Taylor expressed concerns to the Attorney General about the buyback mechanics in place for the hospital, and would ask that the people would have the first option to purchase if they are closed.

B. Commissioners and Committee Reports

There were no commissioner or committee reports.

C. Town Manager

Town Manager Josh Ward echoed the Mayor and thanked all the town crews for their hard work. Ward also thanked Public Works Director and Town Engineer Lamar Nix for getting extra crews in to help.

Ward reminded everyone that Town Hall would be closed Monday and Tuesday for Christmas Eve and Christmas Day.

6. Consent Agenda

Public Works Department
Police Department
Parks & Recreation Department
Planning & Development Department
Treasurer's Report

Commissioner Stiehler made a motion to accept the consent agenda as presented, which was seconded by Commissioner Patterson and the vote was unanimous.

7. Public Hearing: Aerial Fiber Construction Loan

A. Open Public Hearing

Mayor Pro Tempore Pierson made a motion to open the public hearing at 7:11pm, which was seconded by Commissioner Dotson and the vote was unanimous.

B. Staff Comments/Recommendation

Finance Director Rebecca Shuler stated for the LGC to accept an application from the Town to obtain financing it requires the approval of the Resolution and public hearing.

C. Public Comments

Griffin Bell expressed his concerns regarding borrowing money to build something that can be built by a private enterprise. Bell is also concerned that the people would be on the hook for the payback of the money and asked for it to be looked at very carefully perhaps by a committee. Bell also asked if a cost benefit had been done, was it in writing and the public needs the opportunity to see it. Bell also expressed concerns that the loan would be with the contractor. Mayor Taylor told Bell there was a committee, Mayor Pro Tempore Pierson and Commissioner Patterson and they have met with consultants advising the legalities and financials of the project.

Bill Edwards stated he had worked 25 years in the banking business and when obtaining a loan you had to have a source of repayment and it needed to be made public for what the downside would be and was the public obligated for the repayment. Mayor Taylor answered the Reserve Funds we currently have cover the loan. Mayor Taylor continued that for the economic development and our citizens we are on the cutting edge in small communities, it is an uphill battle to obtain service and we are trying to work it out with Wide Open Network. Mayor Taylor added that it is a smart fiber network for our utilities as well.

Nin Bond expressed concerns for private enterprise and the fact that some of the utility poles are not tall enough and don't meet the standards. Bond stated the Town needed to focus first on the infrastructure before spending money other places.

Commissioner Dotson asked MIS/GIS Director Matt Shuler how many poles were out of compliance. Shuler answered he didn't have a firm number, but part of the money being borrowed included putting all poles into compliance. Shuler stated that Frontier and Northland had pole violations and the first wave had been corrected. Shuler continued that GIS Field Technician Carlton Wheatley had completed spot checks for the first wave and the second wave of corrections should be complete in 3 months.

Commissioner Dotson stated over the years it has been discussed multiple providers and insuring for the future and providing space, and asked if the proposal insures the compliance and this price.

MIS/GIS Director Matt Shuler stated it is the goal to add taller poles and build fiber for all to use, so no more congestion and wouldn't be discriminate and would facilitate that is what we envisioned.

Commissioner Dotson stated once the fiber is put in any provider would have access to the fiber.

Mayor Pro Tempore Pierson stated that the Town was still in Contract negotiation.

Commissioner Patterson clarified that the Town of Highlands borrows the money once a solid number is received from a contractor to go to the LGC, so this is the next step in the process. Commissioner Patterson added that we have looked at the finances and what we have and we can pay for it and the Town is responsible, if the LGC gives us the ability.

D. Close Public Hearing

Commissioner Patterson made a motion to close the public hearing at 7:35pm, which was seconded by Commissioner Dotson and the vote was unanimous.

E. Council Action

Mayor Pro Tempore Pierson made a motion to approve the Resolution which was seconded by Commissioner Patterson and the vote was unanimous.



