

REGULAR TOWN BOARD OF COMMISSIONERS OF JULY 15, 2009

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

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

1. Call to Order

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

2. Approve agenda

The agenda was amended to add item 16, Recreation Master Plan.

Vice Mayor Amy Patterson requested that Item H (Methodist Church Rezoning Request from B-3 to B-1) of the Consent Agenda be removed from the Consent Agenda so that it could be discussed.

Vice Mayor Amy Patterson moved to approve the agenda as amended, was seconded by Commissioner Hank Ross and was unanimously approved by the Town Board.

3. Approve minutes of June 10, 17, 24 & July 1, 2009

Approve Minutes of June 10, 2009

Commissioner Hank Ross moved to approve the Minutes of June 10, 2009, seconded by Commissioner John Dotson and the Minutes of June 10, 2009 were unanimously approved by the Town Board.

Approve Minutes of June 17, 2009

Vice Mayor Amy Patterson expressed the need for clarification as to Item I, Old Jail Lease with Highlands Historical Society in that the typographical errors stated where in fact actual dates and Vice Mayor Patterson wanted that clarification for the record.

Vice Mayor Amy Patterson moved to approve the Minutes of June 17, 2009, seconded by Commissioner Hank Ross and the Minutes of June 17, 2009 were unanimously approved by the Town Board.

Approve Minutes of June 24, 2009

Commissioner Dennis DeWolf moved to approve the Minutes of June 24, 2009, seconded by Vice Mayor Amy Patterson and the Minutes of June 24, 2009 were unanimously approved by the Town Board.

Approve Minutes of July 1, 2009

Commissioner Hank Ross moved to approve the Minutes of July 1, 2009, seconded by Vice Mayor Amy Patterson and the Minutes of July 1, 2009 were unanimously approved by the Town Board.

4. Public Comments

Frank James of 539 Laurel Street, Highlands appeared before the Town Board and expressed his thanks that the Board was addressing the flood issue. Mr. James explained that his property is now considered to be in a flood zone and advised that his mortgage company has given him a deadline of August 18, 2009 to furnish proof of flood insurance or it would have to be force placed. He has contacted Wayah Insurance to obtain the necessary insurance but to date has had no luck. Mr. James further advised that his property had been listed for sale but it was necessary that it be removed from the market until the flood insurance issue was handled. Mr. James requested that the Town move quickly to fix the problem.

Zoning Administrator Joe Cooley explained that the Town of Highlands is in the process of reviewing a flood ordinance in response to the new maps adopted by FEMA regarding floodplains. A Special Joint Meeting of the Board of Commissioners and the Planning Board is scheduled for July 20, 2009 and at that time, Randy Mundt, Outreach Coordinator, Acting NFIP Coordinator will appear and explain the requirements and impacts of the ordinance.

Zoning Administrator Joe Cooley explained that time is of the essence in understanding and reviewing the proposed ordinance. As a result of the adoption of the new maps, which include floodplains in Highlands for the first time, many homeowners in the flood zone are having problems obtaining financing. Banks are requiring evidence of flood insurance however the same is not available from FEMA until a local ordinance is adopted.

The floodplain maps were adopted on June 4, 2009. FEMA gives jurisdictions one year to adopt a local ordinance. In essence, the Town of Highlands has until June, 2010 to adopt an ordinance without penalties, however, banks are requiring proof of insurance immediately. The Planning Board provided preliminary information and model language of the ordinance in May, 2009 but no action could be taken until final maps were adopted in June, 2009 by FEMA. The Board of Commissioners have forwarded the ordinance to the Planning Board for review and comment as required by state statute.

Mr. Cooley explained that as this is an amendment to the Code of Ordinances, it must go through legal process of the Planning Board review, advertisement, public hearing and action by the Board of Commissioners. The legal process takes time and the only possible way to expedite the matter was to set special meeting. It is Mr. Cooley's hope that after the meeting on July 20, 2009 and the presentation by Randy Mundt, that the Planning Board meeting set for July 27, 2009 will be used to focus on the ordinance and get it back to the Board of Commissioners in a timely matter.

