

PUBLIC HEARING and REGULAR BOARD MEETING of August 6, 1997, with Mayor John Cleaveland and Commissioners H. N. James, Mike McCall, Donnie Calloway, and Zeke Sossomon present.

Also present were Richard Betz, Lamar Nix, Eddie Madden, Jerry Cook, Virginia Fleming, Rosemary Fleming, Curtis Hayes, Hank Urbanek, Richard Melvin, Earl Jones, Mary Berry, Moyna Kendall, Cynthia Strain, Steve & Brenda Pierson, Alan & Jane Lewis, Georgia Allen, Tom & Sara Olson, Margaret Shaffner, Tom & Jack Shaffner, Ward Hendon, John Shearl, and others.

A. Public Hearing.

Mayor Cleaveland called the Public Hearing to order at 7:00 p.m. and stated that the purpose of the hearing was to receive comments from the public on two proposed amendments of the Zoning Ordinance.

One amendment would require a construction schedule for Special Use Permits, and the other would amend the method of measuring surface area for wall signs. Both amendments had been reviewed by the Planning Board, and had been advertized in The Highlander pursuant to law. At the request of the Mayor, the Clerk summarized the amendments for those present. The Mayor then asked for comments from those present.

Cynthia Strain questioned the lack of a definite time period for construction under the time limits amendment; she felt this could be a possible loophole. She also wondered if the amendment would have any "teeth."

The Clerk explained that a time period had been deliberately omitted, because it would vary according to the scope of the construction work; he said that this would be a determination that the Zoning Board would make on a case by case basis. He explained that remedies for not adhering to the time schedule could result in revocation of the Special Use Permit, or any of the other remedies enumerated in the Ordinance.

Eddie Madden noted that the amendment referred to a "significant departure" from the schedule during a project. Town Attorney Bill Coward said he felt the Zoning Board would be reasonable in making such a determination.

Eddie Madden reported that the Zoning Board, at their meeting last month, had requested that the Board consider modifying the proposed amendment so that it only applied to the exterior of a building. Georgia Allen commented that this would not address the mess around a construction site. The Mayor said he felt such a change would not be solving anything; he felt this amendment would make a start at addressing the problem.

Comm. Sossomon asked how a logo would be treated. The Clerk explained that it would be measured like a letter or word, and counted as part of the surface area of the sign.

There being no further comments from those present, the Mayor declared the public hearing closed.

B. Regular Board Meeting.

I. Mayor Cleaveland called the Regular Board Meeting to order at 7:10 p.m.

II. The minutes of the July 16 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. CALLOWAY, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

III. Reports.

1. The Mayor reported that Comm. Sanders was on vacation and had

been unable to attend the meeting.

2. The Mayor said that he would like to see if the County would consider extending the Macon County Water Supply and Wastewater Treatment Improvements Fund for several additional years. The fund, established in 1990, had funded \$300,000 each year in water and sewer infrastructure on a 50% matching basis over eight years, and the final disbursement was scheduled for next July (FY 98-99). He felt that these funds had been used for a lot of worthwhile projects, and he asked the Board for permission to write a letter and speak to the County Commissioners on the subject. The Board agreed by consensus.

3. Town Attorney Bill Coward reported that he had reviewed the possibility of the Town taking over and operating the Highlands Cemetery, and in his opinion it could be done. The owner of the cemetery—the Highlands Cemetery Company Inc., a non-profit association—would have to be dissolved, and its assets transferred to the Town. A general statute regulated the operation of cemeteries by municipalities.

The Clerk reported that he had not yet had the opportunity to explore the economic feasibility of operating the cemetery. He hoped to have additional information by the next Board meeting.

4. Each Board member received a copy of the Public Works Director's written report for the month. Lamar Nix reported that both the Water Treatment Plant and the Wastewater Treatment Plant were working well, and he invited Board members to make arrangements to visit them.

Comm. James asked about the status of the Sherwood Forest lift station. Mr. Nix explained that the Town had conducted a draw-down test on the station, but line conditions would not permit the Hospital to operate at the level required by the State. He understood that the Hospital would be replacing inadequate sections of line, which could change the pumping conditions.

5. Chief of Police Jerry Cook gave an oral report on Police Department activities for the month of July.

The Mayor reported that he understood Macon County had employed another deputy to work in the Highlands area.

6. Each Board member received a copy of the Zoning Administrator's report for the month. Eddie Madden reported that notices had been sent to owners of non-conforming signs on July 17, and thus far there had been a great deal of cooperation in changing out or removing signs. Approximately 55 businesses would be affected by the October deadline.