**Resolution Approving an Installment Financing Contract and a Deed of Trust with Respect Thereto and Delivery Thereof and Providing for Certain Other Related Matters
Resolution No. 2018-10-Res**

WHEREAS, the Town of Highlands, North Carolina (the “Town”) is a valid existing municipal corporation of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “State”);

WHEREAS, the Town has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the Board of Commissioners of the Town (the “Board of Commissioners”) has determined that it is in the best interest of the Town to (a) enter into an installment financing contract (the “Contract”) with BB&T (USA) (the “Bank”) in order to provide for a Fiber Optic Network Construction Services and smart city services and applications (the “Project”) and (b) create a security interest in the real property on which the Project will be located and the improvements thereon (the “Mortgaged Property”) through a deed of trust, security agreement and fixture filing (the “Deed of Trust”);

WHEREAS, the Project will be owned and facilitated by the Town;

WHEREAS, the Town hereby determines that the Project will permit the Town to carry out public functions that it is authorized by law to perform; and that entering into the Contract and the Deed of Trust are necessary and expedient for the Town by virtue of the findings presented herein;

WHEREAS, the Town hereby determines that the Contract allows the Town to purchase the Project and take title thereto at a favorable interest rate currently available in the financial marketplace and upon terms advantageous to the Town;

WHEREAS, the Town hereby determines that the estimated cost of the Project is an amount not to exceed \$4,595,372.35 and that such cost of the Project exceeds the amount that can be prudently raised from currently available appropriations,

unappropriated fund balances and non-voted bonds that could be issued by the Town in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of financing the Project pursuant to the Contract is expected to exceed the cost of financing the Project pursuant to a bond financing for the same undertaking, the Town hereby determines that the cost of financing the Project pursuant to the Contract and Deed of Trust and the obligations of the Town there under are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of the Project; and (3) no revenues are produced by the Project so as to permit a revenue bond financing;

WHEREAS, the Town has determined and hereby determines that the estimated cost of financing the Project pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the Town does not anticipate a future property tax increase to pay installment payments falling due under the Contract;

WHEREAS, the attorney for the Town has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina;

WHEREAS, no deficiency judgment may be rendered against the Town in any action for its breach of the Contract, and the taxing power of the Town is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the Town is not in default under any of its debt service obligations;

WHEREAS, the Town's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the Town has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

WHEREAS, past audit reports of the Town indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the Town has not been censured by the North Carolina Local Government Commission (the "LGC"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, the Board of Commissioners conducted a public hearing with respect to the Project on December 13, 2018 to receive public comments on the Project, the proposed financing, the Contract and the Deed of Trust;

WHEREAS, the Town will file an application with the LGC for approval of the LGC with respect to the Town entering into the Contract in an aggregate principal amount of not to exceed \$4,595,372.35;

WHEREAS, there has been made available to the Board of Commissioners the forms of the Contract and the Deed of Trust (collectively, the "*Instruments*"), which the Town proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing at an interest rate as specified in the Instruments; and

WHEREAS, it appears that each of the Instruments is in appropriate form and is an appropriate instrument for the purposes intended;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF HIGHLANDS, NORTH CAROLINA, AS FOLLOWS:

Section 1. **Application to LGC.** That the Town Manager is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the City and its financial condition as may be required by the LGC.

Section 2. **Approval, Authorization and Execution of Contract and Deed of Trust.** The Town hereby approves the Project in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the Town in accordance with its terms. The Town hereby approves the amount advanced by the Bank to the Town pursuant to the Contract in an aggregate principal amount not to exceed \$4,595,372.35, such amount to be repaid by the Town to the Bank as provided in the Contract. The form, terms and content of the Contract and the Deed of Trust are in all respects authorized, approved and confirmed, and the Mayor, the Town Manager and the Town Clerk or their respective designees are each authorized, empowered and directed to execute and deliver the Contract for and on behalf of the Town, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Contract and the Deed of Trust, the Mayor, the Town Manager and the Town Clerk or their respective designees are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract and the Deed of Trust as executed.

Section 3. **Further Actions.** The Mayor and the Town Manager are each hereby designated as the Town's representatives to act on behalf of the Town in connection with the transactions contemplated by the Instruments, and the Mayor and the Town Manager are each authorized and directed to proceed with the Project in accordance with the terms of the Instruments, and to seek opinions on matters of law from the Town Attorney, which the Town Attorney is authorized to furnish on behalf of the Town, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The Town Manager is hereby authorized to engage and consult with such attorneys and other professionals as he deems necessary to complete the financing contemplated by the Contract. The Mayor and the Town Manager are each hereby authorized to designate one or more employees of the Town to take all actions which the Mayor and the Town Manager are authorized to perform under this Resolution, and the Mayor and the Town Manager or their designees are each in all respects authorized on behalf of the Town to supply all information pertaining to the transactions contemplated by the Instruments. The Mayor, the Town Manager and the Town Clerk are each authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Instruments or as they may deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 4. **Repealed.** All motions, orders, resolutions, ordinances and parts thereof in conflict herewith are hereby repealed.