Commissioner Hank Ross moved set July 20, 2009 for Joint Meeting with Planning Board for FEMA Flood Hazard Map Presentation, was seconded by Vice Mayor Amy Patterson and was unanimously approved by the Town Board.

5. Reports

A. Mayor

Mayor Mullen discussed setting July 23, 2009 for the Joint Meeting with Macon County and Town of Franklin as referenced in the Consent Agenda to take place at the Mill Creek Country Club.

B. Committees

Town Manager Jim Fatland advised that the Parks & Recreation Department would provide a report at a later date.

C. Town Manager

Town Manager Jim Fatland expressed his thanks to the Chamber of Commerce for the wonderful get together held on July 14, 2009. Mr. Fatland and his wife met many wonderful people.

Commissioner Hank Ross expressed his sincere thanks to Northland Cable in getting the Atlanta Braves on their cable system.

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 June 30, 2009
- F. Monthly Calendar
- G. Grant Status Report
- H. Methodist Church Rezoning Request from B-3 to B-1
- I. Set July 20 for Joint Meeting with Planning Board for FEMA Flood Hazard Map Presentation
- J. Set July 23 for Joint Meeting with Macon County and Town of Franklin

Item H (Methodist Church Rezoning Request from B-3 to B-1) of the Consent Agenda was pulled for discussion.

The Methodist Church has submitted a rezoning request and it is recommended to the Town Board that the same be referred to the Zoning Board.

Much discussion was had as to the reason behind the request for the rezoning and it was revealed that not one Board Member knew the real reason as no plan had been presented. Vice Mayor Amy Patterson questioned which property it was and

concluded that it should be sent to the Planning Board. Zoning Administrator Joe Cooley presented the Town Board members with photographs and a site plan, which shows that the property in question as a large parcel. Vice Mayor Amy Patterson stated that there is a huge difference between B-III and B-I designation.

Commissioner Hank Ross felt that the church should think of a different rezoning request and questioned what did the church want and why were they requesting it and the need for better information. Zoning Administrator Joe Cooley suggested to the church that it move for a conditional rezoning but was advised that the church was not in favor of that.

Vice Mayor Amy Patterson stated that she was very uncomfortable with the matter at hand and was not in favor of granting the request at this time. Mayor Muller concurred and stated that more information was needed to be presented to the Town Board.

Commissioner Dennis DeWolf raised his concerns with regards to the parking requirements. Zoning Administrator Joe Cooley explained to the Town Board how the property was being utilized now. Commissioner Hank Ross stated that he wanted to accommodate the church's request but concurred with Vice Mayor Patterson who further stated that she did not want to reject the request but wanted to know what the church really wanted.

Vice Mayor Amy Patterson moved to reject the Methodist Church Rezoning Request from B-3 to B-1, was seconded by Commissioner Hank Ross and the Methodist Church Rezoning Request from B-3 to B-1 was unanimously rejected by the Town Board.

Vice Mayor Amy Patterson moved to approve the Consent Agenda as amended, seconded by Commissioner Hank Ross and the Consent Agenda as amended was unanimously approved by the Town Board.

7. Public Hearing: Voluntary Annexation Filed by Nancy Hester

Mayor Mullen opened the public hearing.

On May 25, 2009, Nancy E. Hester and Martha L. Hester, owners of Lot 44, Section 5, Satulah Ridge Subdivision, requested annexation. The owners advised that they believed that the subject property was within the Town of Highlands' limits as the tax bill showed charges for Highlands City Tax which they have been paying.

Zoning Administrator Joe Cooley advised that he recommends the annexation.

There were no public speakers and Mayor Mullen closed the public hearing.

Vice Mayor Amy Patterson moved to approve the Voluntary Annexation Filed by

Nancy Hester, was seconded by Commissioner Dennis DeWolf and the same was unanimously approved by the Town Board.