7. Each Board member received a copy of the Treasurer's Report for the month.

MOVED BY COMM. JAMES, SECONDED BY COMM. CALLOWAY, AND UNANIMOUSLY CARRIED TO ACCEPT THE TREASURER'S REPORT.

The Mayor reported that he had learned on television news prior to the meeting that the Town had been awarded the Parks and Recreation Trust Fund grant for the tennis courts.

8. The Clerk reported that he had received a letter from Hubert C. Normile Jr., Vice President of V-Z Top Homeowners Association, pursuant to a conversation he had had last month. Mr. Normile wanted to meet with the Utilities Committee and representatives from Highlands Country Club to discuss the possibility of connecting to the Town sewer system.

Utilities Committee members Sossomon and James agreed to meet in the Clerk's office at 8:00 a.m. on August 13 if that time is acceptable to the other parties.

9. The Clerk reported that he had received an update from Fish & Wildlife Associates concerning the water quality testing of Lake Sequoyah. The July testing results, which included all of the organic chemicals and pesticides, indicated that all of the chemicals were below the detection limits; fecal coliform was also within accepted limits.

10. The Clerk reported that Dennis DeWolf had been working with property owners adjoining Carolina Way, pursuant to an updated estimate of \$29,150 submitted in May to improve that road. The plan called for a 25-foot asphalt road and a 5-foot stamped, colored asphalt sidewalk immediately north of the road. He said that Mr. DeWolf was requesting a formal motion from the Board agreeing to accept this road for maintenance if improved to Town specifications.

Comm. Calloway asked to see the plan submitted in May. There was some discussion about the placing of a sidewalk between the road and existing parking spaces. The Clerk reported that the plan had been approved some time ago by the Planning Board. The Board agreed for the Street Committee to review the plan and report back at the next meeting.

11. The Clerk reported that he had spoken to David Young and to Paul Schmitt, who had both assured him that a crew would be working on Mr. Young's Main Street building next week. The second floor concrete slab was expected to be poured within two weeks, and the roof installed within three weeks.

IV. Old Business.

1. Each Board member had received a copy of a letter from Kimila L. Wooten, attorney for Margaret Mitchell O'Donnell, to Town Attorney Bill Coward, dated August 3. The letter said that Ms. O'Donnell had agreed to construct the segment of sidewalk between Third Street and the Post Office, provided an estimate of no more than \$5,500 could be obtained, approximately one-half the estimate prepared by Town Engineer Lamar Nix some time ago.

Comm. James felt that specifications for the sidewalk would have to be approved by the Town Engineer. The Board then discussed a time frame for installation of the sidewalk. It was agreed by consensus that Mr. Nix, through the Town Attorney, would forward specifications for the sidewalk to Ms. O'Donnell; detailed plans would then be requested to be submitted to him for review by September 15.

2. Town Attorney Bill Coward submitted a written report to the Board of Commissioners on the question of the right-of-way along Poplar Street and 4½ Street, and read it into the record. A copy is attached hereto and made a permanent part of this record.

The Mayor then read a copy of a letter dated July 24 from attorney Richard Melvin concerning the proposed Poplar Street and Fifth Street Extension. He also reminded the Board that a letter had been received from Dennis F. Wilson of C. A. Wilson Electric Services Inc., as reported at the last meeting, expressing an interest in opening 4½ and/or Poplar Streets and encouraging the Town to proceed with a survey.

Richard Melvin was present, and offered to meet with the Town Board and the Town Attorney at the County Courthouse to see where the Town had a deed to any of the streets they were talking about. Comm. James said he would accept the offer if Mr. Melvin would show him a deed for anybody else who owned those streets. Mr. Melvin alleged that the Town never owned the property in question, that there had been a fence around it for a hundred years. He said that in his opinion Kelsey never authorized the map to be recorded.

Virginia Fleming asked how the Town could call the property in question a road; they had had to cut through the brush to find it.

She said that it had been paid for by her ancestors.

Comm. Calloway asked how many streets shown on the Kelsey Map remained unopened; the Mayor said these were the only ones, with the exception of two alleys south of Spring Street. He then asked Mr. Melvin his opinion on 4½ Street; Mr. Melvin replied that he had not expressed an opinion on that matter.

The Mayor asked Mr. Melvin about the Kelsey Trail; Mr. Melvin said that its exact location was not known. However, he felt its status was the same as Main Street, in that it had been used by the public and opened. He said that if streets were not used or opened then they reverted to the property owners.

