

PUBLIC HEARING and REGULAR BOARD MEETING of April 17, 1996, with Mayor John W. Cleaveland and Commissioners H. N. James, Mike McCall, Ron Sanders, and Zeke Sossomon present. The Mayor reported that Comm. Calloway could not be present.

Also present were Richard Betz, William Coward, Tony Chambers, Georgia Allen, Harold Brammer, and Ted Anderson.

A. Public Hearing.

The Mayor called the Public Hearing to order at 6:30 p.m., and explained that the purpose of the hearing was to receive comments from the public on several amendments to the Zoning Ordinance relating to real estate signs and enforcement authority, and also amendments to the Fee Schedule setting fees for real estate signs in setback areas and a schedule for civil penalties. It was reported that the Planning Board had recommended adopting the amendments.

Tony Chambers was present, and asked about the procedure for obtaining permits for real estate signs in the setback area. He also asked about the constitutionality of the proposed provision in Section 701.2 authorizing the Zoning Administrator to, upon presentation of proper credentials or inspection warrant, enter private property.

The Clerk reported that this was similar to a provision in the General Statutes authorizing building inspectors to obtain an administrative search warrant if an owner refused entry to a project; he believed the provision was legal. Town Attorney William Coward agreed, pointing out that a violation of the Ordinance was a misdemeanor and would justify the seeking of an inspection warrant.

Mr. Coward also discussed a memo he had submitted concerning paragraph (C) of Section 708, Criminal Penalties, which he had discussed with Zoning Administrator Shannon Baldwin. As drafted, the word "shall" in the first sentence would seem to eliminate any discretion on the part of the Board; all persons would have to be prosecuted. He recommended modifying the proposed amendment as follows:

"(C) The maximum fine for any violation of the Highlands Zoning Ordinance prosecuted pursuant to G.S. §14-4 shall be \$500."

There were no further comments from the public.

The Mayor closed the public hearing at 7:00 p.m.

B. Regular Board Meeting.

In addition to those present for the Public Hearing, the following had arrived: Lamar Nix, Jerry Cook, Doris Allen, Dan Barker, Allan Marsh, Charles Cooper, Wes Wilson, and others.

I. Mayor Cleaveland called the Regular Board Meeting to order at 7:00 p.m.

II. The minutes of the April 3 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. SANDERS, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO APPROVE THE FOREGOING MINUTES.

III. Reports.

1. The Mayor reported that there had been some good publicity recently on US-64 from area newspapers, as well as support from County officials. He said he had spoken to Highway Commissioner Marvin Raper, and thought he was sympathetic to both a permanent solution and a short-term solution that would include re-routing "through" trucks. He felt it was important to keep pushing for a safe road for the public.

2. Public Works Director Lamar Nix reported on routine maintenance in the Public Works departments. He also reported that the fencing had been completed at the Town Warehouse, the sewer cleaning had been completed, and—in conjunction with the NC-106 project—a utility pole had been relocated and a water line installed for future expansion. He said that Lake Sequoyah was being lowered to permit some work on the raw water intake near the bridge, work which he hoped would begin in the morning. As requested at a previous meeting, he had investigated the feasibility of installing lighting at the Highlands Conference Center; two lights would be adequate, and they could be installed at a cost of approximately \$200 each.

MOVED BY COMM. SANDERS, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO INSTALL TWO LIGHTS AT THE HIGHLANDS CONFERENCE CENTER.

Mr. Nix then provided each Commissioner with a list of estimates he had prepared on 1996 street paving needs. He had identified twelve roads which had been discussed by the Board or which he felt needed re-surfacing, totaling \$105,875. Since only \$75,000 had been budgeted for paving, he recommended soliciting bids on the entire amount, then selecting roads by priority totaling between \$65,000 and \$75,000 to account for overage.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO ADVERTISE FOR PAVING BIDS TO BE RECEIVED ON MAY 1 ON ALL THE PROJECTS IDENTIFIED, BUT TO AWARD BIDS BASED ON FUNDS BUDGETED.

Mr. Nix also said he felt it would be in the best interest of the Town to remove the trees along the western perimeter of Wright Memorial Square adjacent to the recently completed rock excavation, due to the threat they posed to power lines on NC-106. He recommended that, upon receipt of written permission, the Town take down the trees and clean up the debris, leaving the logs for the property owners to dispose of.

