

REGULAR BOARD MEETING of November 19, 1997, with Mayor John Cleaveland and Commissioners H. N. James, Mike McCall, Ron Sanders, Donnie Calloway, and Zeke Sossomon present.

Also present were Richard Betz, Lamar Nix, Eddie Madden, Buck Trott, Amy Patterson, Jolene Niblack, Charlie McDowell, Curtis Hayes, Joseph Cook, David Harris, LaDonna Keener, Del Roberts, Nin Bond, David Johnston, Alan Marsh, Rosemary Fleming, Joy Smith, and others.

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

II. The minutes of the November 5 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

III. Reports.

1. The Mayor reported that a meeting had been scheduled for December 5 at 12:00 noon with John Hankinson, Regional Administrator with the U. S. Environmental Protection Agency, concerning the Town's Wastewater Treatment Plant. He said that Mr. Hankinson seemed determined that the Town pursue land application of effluent from its WWTP, using land provided by the Forest Service, and that he was holding up renewal of the permit for the Plant. He said that the cost of land application would be prohibitively expensive, and he was totally opposed to such an idea while our Plant was operating within State standards.

2. The Mayor reported that construction had begun on the sidewalk to the U. S. Post Office at Highlands Plaza, as required by the Board at the October 15 meeting; however, he had been contacted by the contractor and instructed not to proceed with construction until the D. O. T. Encroachment Permit had been issued. Apparently Division Engineer Dan Martin had not signed the permit pending a decision on who would be responsible for the maintenance of the sidewalk in the future. The Mayor said that Ms. O'Donnell had also insisted on the signing of a release prepared by her attorney, Kimila Wooten, a draft copy of which had been forwarded to the Board through Town Attorney Bill Coward. The release relieved Ms. O'Donnell of all "claims, demands, and causes of action" arising out of the sidewalk, and future maintenance for same, except in the case of new construction on the property; however, it specifically permitted her to add on to the existing "bank building" on the property without subjecting her to the sidewalk requirements of the Zoning Ordinance.

The Mayor felt that another attempt should be made to see if the U. S. Post Office would instead acquire the "bank building" property, as originally agreed.

MOVED BY COMM. JAMES, SECONDED BY COMM. CALLOWAY, AND UNANIMOUSLY CARRIED TO DENY THE REQUEST THAT THE TOWN EXECUTE THE RELEASE. The Board agreed that Ms. O'Donnell needed to continue with the construction of the sidewalk in order to avoid being in violation of the Ordinance. It also agreed for the Town to execute the Encroachment Permit, since it would be maintaining the sidewalk in the future.

2. The Street Committee had not yet had the opportunity to review the request from Joseph Cook that the Town post "No Through Trucks" signs at Cobb Road and North Cobb Road. Comm. Calloway reported that both he and Comm. Sossomon had received personal letters from Mr. Cook regarding the request. It was agreed that this matter should be discussed under Old Business at the December 3 meeting.

3. The Clerk reported that he had received a letter from Town Attorney Bill Coward, advising that no deed be granted by the Town to the Highlands Land Trust Inc. until such time as the 4½/Poplar Street Declaratory Judgement action has been finalized.

4. The Clerk reported that consulting engineer Victor Lofquist

with W. K. Dickson Company would be present at the next meeting to present the final change orders on the Water Treatment Plant.

5. The Clerk reported that a grant application had been submitted to the Clean Water Management Trust Fund for the Lake Sequoyah West Shore Sewer Improvement Project. He felt that it and the recent application to the State Revolving Loan & Grant Program had a good chance of being approved for some funding.

IV. Old Business.

1. Each Board member had received copies of a memo dated October 17 from the Clerk, researching the question raised at the October 15 Board meeting concerning the Alcohol Testing Section of the Personnel Manual by Comm. Sossomon. Comm. James felt that he needed additional time to review the Personnel Manual, and the Board agreed to consider this matter under Old Business at the December 3 meeting.

2. Each Board member had received copies of a Report and Proposal on a Highlands Cemetery Fund at the November 5 meeting. The Clerk briefly reviewed the background of the Highlands Cemetery Company's request that the Town take over operation of the Cemetery. The Town Attorney had reported in August that municipalities are permitted to operate cemeteries; if the Town wanted to proceed, the Cemetery, a non-profit corporation, would have to be dissolved and its assets transferred to the Town. The Clerk recommended establishing a Cemetery Fund, similar to the Scholarship Trust Fund, effective with the FY 98-99 budget. He had prepared a proposed budget based on a recommended increase in the cost of lots from \$200 to \$400, and an increase in the contribution to the Perpetual Care Fund from \$100 to \$300, as well as the consolidation of assets into larger certificates of deposit in order to increase interest earnings. Eddie Madden had agreed to undertake the administrative responsibilities of locating graves and corner markers on a trial basis.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO INSTRUCT THE TOWN ATTORNEY TO BEGIN THE LEGAL WORK REQUIRED TO TAKE OVER OPERATION OF THE CEMETERY, AND TO REVIEW IT AGAIN WHEN COMPLETED.