Comm. Sossomon asked Mr. Melvin if the Edwards claim was based largely on the idea of adverse possession. Mr. Melvin replied that it was in part. He felt that there had been no official dedication of the streets to the Town. Comm. McCall asked if the Edwards family had been paying taxes on the land. Mr. Melvin replied that that was not to the point, and explained that the County had only recently made the tax maps and they were notoriously inaccurate. Comm. Sossomon noted that the Edwards deeds recognized the streets. Mr. Melvin admitted that that was so, but said that the Edwards family had been in quiet and undisputed possession of the property to his knowledge for at least 50 years, and probably 90.

Bill Coward cited a N. C. Court of Appeals Case, Bumgarner v. Raynaud, and a Supreme Court case, confirming that in his opinion the streets shown on the Kelsey map had been dedicated. He pointed to the right of people who bought property in Highlands to rely on the map. He also noted that the question of adverse possession was a very detailed, fact-specific issue that could not be answered tonight.

Mr. Melvin said he agreed with the cases cited. However, he believed the Edwards had a better title to the streets in question than the Town, and that was all they had to show.

Hank Urbanek said that he did not think the Town needed another couple of acres of asphalt.

Margaret Shaffner urged those present to work together to solve the problem, rather than going to battle; she said the important issue was the safety of traffic exiting from Poplar Street onto US-64. It was reported that the D.O.T. was working on a report on this intersection.

Comm. James said that every Board he had ever worked with had defended the Town's streets.

MOVED BY COMM. JAMES, SECONDED BY COMM. MCCALL, AND CARRIED, TO SURVEY ALL OF THE UNOPENED STREETS SHOWN ON THE KELSEY MAP, INCLUDING POPLAR STREET, FIFTH STREET, 4½ STREET, AND THE ALLEYS SOUTH OF SPRING STREET. Comms. James, McCall, and Calloway voted "aye;" Comm. Sossomon voted "nay."

Moyna Kendall asked the Board to talk about other issues, and specifically if the Town was planning on opening the streets soon. She said that the Land Trust was very interested in an offer of sale from the Edwards family of three acres, and that a donor had offered to provide funds; the Trust would very much like to proceed due to the historical and ecological importance of the property, but it was affected by Fifth Street and Poplar Street. If the issue was unsettled, there was no way to proceed. She felt that the Board's action showed a lack of demonstration of good will. She also reported that the Land Trust had agreed to have the property surveyed, and would know where the Kelsey Trail was in relation to the Edwards Property and Fifth Street in three weeks.

The Mayor said that, as he had told the Land Trust in a meeting last month, he felt that the strip of Fifth Street north of Poplar Street would be of no benefit to the Town. He suggested that the Town might

be willing to do something with it.

Comm. Sossomon said that he was more concerned about the monetary aspects of the issue than the assertion of rights. He felt that if the Town asserted its claim, there was a strong possibility that it would get sued. Another and less expensive way to determine if we owned the rights-of-way would be through a Declaratory Judgement, in which both parties lay the facts down in Court before a judge.

Otherwise, he felt an inverse condemnation case would be initiated that could not be stopped, and if the Town did not prevail, it would be required to purchase the land and pay attorney's fees.

Town Attorney Bill Coward said that he agreed that that would be the easiest way to have a survey done without an inverse condemnation lawsuit; he recommended proceeding with a motion for Declaratory Judgement, and felt that the Town should ask for the right to survey the property as part of the judgement.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. CALLOWAY, AND CARRIED, THAT PRIOR TO A SURVEY THE TOWN INSTITUTE A DECLARATORY JUDGEMENT ACTION, ASKING IF WE OWN THE RIGHT-OF-WAY. Comms. Sossomon, Calloway, and McCall voted "aye;" Comm. James voted "nay."

3. Comm. James felt that the Town should proceed with working on a parking lot at the Recreation Park west of the rear driveway to Foreman Road this winter. Mr. Nix reported that the project had been discussed last year, but had been put on hold during discussions involving the Performing Arts Center.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO PROCEED WITH CREATING ADDITIONAL PARKING IN THIS LOCATION.

V. New Business.

1. The Board considered the proposed amendments of the Zoning Ordinance, subject of a public hearing immediately preceding this meeting.

MOVED BY COMM. CALLOWAY, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING AMENDMENTS OF THE ZONING ORDINANCE, EFFECTIVE IMMEDIATELY:

1. Add the following paragraph to Section 501.3(A):

"(5) A complete construction schedule, including the date upon which construction is expected to begin and the date within which it is expected to be completed."