Ted Anderson, President of the Wright Memorial Square Property Owners Association, said his organization was concerned about its liability if the trees fell, and was also concerned about the sharp drop-off along the bank; he felt a fence was needed along the top of the bank.

Harold Brammer, another property owner at Wright Memorial Square, was also concerned about the steep bank; he wondered if a wall was going to be constructed.

The Mayor explained that the Town was willing to take the trees down as proposed, but he felt the fence was the property owners' problem.

It was pointed out that the bank was solid rock, and would not require a retaining wall. The Mayor felt that the sidewalk would be a benefit to the property owners in the shopping center, and that the Town's offer to remove the trees was a reasonable one. He asked Mr. Anderson to meet with the Property Owners Association and decide whether or not they wanted the Town to proceed.

Ted Anderson also asked about a hole behind Fireside Inn Restaurant where a PVC sewer pipe had been repaired, and was reportedly too shallow to be paved over; Mr. Nix offered to look into the situation.

3. The Clerk reported that he had learned that the National Day of Prayer, as proclaimed by the Mayor at the April 3 meeting, was to be held on May 2, not May 23 as the minutes had indicated. He also reminded the Board that the open house at the Wastewater Treatment Plant was scheduled for April 26 between 1:00 p.m. and 4:00 p.m. He said that he would bring a recommendation on amended electric rates to the May 1 meeting for adoption.

He said that he had received Notice of Sale forms from the Department of Transportation, which were required for transfer of title, for five abandoned vehicles currently located at the Town Warehouse; Police Chief Jerry Cook had also recommended selling a 1991 Ford Crown Victoria police car. He asked for permission to advertise

for bids on the abandoned and surplus vehicles. The Board agreed, by consensus, to received bids for these vehicles on May 1.

The Clerk also reminded the Board of the Joint Meeting with the Planning Board to be held on April 22 at 5:30 p.m.

IV. Old Business.

1. The Board had had the opportunity to review the Town of Highlands Alcohol and Drug Policy prepared by Lamar Nix and distributed at the previous meeting. Town Attorney William Coward had also indicated earlier in the meeting that he had reviewed the policy.

MOVED BY COMM. SANDERS, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO ADOPT THE TOWN OF HIGHLANDS ALCOHOL AND DRUG POLICY.

2. The Board reconsidered an amendment of the Fee Schedule adopted at the April 3 meeting concerning utility deposits. Some Board members felt that the words "in the discretion of the Town Clerk" should be deleted in two places in the amendment.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO DELETE THE WORDS "IN THE DISCRETION OF THE TOWN CLERK" IN THE AMENDMENT.

V. New Business.

1. The Board again considered the amendments to the Zoning Ordinance, and also the Fee Schedule, subject of a public hearing immediately preceding this meeting. It was agreed that the modified wording proposed by the Town Attorney for Section 708(C), as discussed at the hearing, should be adopted.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO ADOPT THE PROPOSED AMENDMENTS TO THE ZONING ORDINANCE AND THE FEE SCHEDULE, EFFECTIVE IMMEDIATELY, INCORPORATING THE MODIFICATION PROPOSED BY THE TOWN ATTORNEY.

The amendments, as modified, are as follows:

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AMENDMENTS OF ZONING ORDINANCE

1. Change the words "any sign" to "any permanent sign" in Section 407.1.

2. Replace period at end of Section 404.1(C) with semicolon, and add the following: "however, if the setback requirement cannot be met, the sign shall comply with Section 405.1(C)."

3. Add the following Section 405.1(C):

"(C) Real estate signs which cannot comply with the ten (10) foot setback requirement described in Section 404.1(C) shall be permitted in the setback area, provided each sign satisfies each of the following conditions:

(1) The difficulty in erecting the sign to meet the setback requirement is due to topographical factors;

(2) The sign cannot be erected anywhere on the property to satisfy the ten (10) foot setback requirement;

(3) The sign, when erected, will not impair sight distance."