8. Animal Control Resolution

The Town Board was advised that the Ordinance would be in effect within the Town of Highlands' city limits and that of the ETJ (extraterritorial jurisdiction). Further, discussion was had as to the differences between the Town's ordinance and that of Macon County.

Town Attorney William Coward raised his concern regarding Section 90-10, Notice in Case of Injury, and its provisions regarding notification and questioned Police Chief Bill Harrell as to the types/classification of animals it would be concerned with. Police Chief Bill Harrell further stated that he was in favor of the Ordinance.

Mayor Mullen addressed the public and Board Members and read the following resolution:

**RESOLUTION IN SUPPORT OF MACON COUNTY
ANIMAL CONTROL ORDINANCE**

WHEREAS, the Macon County Board of Commissioners has adopted and amended an ordinance for the regulation of certain animals; and

WHEREAS, Section 90-4 of said ordinance limits the effective areas to all areas of Macon County outside the corporate limits and extraterritorial jurisdiction of any municipality; and

WHEREAS, the Town of Highlands Board of Commissioners are desirous to have Macon County Animal Control enforce said ordinance within the corporate limits and extraterritorial jurisdiction of the Town of Highlands; and

NOW THEREFORE, BE IT RESOLVED:

That the Town of Highlands Board of Commissioners do hereby approve and authorize that the Macon County Animal Control Ordinance be enforced within the corporate limits and extraterritorial jurisdiction of the Town of Highlands.

Approved this 15th day of July 2009.

Attest:

Approved:

Town Clerk

Mayor

Commissioner Larry Rogers moved to approve the Animal Control Resolution, seconded by Commissioner Dennis DeWolf and the Animal Control Resolution was unanimously approved by the Town Board.

9. Mirror Lake Sewer Project Contract Award

Bids were opened on June 25, 2009 for the Mirror Lake Sewer Project. The estimated construction cost was \$3.6 million dollars. The Town received nine bids for the project. McGill Associates reviewed the bids. By recommendation of McGill and the Town Attorney, the bid was rejected. The next low bid was from Stillwell Enterprises of Sylva, N.C. in the amount of \$2,171,776.00. All bid requirements were met in the Stillwell bid.

Town Engineer Lamar Nix advised the Town Board that although Spur Construction, LLC of Waynesville was the lowest bidder however, the information submitted by them documenting their "Good Faith Effort" to solicit minority-owned businesses for the project did not meet the requirements of the bid documents or the North Carolina General Statutes. The documentation was also reviewed by the Town Attorney who concurred.

It is recommended to the Town Board to award the Mirror Lake Sewer Project to Stillwell Enterprises, Inc. in the amount of \$2,171,776.00 contingent on approval by the North Carolina Division of Water Quality (DWQ) and adopt a Resolution of Tentative Award.

As to the fiscal impact, the Town of Highlands received a grant for \$1.5 million and a \$1.5 million interest free loan. The low bid including design is well below this amount and no additional local funds will be needed. It will not be necessary to use capital reserves.

Commissioner Hank Ross moved to approve the Mirror Lake Sewer Project Contract Award to Stillwell Enterprises, Inc., was seconded by Vice Mayor Amy Patterson and was unanimously approved by the Town Board.

Vice Mayor Amy Patterson moved to adopt a Resolution of Tentative Award regarding the Mirror Lake Sewer Project Contract Award to Stillwell Enterprises, Inc., was seconded by Commissioner Hank Ross and was unanimously approved by the Town Board.

10. Harris Lake Sewer Change Order

The citizens who are adjacent to the Harris Lake Project have met with Town Engineer/ Public Services Administrator Lamar Nix to discuss two extensions to the project that would provide sewer service to their properties. The two extensions to considered are Lynn Lane and Satulah Ridge Lane.

As to Lynn Lane, there are at least four services that would be connected, two immediately and two or three would follow within the next year with an estimated cost of \$45,117.36.

As to Satulah Ridge Lane, this line would serve the annexed lots. Town Manager Jim Fatland advised that he has had contact with at least two of the owners that are requesting service. The estimated cost would be \$40,185.84.