V. New Business.

1. David Harris, Vice President of Custom Communications, appeared before the Board to present a report on his review of the Legal, Technical, and Financial Qualifications of Highlands Cable Group, as agreed at the May 7 Board meeting. Mr. Harris provided some general background on the Town's 1982 Cable TV Ordinance; because of the effects of three Cable TV Acts by the Federal Government since then, he felt the Board should consider adopting a new Ordinance before proceeding with negotiating a franchise. He said that legally and technically, Highlands Cable Group was qualified; they had been organized properly, and their engineering and marketing references were in order. In terms of their financial qualifications, however, they were not funded, and without a franchise agreement it would be difficult to get financial backing. He therefore recommended negotiating a franchise agreement with a condition that no work be started until \$1.5 million is placed in escrow; the construction schedule would follow accordingly. Citing the City of Lexington, he said that normally construction would take two to three years.

Nin Bond said that he intended to set an aggressive construction schedule and be up and running, serving some subscribers, within six months of funding. He cited the City of Morganton, in which 125 miles of cable had been constructed within six months. He also indicated that he had several sites already secured and approved, and an office site selected but not yet secured.

The Town Administrator reminded the Board that Mr. Harris had already

agreed to negotiate a franchise agreement with Highlands Cable Group for \$5000, and to re-negotiate a franchise agreement with Northland Cable TV for \$9500; the cost of \$3000 for reviewing the qualifications of Highlands Cable Group had already been paid by Mr. Bond. Mr. Harris had submitted contracts for negotiating both agreements, as well as a draft Ordinance.

Mr. Harris recommended approving the recommendation in the report on Highlands Cable Group, then adopting a new enabling Ordinance, holding a public hearing to receive comments from citizens, preparing a needs assessment, negotiating a franchise agreement with both Highlands Cable Group and Northland, and approving the final agreements.

MOVED BY COMM. CALLOWAY, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE THE RECOMMENDATION IN THE REPORT REGARDING HIGHLANDS CABLE GROUP AND THE NEW ORDINANCE, AND TO EXECUTE THE TWO CONTRACTS WITH CUSTOM COMMUNICATIONS TO PROCEED WITH NEGOTIATING A FRANCHISE AGREEMENT WITH HIGHLANDS CABLE GROUP AND RE-NEGOTIATING A FRANCHISE AGREEMENT WITH NORTHLAND CABLE TV.

Nin Bon reminded the Board that he wanted to set up a Cable TV Advisory Board to meet on a quarterly basis.

2. LaDonna Keener of Lucas & Keener, P.A., presented the FY 96-97 Audit; copies had been distributed to each Board member some time ago, together with copies of a Management Letter dated November 1. Ms. Keener said that there were no serious changes in the previous format, and no substantial problems; the Town had received an unqualified report. She said that she had reviewed the audit with the Treasurer and with Mayor-elect Buck Trott earlier in the day, and would be glad to meet with anybody on the Board if they had any questions.

The Treasurer said that the audit had gone smoothly again this year, and he appreciated Ms. Keener's work.

3. Joy Smith was present from Mountain High Motel with a request to construct five cross-tie steps down to the grass "sidewalk" on the bank along the north side of Main Street; she said that she had witnessed guests falling while trying to climb down the bank. The steps would be recessed into the bank, and would extend ten feet into the right-of-way.

Comm. James pointed out that this request had come to the Board before; he felt that it was not unreasonable to require the steps to be cut back into the bank and placed on the motel property. It was also noted that the grass "sidewalk" was used as a driveway by Town vehicles from time to time, and it would be necessary to retain an adequate width for this purpose.

The Board agreed for Town Engineer Lamar Nix to meet with the contractor on site, and then to bring a recommendation back to the Board.

4. The Clerk reported that the contract for operation of the Wastewater Treatment Plant by Culligan Operating Services, which had expired on November 1, had still not been finalized; Culligan had agreed to honor the existing agreement in the meantime.

5. Comm. Calloway asked the Board to consider creating an Industrial Zoning District on Pierson Drive. He pointed out that there was no Industrial zone in the Town anymore, and he felt that one was necessary in order to clean up the area and to provide a place for heavy trucks to park.

The Mayor asked about the progress of the Land Use Plan update. Eddie Madden reported that he expected the update to take some months to finalize, perhaps beyond the first of the year. He said that the Land Use Planning Committee would be reviewing the entire Zoning Map, and the idea could certainly be suggested.

The Board agreed to ask the Planning Board to review the proposal in conjunction with the Land Use Plan Update.