Section 5. **Severability.** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration does not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. **Effective Date.** This Resolution is effective on the date of its adoption December 13, 2018.

Upon motion duly made and seconded, the resolution was unanimously adopted by the Board of Commissioners at a regular meeting held on the 13th day of December, 2018, in the Highlands Community Building, 71 Poplar Street, Highlands, North Carolina.

This the 13th day of December, 2018.

Patrick L. Taylor, Mayor

ATTEST:

Gilberta B. Shaheen, Town Clerk

8. 2018 Audit Presentation

Cassie Wilson from Martin, Starnes & Associates presented the annual audit overview.

9. Agreement for the Resurfacing of a Portion of N. 5th Street & Carolina Way by the N.C. Dept. of Transportation

Public Works Director and Town Engineer Lamar Nix stated Town Staff met with NCDOT officials concerning the paving of Main Street, US28 and US64, and the idea to piggyback and reduce costs for paving 5th Street and Carolina Way. Carolina Way was not in this year’s budget, but thought it was a good one to add because of the breakdown. Nix stated his recommendation is to approve the Agreement and get the streets paved with costs of \$147,500, and if it’s under that amount we will get reimbursed and if it’s more we pay the difference.

Commissioner Patterson asked Town Manager Josh Ward if a Budget Amendment was needed. Ward answered that we have \$192,000 in the budget for resurfacing which included Satulah, but it is better to wait to pave Satulah until next year’s budget when the Water Tank construction was complete, so no Budget Amendment is required.

Commissioner Patterson made a motion to approve the Agreement which was seconded by Mayor Pro Tempore Pierson and the vote was unanimous.

NORTH CAROLINA
MACON COUNTY

RESURFACING AGREEMENT
DATE: 11/20/2018

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

WBS Elements: 36249.3966

TOWN OF HIGHLANDS

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the “Department” and the Town of Highlands, hereinafter referred to as the “Municipality”.

WITNESSETH:

WHEREAS, the Department and the Municipality propose to make certain improvements under WBS Element 36249.3966 in Macon County; and,

WHEREAS, the Municipality has agreed to participate in the cost of the project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

SCOPE OF THE PROJECT

1. The Project consists of leveling and resurfacing 5th Street from Main Street to 100 feet past Carolina Way and Carolina Way from US 64 to 5th Street in Highlands.

PHASES OF WORK

2. The Department shall be responsible for phases of the project which include planning, design, construction and contract administration. All work shall be done in accordance with departmental standards, specifications, policies and procedures.

FUNDING

3. The Municipality shall reimburse the Department one hundred percent (100%) of the actual cost of all work performed by the Department, including administrative costs. Based on the estimated cost of \$147,900, the Municipality shall submit a check to the Department's Division Engineer upon partial execution of this Agreement by the Municipality. Upon completion of the project, if actual costs exceed the amount of payment, the Municipality shall reimburse the Department any underpayment within sixty (60) days of invoicing by the Department. If the actual cost of the work is less than \$147,900, the Department shall reimburse the Municipality any overpayment. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23.

UTILITIES AND RIGHT OF WAY

4. The Municipality shall accomplish the relocation and/or adjustment of any and all utilities in conflict with the construction of the project. Said work shall be accomplished in a manner satisfactory to the Department, and without cost to the Department.
5. It is understood by all parties hereto that all work shall be contained within existing right of way. However, should it become necessary, the Municipality shall provide any required right of way and/or construction easements at no cost or liability whatsoever to the Department. Acquisition of right of way shall be accomplished in accordance with State procedures. The Municipality shall indemnify and save the Department harmless from any and all claims for damages that might arise on account of damage to public or private property and right of way acquisition, drainage and construction easements for the construction of the project.

MAINTENANCE

6. Upon completion of the Project, only those improvements that are within the state-owned right of way shall be considered on the State Highway System and owned and maintained by the Department.

ADDITIONAL PROVISIONS

7. The Department shall not be liable and shall be held harmless from any and all claims that might arise on account of the Municipality negligence and/or responsibilities under the terms of this agreement and/or project.
8. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

ATTEST:

TOWN OF HIGHLANDS

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

Approved by _____ of the local governing body of the Town of Highlands as attested to by the signature of Clerk of said governing body on _____ (Date)

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Federal Tax Identification Number

(SEAL)

Remittance Address:

Town of Highlands

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

PRESENTED TO BOARD OF TRANSPORTATION ITEM O: _____

10. Main Street Planter Discussion

Mayor Pro Tempore Pierson stated it was a continuation of discussion from committee meeting and the state approved the variance. Mayor Pro Tempore Pierson added after the meetings he had citizens request more trees to make it look better aesthetically, and presented a different mock up adding more trees.