The total estimated cost for both extensions is \$85,303.20.

It is recommended to the Town Board that it approve a thirty (30) day extension to contract for rain/snow days and to consider each extension.

Town Engineer/ Public Services Administrator Lamar Nix advised that all easements are in place. As to the Satulah Ridge Lane, Mr. Nix further advised that there are no existing homes on the lots and all have been surveyed.

Mr. Nix advised that the above mentioned costs have come from the contractor doing the Harris Lake Sewer Project and thus the reason for the change order.

Commissioner Larry Rogers stated that it made no sense to run lines to vacant lots and also raised his concern that maybe contracting with a local contractor would be more cost effective. Commissioner Hank Ross voiced his agreement with Commissioner Rogers to do the Lynn Lane project but hold off on the Satulah Ridge Lane project for now since there are no homes there.

Commissioner Dennis DeWolf questioned Lamar Nix as to the purpose of including Satulah Ridge Lane now and Mr. Nix advised that the Town was well under budget for the Harris Lake Project. Commissioner John Dotson felt that even though the project was under budget, it was not a reason to spend the money and further suggested that maybe the Town should consider a "sewer availability fee".

Commissioner Hank Ross questioned if there would be a problem using another contractor and suggested that maybe some comparison shopping be done to find the best price.

Commissioner Larry Rogers moved to approve the Harris Lake Sewer Change Order for Lynn Lane for DPI, was seconded by Commissioner Hank Ross and the same was unanimously approved by the Town Board.

Commissioner John Dotson moved to forgo the Harris Lake Sewer Change Order for Satulah Ridge Lane, seconded by Commissioner Hank Ross and the Town Board to no further action.

Vice Mayor Amy Patterson moved to approve a thirty (30) day extension to contract for rain/snow days, was seconded by Commissioner Hank Ross and was unanimously approved by the Town Board.

11. Update from Highlands ABC Board on Store Relocation & Renovation

David Wilkes, Chairman of the Highlands ABC Board spoke to the Town Board and advised that on July 6, 2009, the Highlands ABC Store opened at its new location in the Highlands Plaza. Mr. Wilkes explained that during 2008, the ABC Board explored numerous sites for the new store and was advised in January, 2009 that 6,000 sq. feet of space would be available. Highlands ABC Board negotiated a lease with Margaret O'Donnell, owner of Highlands Plaza, for 4,800 sq. feet for twenty (20) years. The lease began on January 1, 2009. The ABC Board hired Potts Construction to refit the interior and the design work was provided by Design Plus who specializes in ABC Store design and fixtures. Design Plus provided all the floor coverings and store fixtures. The ABC Board requested that Potts Construction use all local subcontractors. All electrical, plumbing, carpentry and painting were completed by Potts crews and local subcontractors.

As of July 15, 2009, the following are the finished costs:

Potts Construction	\$255,239.26
Design Plus	\$79,340.13
Furniture, file cabinets, carpet, window coverings, computers	\$17,312.14
Total to date	\$351,891.53

The build out costs averaged \$53.17 per sq. ft. with the finished costs averaging \$69.70 per sq. ft.

David Wilkes further advised that the furniture and file cabinet purchases, while not directly related to the construction were capital equipment purchases necessary due to the age and condition of the existing equipment. The computer hardware and software updates were normal updates and would have occurred regardless of location.

The total capital improvement fund balance prior to any payment was \$434,818.76. After all payments are made totaling \$351,891.53 the remaining balance of \$82,927.23 will be disbursed, the Capital Improvement Account will be closed and normal disbursements will continue.

Mr. Wilkes and the ABC Board wanted to publicly thank everyone who contributed to the completion of the project. A special thanks was given to Sandra Baty, ABC store

supervisor for not only operating the existing store, but also for overseeing the work at the new location. Special thanks also went to Bobby Potts and Sam Potts of Potts Construction for the superior job of coordinating and supervising construction. Additional thanks were given to the staff of the Highlands ABC store who came together to make the move to the new store by working the 4th of July, 2009 weekend without losing a single day of operation and only one (1) broken bottle.