4. Delete second sentence of Section 701.2 and replace with the following:

"The Zoning Administrator, or his duly authorized representative, shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter upon any property, public or private, within the Town at any reasonable hour for the purpose of inspection, determining compliance with approved plans, investigating sites of any complaints or alleged violations of this Ordinance, conducting investigations as he may reasonably deem necessary, or for performing any other duty imposed upon him by this Ordinance or by the Board of Commissioners. No person shall refuse entry or access to the Zoning Administrator when entry is requested for purposes described in this Ordinance, nor shall any person obstruct, hamper, or interfere with the Zoning Administrator or his duly authorized representative while in the process of carrying out official duties."

5. Delete Section 707, Penalties, and replace with the following:

"Section 707. Enforcement.

(A) Complaints Regarding Violations. Any person may file a written complaint with the Zoning Administrator whenever a violation of a provision of this Ordinance occurs or is alleged to have occurred. The Zoning Administrator shall properly record the complaint, promptly investigate it, and take action as provided this Ordinance.

(B) Notice of Violation. When the Zoning Administrator finds a violation of a provision of this Ordinance, it shall be his duty to issue the owner or occupant a "Notice of Violation" stating the following:

(1) that the land, building, structure, sign or use is in violation of this Ordinance;

(2) the nature of the violation, and citation of the Section of this Ordinance violated;

(3) the measures necessary to remedy the violation; and

(4) the time within which the violation must be corrected.

The Notice of Violation shall be in writing, and shall be delivered by certified or registered mail to the last known address of the owner or occupant, by personal service, or by posting conspicuously on the property. The owner or occupant shall remedy the violation within the time specified in the Notice of Violation. Appeals of the Notice of Violation may be taken to the Zoning Board of Adjustment in accordance with Section 701.4, and any further enforcement shall be stayed pending hearing of the appeal."

6. Delete Section 708, Remedies, and replace with the following:

"Section 708. Penalties and Remedies.

Any or all of the following procedures may be used to enforce the provisions of this Ordinance.

(A) Equitable Remedies.

This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, including by way of example and not by way of limitation, the equitable remedies of injunction, abatement, mandamus, or temporary restraining order, pursuant to N.C.G.S. 160A-175(d).

(B) Civil Penalties.

Any person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty in accordance with the following procedures:

(1) Responsible Parties. The owner or occupant of any land, building, structure, sign, use of land, or part thereof, and any architect, builder, contractor, agent, or other person, who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

(2) Issuance of Citations. No civil penalty shall be assessed under this Section until the person alleged to be in violation has been notified in accordance with Section 707(B), Notice of Violation. If after receiving a Notice of Violation the owner or other violator fails to correct the violation, a civil penalty shall be imposed in the form of a citation. Such citation shall be in writing; shall be delivered by certified or registered mail to the last known address of the owner or occupant, by personal service, or by posting conspicuously on the property; shall state the civil penalty to be imposed upon the violator; and shall direct the violator to pay the civil penalty within ten (10) business days of the date of the violation. The following language shall be placed on any citation issued and served pursuant to this Ordinance: "Failure to pay the civil penalty stated hereinabove, in addition to other remedies against you, shall subject you to the payment of reasonable attorney's fees, not to exceed 15% of the outstanding balance, including the principal amount of the penalty and interest accruing thereon."

(3) Payment of Civil Penalties. The schedule for civil penalties shall be set forth in the Fee Schedule maintained in the Town Office by the Town Clerk. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty. If the offender fails to pay the civil penalties within thirty (30) days after having been cited, the Town of Highlands shall recover the penalties in a civil action in the nature of debt. Assessment of civil penalties shall be stayed pending appeals taken to the Zoning Board of Adjustment in accordance with Section 701.4.

(4) Civil penalties assessed for violations of this Ordinance shall constitute a lien against the property upon which the violation is, or has been, conducted.

(C) Criminal Penalties.

The maximum fine for any violation of the Highlands Zoning Ordinance prosecuted pursuant to G.S. §14-4 shall be \$500.

(D) Denial of Permit or Certificate.

The Zoning Administrator may withhold or deny any permit, certificate, or other authorization on any land, building, structure, sign, or use in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

(E) Conditional Permit or Temporary Certificate.

The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of a deficiency, or payment of civil penalties within a specified time.

(F) Stop Work Orders.

Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Zoning Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with G.S. § 160A-421.

(G) Revocation of Permits or Certificates.