6. Zoning Administrator Eddie Madden reported that the Zoning Board had requested clarification by the Town Board of the "strings of lights" provision of the Zoning Ordinance. He explained that an appeal had been heard last month of his decision concerning strings of lights in the window of The Christmas Tree Shop; the Ordinance prohibited "any . . . string of lights whatsoever in commercial zoning districts," except for customary holiday decorations permitted between November 15 and January 15. The appellant had argued that a distinction should be made between merchandise on the inside of a window and a sign. He had ruled that lights installed within a window frame were a sign according to the definition of the Ordinance.

Del Roberts was present, and stated that the question was whether he should be permitted to display merchandise in his window. Under a strict interpretation of "whatsoever," he could not have an illuminated Christmas tree in his back room. He felt the provision needed to be clarified, and that he should have the right to display the merchandise that he sells.

The Mayor said that he felt the Town, in enacting the provision, had been trying to prevent lights being strung up all year round and used as signage instead of decorations. Personally, he felt that lights on Christmas trees within his shop should be permitted.

Mr. Madden asked, if a business was permitted to display strings of lights just because it was merchandise, what was to prevent, for example, a shop from displaying neon signs if they were merchandise? He also pointed out that he had provided the Zoning Board with copies of the minutes of the Town Board meetings at which the amendment had been adopted, and that his interpretation was the same as that of previous Zoning Administrator Richard Betz. An appellant's route of appeal from the Zoning Board was to Superior Court. He also pointed out that he had ruled that lights displayed on trees within The Christmas Tree Shop would be permitted.

Comm. James said that he did not feel comfortable clarifying a pending case; he did not think the Board could tell the Zoning Board how to interpret the Ordinance. If somebody wanted to propose an amendment to the Ordinance, the Board could consider it, but the Zoning Board would have to make its own decision in this case. The Board agreed by consensus to make no recommendation on the matter.

7. The Mayor reported that David Bee had resigned from the Zoning Board as an alternate member, and that Sherry Sims had agreed to serve.

MOVED BY COMM. CALLOWAY, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO APPOINT SHERRY SIMS AS AN ALTERNATE TO THE ZONING BOARD TO FILL DAVID BEE'S UNEXPIRED TERM. Her term will expire July 1, 1999.

8. The Clerk had prepared a list of issues which needed to be addressed concerning the Board's approval in concept at the November 5 meeting of an 80-foot tower on Big Bearpen Mountain, as well as a copy of the current lease agreement with WHLC. He reported that he had spoken with Comair, and they had indicated that they would be willing to move to the new antenna before their lease expired in 1999. He also reported that David Harris, in a conversation earlier in the day, had indicated that he could provide a sample Ordinance and agreement for a telecommunications tower, and he felt it might be of some help in drafting a new lease agreement for WHLC.

The Board discussed the issues identified at the previous meeting, agreeing that the Town should own the tower, and that the tower should be able to contain all of the antennas on Big Bearpen. Comm. James felt that Town Engineer Lamar Nix should review the site for the

tower to ensure that there would be adequate room for a future water tank. It was also agreed that an agreement should contain a provision that "the last one on" should be responsible for ensuring that there is no interference with existing antennas.

In other issues, Mayor Cleaveland felt that rent should be increased to at least \$500, and that the Board should review it every two years.

The Clerk offered to discuss this with Mr. Harris and see what other Towns were charging for rent for similar towers. Comm. James felt that a 10-year term was the longest that should be approved, and he questioned whether automatic renewal options should be permitted.

The Board also discussed what would happen if the radio station sold. The Mayor said he assumed that a purchaser would assume what is left of the lease, and then re-negotiate with the Town, but Comm. Calloway felt that a potential purchaser should be required to re-negotiate before assuming the lease. The Clerk agreed to see how the model agreement to be provided by Mr. Harris addressed the issue. The Board postponed further discussion of the lease for a tower until the additional information could be received.

9. It was reported that Finley Merry had requested being placed on the agenda, but had later requested postponing his appearance.

10. A memo had been received from the Scholarship Committee on November 13, recommending that Stephanie Foster receive a \$500 scholarship; the application had not been reviewed with the other applicants due to an oversight.

MOVED BY COMM. SANDERS, SECONDED BY COMM. CALLOWAY, AND UNANIMOUSLY CARRIED TO AWARD A \$500 SCHOLARSHIP TO STEPHANIE FOSTER.

11. The Clerk reported that a lot on Hicks Road had been donated to the Fire Department from Mary Elizabeth Ramsey, although the deed had not yet been prepared. The Fire Department wished to sell the lot, and according to § G. S. 160A-266 it could be disposed of pursuant to advertisement for sealed bids.

MOVED BY COMM. CALLOWAY, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO ADVERTISE FOR SEALED BIDS WHEN THE DEED HAS BEEN PREPARED.

12. The Southwestern North Carolina Planning and Economic Development Commission had again requested that the Town adopt a resolution requesting the release of its share of State funds to the Region A Regional Council.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO ADOPT THE RESOLUTION. A copy is attached hereto and made a permanent part of this record.

VI. Meeting was adjourned at 8:45 p.m.

Richard Betz, Town Clerk