The Highlands AC Board is confident that the improvements made by the move will pay off over the years with increased revenue for all the recipients of ABC distributions. Mr. Wilkes further stated that sales were up 13% and was confident that sales would continue to go up.

Commissioner John Dotson advised that he had been in the store at the new location, admired the work done and stated that “it is a good looking ABC Store”.

As this was merely a verbal presentation for the Town Board’s information, no action was necessary and none was taken.

12. Greenway Project Request

Ran Shaffner, Highlands Plateau Greenway spoke to the Town Board and explained the request for first quarter funding of the Greenway work as allocated in the 2009-2010 budget as follows:

Category	Annual	July-September
Consulting	\$5,000.00	\$1,000.00
Bear Pen	\$41,800.00	\$21,000.00
Tools	\$1,000.00	\$250.00
Brochures	\$2,200.00	\$2,200.00
Rock	\$20,000.00	\$10,000.00
Summer Hire	\$3,000.00	\$3,000.00
TOTAL	\$73,000.00	\$37,450.00

Mr. Shaffner passed out photographs to the Board members to show the work that had been done to date. Mr. Shaffner stated that the disbursement of the \$21,000.00 for Bear Pen was to continue the work being done there. Commissioner John Dotson questioned if the disbursement asked for of \$37,450.00 would finish the trail at the recreation park and was informed by Mr. Shaffner that it would.

Mayor Mullen expressed his thanks to all for the work done to date.

Commissioner Hank Ross moved to approve the request for first quarter funding of the Greenway work as allocated in the 2009-2010 budget, was seconded by Vice Mayor Amy Patterson and the same was unanimously approved by the Town Board.

13. Resolution to Surplus 1993 Ford F150 Pick-Up Truck

Town Manager Jim Fatland advised the Town Board that this particular vehicle was in bad shape and unsafe to drive. Mr. Fatland further stated that an ad would be placed to solicit bids and there would be no minimum bid due to the condition of the vehicle. Town Engineer/ Public Services Administrator Lamar Nix felt that the vehicle would be purchased merely for parts.

The proposed Resolution reads as follows:

RESOLUTION APPROVING SALE OF SURPLUS EQUIPMENT

WHEREAS, the Town of Highlands desires to surplus equipment that is no longer uses; and

NOW THEREFORE, BE IT RESOLVED THAT THE TOWN OF HIGHLANDS

Authorizes its Town Manager to place legal ads to solicit bid for the following equipment:

1993 Ford F150 Vin Number 1FTEF14Y5PNB10534

APPROVED THIS 15th DAY OF JULY 2009

ATTEST:

APPROVED:

Town Clerk

Mayor

APPROVED AS TO FORM:

Town Attorney

Vice Mayor Amy Patterson moved to approve the Resolution to Surplus 1993 Ford F150 Pick-Up Truck, was seconded by Commissioner John Dotson and the same was unanimously approved by the Town Board.

14. Appointment(s) to Planning & Appearance Commission

Applications have been received for appointment to the Planning Board from the following:

Richard Lee Boger	Dick Hills
Patrick Leonard	Alan Marsh
Robert (Bob) H. McEver	Rick Siegel
John Underwood	

Applications have been received for appointment to the Appearance Commission from the following:

Richard Lee Boger

Commissioner Hank Ross stated that he liked the old way of submitting ballots and he was informed by Town Attorney William Coward that the new procedure of advertising for the open positions was in compliance with the open meeting law and that any discussion had was suppose to be in a public forum.

After the review of the applications and questions regarding residency, the Town Board members wrote their desired candidate's name on a piece of paper and handed it to Mayor Mullen who tallied the votes. Dick Hill, Alan Marsh and Rick Siegel each received one vote. John Underwood received two (2) votes.

Commissioner Dennis DeWolf moved to approve the appointment of John Underwood to the Planning Board, seconded by Vice Mayor Amy Patterson, and the same was unanimously approved by the Town Board.