Harry Bears stated that a lot of people don't want them and expressed disappointment that this was the most non-transparent discussion.

Jerry Moore stated we came here to find a reasonable compromise and came to one and people were commenting on it was fair and we felt we were heard. Moore continued that it was expected by the business owners to vote on the two trees and he was disappointed that another plan had been presented. Moore stated he felt the Board should vote on what was agreed upon or put it back out there.

Town Manager Josh Ward stated Commissioner Calloway was ill and unable to be at the meeting but supported the two trees, but if it was different he wanted it to go back to the committee.

Mayor Taylor asked to send it back to the Land Use Committee, Lamar and Chamber to meet and come back to January meeting, inform Bob Kieltyka and coordinate as soon as possible.

11. Financial Matters: Budget Amendments

- **Community Building Roof Replacement**
- **Code Enforcements Position & Equipment**

Town Manager Josh Ward stated that the Community Building had some leaks occurring and the roof needed to be replaced. Ward continued the amount quoted included shingles replaced, removal of skylights and a ridge vent. Staff and Recreation Committee recommendation is to go ahead and do the repairs.

TOWN OF HIGHLANDS BUDGET AMENDMENT
AMENDMENT # _____

December 13, 2018

FROM: General Fund



DEPARTMENT: Public Buildings
EXPLANATION: Community Building Roof

Account	Description	Increase/Decrease	Debit	Credit
1. 10-3100-0910	Fund Balance Appropriated ~ General Fund	Increase		\$21,500.00
10-5700-7320	Capital Outlay/Buildings	Increase	\$21,500.00	
		Subtotals	\$21,500.00	\$21,500.00
		Totals	\$21,500.00	\$21,500.00

Approved by Town Manager

Action by Town Board

Approved and Entered on Minutes Dated

Finance Director

Commissioner Stiehler made a motion to approve the budget amendment, which was seconded by Commissioner Patterson and the vote was unanimous.

Town Manager Josh Ward state for several months the plan has been to split planning director and code enforcement officer under the police department. Ward continued the Budget Amendment covered heavy on wage of the salary, over time, truck, topper, training and uniforms. Ward state the position would require a sworn officer.

Commissioner Patterson stated the position would be out in the community, so mainly an outside job enforcing and separating the positions would help find a planner easier.



FROM: General Fund

DEPARTMENT: Police Department

EXPLANATION: Code Enforcement Salary & Equipment Expenses & Full Time 84 vs. 86 hour and Holiday pay amendments

Account	Description	Increase/Decrease	Debit	Credit
1. 10-3100-0910	Fund Balance Appropriated ~ General Fund	Increase		\$119,000.00
10-5100-0205	Salaries & Wages	Increase	\$68,000.00	
10-5100-1400	Travel, School & Training	Increase	\$1,200.00	
10-5100-3600	Uniforms	Increase	\$10,000.00	
10-5100-7400	Capital Outlay/Equipment	Increase	\$39,800.00	
	Subtotals		\$119,000.00	\$119,000.00
	Totals		\$119,000.00	\$119,000.00

Approved by Town Manager

Action by Town Board

Approved and Entered on Minutes Dated

Finance Director

Commissioner Patterson made a motion to approve the budget amendment, which was seconded by Commissioner Dotson and the vote was unanimous.

12. Historical Marker Request for Moccasin War

Ran Shaffner requested permission to place a monument on Main Street commemorating the legend of the Moccasin War. The sign will be 18x20x30 and will be 4 foot off the ground and the idea is to place it where it occurred, between Highlands Inn and Madison's.

Commissioner Patterson made a motion for the Mayor to write a letter to the NC Folklore Institute to approve the marker, which was seconded by Commissioner Stiehler and the vote was unanimous.

13. Adjournment

As there were no further matters to come before the Board of Commissioners, Commissioner Dotson moved to adjourn which was seconded by Mayor Pro Tempore Pierson and upon a unanimous vote, the Town Board adjourned at 9:00pm.

 Patrick Taylor
 Mayor

 Gilberta B. Shaheen
 Town Clerk