2. Delete the last sentence of Section 501.3(A), and replace with the following:

"The Zoning Board of Adjustment may, in its sole discretion, waive the foregoing requirements where, for example, only minor construction, minor changes to parking areas, or changes only to the use of existing buildings is contemplated."

3. Add the following paragraph to Section 501.3:

"(F) All construction approved pursuant to a Special Use Permit shall be completed in accordance with the construction schedule submitted in paragraph (5) of Section 501.3(A), as approved by the Zoning Board of Adjustment. In the event that a significant departure from the construction schedule occurs during a project, the applicant may appear before the Board and request an amendment of the Special Use Permit. The Board may extend the construction schedule only upon a finding that delays

in construction have been caused by, or are expected to be caused by, circumstances beyond the control of the applicant. Unless the construction scheduled is extended by amendment of the Special Use Permit, failure to complete construction within the approved time shall be considered a violation of the Special Use Permit, and subject to the sanctions provided in Sections 707 and 708 hereof."

4. Replace the current definition of **Surface Area** under section 902 (Individual words or terms) with the following:

- "• Surface area: The entire display area of a sign, including any border or accessory area, but excluding any base supports, posts, roofs, or other structural elements provided they do not serve primarily to attract attention. In the case of three-dimensional letters or letters painted directly on a wall surface or awning, the surface area shall be defined as the area within the perimeter of all the letters and/or logos, collectively. When lettering is highlighted by a border or decorative strip, then the surface area shall be defined as the entire highlighted area."

2. Public Works Director Lamar Nix reported that the Town was prepared to advertize for bids on the electric department line truck chassis and transfer/rebuild, as approved in the Capital Improvement Plan and budgeted for this year.

MOVED BY COMM. CALLOWAY, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO ADVERTIZE FOR BIDS FOR THE ELECTRIC DEPARTMENT LINE TRUCK.

3. The Clerk had reported in the annual Budget Message that the authority to issue General Obligation Wastewater Bonds, approved in a referendum on November 6, 1990, would expire in seven years; the time period could be extended an additional three years if approved by the Local Government Commission.

MOVED BY COMM. JAMES, SECONDED BY COMM. SOSSOMON, AND CARRIED TO TABLE THIS MATTER. Comms. James, Sossomon, and McCall voted "aye;" Comm. Calloway voted "nay."

4. Ward Hendon was present representing Ann Hobson Haack, requesting a variance from the 18-foot road width requirement of the Subdivision Ordinance for the Hobson Subdivision. The final plat had already been recorded in 1994 for this subdivision, and a bond posted in lieu of installation of improvements. Mr. Hendon said Ms. Haack proposed installing a 12-foot wide road, the same width approved recently for the Morris subdivision immediately below it on Satulah Mountain. He cited a desire not to disturb soil on the mountain. Ms. Haack was not planning to pave the road, as paving was not required by the Ordinance for private roads.

The Mayor felt, and several Board members agreed, that the Morris Subdivision variance had been granted because of the narrow width of Worley Road below the property, the lack of additional land to be developed above the property, and an offer to pave the road and provide two pull-offs; he felt that, if a variance was granted, the road should be paved.

Comm. Calloway expressed a concern that the Board might be setting a precedent granting this variance. He felt the Board might as well amend the Ordinance.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. CALLOWAY, AND UNANIMOUSLY CARRIED TO GRANT THE VARIANCE, PROVIDED THE ROAD IS PAVED AND PULL-OFFS ARE INSTALLED MEETING THE APPROVAL OF THE TOWN ENGINEER.

Mr. Hendon also explained that the time limit for the installation of improvements in the subdivision would expire on August 15. He

said that Ms. Haack had discovered that the engineer who had done the original design, Craig Cranston, had retired, and his office was closed; she was now working with W. K. Dickson Company, was negotiating prices with grading contractors, and intended to proceed. He requested a six-month extension of time.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. CALLOWAY, AND UNANIMOUSLY CARRIED TO EXTEND THE TIME LIMIT FOR INSTALLATION OF IMPROVEMENTS IN THE HOBSON SUBDIVISION AN ADDITIONAL SIX (6) MONTHS, UNTIL FEBRUARY 15, 1998, BUT NOT TO EXTEND THE TIME LIMIT BEYOND THAT DATE.