With regards to an appointment to the Appearance Commission and there being only one applicant, Richard Lee Boger, questions were raised as to his place of employment and Vice Mayor Amy Patterson raised her concerns as to his residency. It was then decided by the Town Board members that since there was no meeting of the Commission in the near future, and confirmed by Zoning Administrator Joe Cooley, the appointment of Richard Lee Boger would be tabled until his residency and appointment could be confirmed and no action was taken.

15. Scholarship Program

Town Manager Jim Fatland advised that the Scholarship Committee and Finance Committee want to discuss the different ways of investing.

Town Attorney William Coward addressed the Town Board and advised that there is a 1975 law which restricts scholarships to returning students and further stated that at

least one member of the Committee must be a minister. Mr. Coward was questioned if the Town could contribute funds towards the scholarships and responded that under the law, it was not permitted. Commissioner Hank Ross expressed his disappointment and suggested that the legislation should be changed. Mr. Coward stated that all would have to be taken under advisement for next year but that the law needed to be followed.

The Town Board has taken this issue under advisement and no action was taken.

16. Recreation Master Plan

This agenda item was reviewed with the Recreation Committee on July 15, 2009.

The Town Board had discussed the need for a parks master plan at its Board Retreat held on January 29, 2009 and included funds in its FY10 Budget to compete.

The Recreation Committee reviewed the scope of work with consultation Haden Stanziale on January 15, 2009.

The master plan is scheduled to be completed by December 31, 2009 in advance of the State PARTF application deadline of January 31, 2010.

It is recommended to the Town Board that it approve the proposal with Haden Stanziale at a cost not to exceed \$44,800.00 plus out of pocket costs not to exceed \$5,000.00.

As to the fiscal impact, the funds are included in the FY10 Parks and Recreation Special Revenue fund to complete the master plan.

Recreation Director Selwyn Chalker advised the Board that he wants all in place by the end of January, 2010.

Commissioner Dennis DeWolf advised that he was very comfortable with the plan and felt that the time frame was important. It was also discussed how hard it is to find out what the public wants and to find ways to reach out to the community.

Commissioner Dennis DeWolf moved to approve the proposal with Haden Stanziale at a cost not to exceed \$44,800.00 plus out of pocket costs not to exceed \$5,000.00, was seconded by Commissioner Hank Ross and the proposal with Haden Stanziale was unanimously approved by the Town Board.

17. Fire Department Agreement with Macon County

The contract has been reviewed by Warren Cabe, Macon County Emergency Management and the Highlands Fire Department.

The agreement provided for the following:

1. Payment of taxes from County for taxes levied
2. Fire Protection Services required
3. Limitation on use of first service tax
4. Annual budget and record keeping required
5. Additional record keeping requirements (by-law, inspections, insurance, etc.)
6. Roster required, submitted by June 1st of each year
7. Report of rural fire conditions required
8. Call list information required
9. Term of contract, continue from fiscal year to fiscal year
10. Termination of contract
11. Workers compensation insurance required
12. Operation deficiencies
13. Amendment to contract, only in writing
14. Effective date

It is recommended to the Town Board that it approve the agreement with Macon County and Highlands Fire Department subject to the Town Attorney's approval.

Town Manager Jim Fatland advised that the contract is new and is to document the services provided.

Vice Mayor Amy Patterson suggested that the contract should be reviewed by the Town Attorney and that this matter should be put on the agenda for the next Town Board meeting. No further action was taken by the Town Board.

18. Closed Session for Riverwalk Potential Litigation and Personnel Matter

The Town Board moved to a closed session to discuss past and future potential litigation regarding the Riverwalk Subdivision and a personnel matter.

19. Adjourn

As no further action was taken, Vice Mayor Amy Patterson moved to adjourn, was seconded by Commissioner Dennis DeWolf and the Regular Town Board meeting adjourned at 9:35 p.m.

James R. Fatland
Town Manager

Jane J. Capman
Recording Secretary

Don Mullen Mayor