The Zoning Administrator may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable State or local law may also be revoked.

(H) Institution of Action by the Board of Commissioners of the Town of Highlands.

If any building, structure, or facility is erected, constructed, reconstructed, altered, repaired, converted, or maintained—or any building, structure, facility or land is used—in violation of this Ordinance, the Board of Commissioners, in addition to all other remedies available either in law or in equity, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises."

AMENDMENTS OF FEE SCHEDULE

1. Add the following under "Zoning/Subdivision, Sign Permits:"

"REAL ESTATE SIGNS IN SETBACK AREA: \$15.00 per sign"

2. Add the following under "Zoning/Subdivision:"

"Civil Penalties Schedule

First Citation:	\$30.00
Second Citation For The Same Offense:	\$60.00
Third Citation For The Same Offense:	\$120.00
Fourth And Subsequent Citations For The Same Offense:	\$240.00

Penalties paid within ten (10) business days shall be reduced by fifty percent (50%)."

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2. Charles Cooper was present to request renewal of the one- year lease for equipment on Little Bearpen Mountain between the Town and WHLC radio, which operates on a frequency of 104.5 FM. He said that he was as eager to leave the site as he understood the neighboring

residents were, but that he was experiencing difficulty in locating an alternate site due to spacing requirements from WQXJ in Clayton on 104.1 FM, an FCC requirement to provide "City Grade Coverage" for the downtown area, and line-of-sight requirements for his studio on US-64. He had filed for a 10-watt translator like that recently approved for National Public Radio on Brushy Face, and he hoped he would be successful in finding a new site, possibly in conjunction with a cellular telephone company wishing to locate in the area. In order to continue to serve the area, he needed to have an antenna, and renewal of the site lease for an additional year. The rent for the site is currently \$200 per month, and the current lease expires on July 9.

Dan Barker was present, and asked about line-of-sight and frequency requirements. Mr. Cooper said that line of sight was required, and indicated that no other frequencies were available.

MOVED BY COMM. SANDERS, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO RENEW THE LEASE FOR AN ADDITIONAL YEAR UNTIL JULY 9, 1997, UNDER THE SAME RENT AND CONDITIONS.

Comm. James indicated that he would not vote to renew this lease next year.

3. The Clerk reported that S&ME Inc. had prepared contract and technical specifications for a groundwater remediation system at the Town Warehouse site on Poplar Street, which would address a contamination problem where underground storage tanks had leaked a small amount of fuel some time ago. The Town had already spend \$20,000 on this site, and costs incurred for the past several months, as well as this project, were being reimbursed by the North Carolina Department of Environment, Health, and Natural Resources through the so-called "superfund." S&ME had offered to receive bids on the Town's behalf until 4:00 p.m. on May 6.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO RECEIVE BIDS ON A GROUNDWATER REMEDIATION SYSTEM, BASED ON THE SPECIFICATIONS PREPARED BY S&ME INC., UNTIL 4:00 P.M. ON MAY 6.

Bids would be received and tabulated by S&ME Inc., and awarded at the May 15 Board meeting.

4. The Clerk reported that he had discussed the need for a full time custodian for the Town rest rooms with Selwyn Chalker; they recommended that Mildred Ramey, who was currently performing this duty on a part-time basis, be employed full-time at her current hourly wage of \$6.55. Ms. Ramey's other duties would include cleaning the Town Office and Conference Room and the Ball Park rest rooms, and working at the front desk and swimming pool at the Recreation Park.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO EMPLOY MILDRED RAMEY FULL-TIME AT HER CURRENT HOURLY WAGE OF \$6.55.

5. Comm. James asked Comm. Sanders if the Recreation Committee had had the opportunity to look into the feasibility of moving the playground and picnic shelter where the old tennis courts are now located, as well as installing some additional parking, and placing tennis courts adjacent to Foreman Road, as discussed at the previous meeting. The Board agreed to meet informally at the Recreation Park at 5:00 p.m. on April 22, immediately preceding the joint meeting with the Planning Board; Comm. Sanders would not be able to be present then, but agreed to visit the site at another time.

V. MOVED BY COMM. SANDERS, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO ADJOURN.

Meeting was adjourned at approximately 9:00 p.m.

Richard Betz, Town Clerk