The Clerk reported that he had been asked by Victor Lofquist of W. K. Dickson Company for the Board's permission to work on the Hobson Subdivision, since they were the Town's consulting engineers. By consensus, the Board approved the request.

5. Comm. McCall, who was also Fire Chief, explained that the Fire Department had decided to purchase a 1997 American Eagle pumper fire truck, as discussed during budget meetings; Comm. McCall reported that the old pumper would not pass the pump test. The cost of the truck was \$114,375, and it would be financed over two years at 5.89% interest in two annual payments of \$62,288.20, the first payment not due until FY 98-99. The truck had been approved as part of the Capital Improvement Plan.

MOVED BY COMM. JAMES, SECONDED BY COMM. CALLOWAY, AND UNANIMOUSLY CARRIED TO AUTHORIZE THE PURCHASE OF THE FIRE TRUCK.

6. The Public Works Director recommended that the Town sell a 1986 Ford Ranger 4X4 pickup truck in the Electric Department that was no longer needed, at a minimum price of \$1000.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. CALLOWAY, AND UNANIMOUSLY CARRIED TO ACCEPT BIDS ON THE AFORESAID VEHICLE, ASKING A MINIMUM PRICE OF \$1000.

7. The Clerk said that, as reported at the previous meeting, he had reviewed the Town's insurance needs, and he recommended transferring to the Municipal Insurance Trust. He said that both local insurance agencies also recommended the M.I.T., which was sponsored by the League of Municipalities and used by most of the municipalities in the State. Premiums under the M.I.T. Med 500 Plan would increase only 5.2%, compared to a projected 40% increase with Blue Cross/Blue Shield; this would be well within budget, with the Town continuing to pay 100% of the premium. Benefits were comparable, with a \$500 deductible and 80% payment for "Out of Network, PPO Unavailable" providers; if area doctors and hospitals joined the PPO, payments would increase to 90%. The plan also provided a \$200-per-covered-person wellness program, as well as a drug card.

He reported that several additional options were available which were not available through Blue Cross. The M.I.T. could offer health coverage to retired employees under age 65 at the same premium. He also understood that it could continue to offer not only coverage for elected officials, as Blue Cross did, but also coverage for retired elected officials serving a stated length of time. And finally, it could offer health coverage to volunteer firemen.

MOVED BY COMM. JAMES, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO TRANSFER TO THE MUNICIPAL INSURANCE TRUST MED 500 PLAN AS SOON AS POSSIBLE; TO OFFER HEALTH COVERAGE TO RETIRED EMPLOYEES UNDER AGE 65, PAID FOR 100% BY THE EMPLOYEES; TO OFFER HEALTH COVERAGE TO RETIRED ELECTED OFFICIALS, PROVIDED THEY SERVE A MINIMUM OF EIGHT (8) YEARS, PAID FOR 100% BY THE OFFICIALS; AND TO OFFER HEALTH COVERAGE TO VOLUNTEER FIREMEN, PAID FOR 100% BY THE FIREMEN.

8. Comm. Calloway said that he felt recent comments concerning the inability to hear at public meetings was a legitimate concern, and he felt the Town should consider installing a PA system. The

Board agreed for the Clerk to obtain some prices for such a system.

9. MOVED BY COMM. CALLOWAY, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION TO DISCUSS POLICE PERSONNEL MATTERS, PURSUANT TO G. S. §143-318.11(a)(6).

- A. The Board discussed part-time officer Brett Ensley with Police Chief Jerry Cook. Chief Cook explained that, although the Personnel Manual did not permit full-time employees related to one another to work in the same department, Brett Ensley was an excellent officer and well-qualified, and he recommended employing him full-time. He pointed out that the Police Department was unique among Town departments in having more than one shift, said he would rarely work on the same shift as his twin brother Todd Ensley, and said he would never be supervised by him.
- B. The Board discussed Officer William Perkey.
- C. The Board asked Chief Cook to provide officers for foot patrol on Main Street during the season.

MOVED BY COMM. CALLOWAY, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION.

10. MOVED BY COMM. MCCALL, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO EMPLOY BRETT ENSLEY FULL-TIME AT THE BEGINNING SALARY OF \$18,566, PROVIDED THAT HE IS NOT TO WORK ON THE SAME SHIFT AS TODD ENSLEY EXCEPT IN A GENUINE EMERGENCY.

VI. MOVED BY COMM. CALLOWAY, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO ADJOURN.

Meeting was adjourned at approximately 9:30 p.m.

Richard Betz, Town Clerk