

PUBLIC HEARING and REGULAR BOARD MEETING of July 15, 1998, with Mayor Buck Trott and Commissioners H. N. James, Mike McCall, Ron Sanders, Zeke Sossomon, and Amy Patterson present.

Also present were Richard Betz, Eddie Madden, James Tate, Alan Marsh, Steve Pierson, Eric Pierson, Kay Earp, Tony Chambers, Virginia Fleming, Rosemary Fleming, Tony Chambers, John Lupoli, Charles Arwood, Richard Randolph, Kim Lewicki, and others.

A. Public Hearing.

Mayor Trott called the Public Hearing to order at 7:00 p.m. and stated that the purpose was to receive comments from the public on several proposed amendments to the Zoning Ordinance; the hearing had been advertized in The Highlander pursuant to law. He then asked Town Planner Eddie Madden to review the amendments, and Mr. Madden did so individually, the Mayor asking for comments after each amendment.

Steve Pierson was present, and stated that he objected to the amendment prohibiting the erection of structures within 30 feet of the centerline of a primary route, or 15 feet of any other public or private road, where no right-of-way was defined. He said that rock walls in locations such as Central Drive on Little Bearpen would be prohibited, as well as parking areas constructed adjacent to a road; he felt the Board needed to take a hard look at the effects of the amendment.

Mr. Madden requested that the Board defer action on the amendment addressing change in color or materials for commercial buildings, and the associated Appendix C; he said that he was working with a group of local architects on defining the types of materials that would be permitted in the Appendix, but had not yet completed that work.

Alan Marsh was present, and stated that he favored adoption of the provision that would require all off-street parking to be provided on the same parcel of property as the principal use, rather than within a 400-foot radius.

There being no further comments from the public on the proposed amendments, the Mayor closed the public hearing at 7:12 p.m.

B. Regular Board Meeting.

I. Mayor Trott called the Regular Board Meeting to order at 7:12 p.m.

II. The Clerk asked the Board to consider adding several items to the agenda:

- Preliminary and final plat for Henrietta Maret subdivision.
- Request by John Lupoli Jr. to access Town sewer system.
- Proposed donation to the Tennis Court Fund.

He also stated that the Closed Session on the agenda to review employment applications would not be necessary; only one application had been received, and Public Services Administrator Lamar Nix had not yet had the opportunity to review it.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS AMENDED.

III. The minutes of the July 1 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY

CARRIED TO APPROVE THE MINUTES AS CORRECTED.

IV. Reports.

1. The Mayor reported that he had received two reports from local businesses on the excellent, professional handling of incidents by the Highlands Police Department.

He also reported that the Department of Transportation had agreed not to install guardrail along US-64E where the proposed Mirror Lake Pressure Sewer Line was to be installed, as discussed at the previous meeting.

2. Comm. Sossomon reported that the Street Committee had discussed the request from Franklin Cleaners for a 15-minute parking space at the last meeting. He felt that the Town had a loose policy of approving such parking spaces for in-and-out businesses such as the cleaners, pharmacies, and banks in the B-1 district. Comm. Patterson also noted that there was some sentiment that such spaces should be balanced between one end of Town and another.

MOVED BY COMM. SANDERS, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO AMEND THE TRAFFIC SCHEDULE TO DESIGNATE A 15-MINUTE PARKING SPACE AS REQUESTED BEHIND FRANKLIN CLEANERS ON OAK STREET, AND ALSO TO REMOVE THE DESIGNATION OF THE 15-MINUTE PARKING SPACE IN FRONT OF THE BLUE RIDGE PHARMACY, WHICH HAD GONE OUT OF BUSINESS.

3. Each Board member had received a copy of the Town Administrator's report for the month, which included copies of a letter to the County Commissioners concerning the EMS service, a memo on the Morris guarantee & escrow agreement, and a letter from John Randolph dated July 8 concerning the Charles Arwood subdivision.

Comm. Patterson asked the Town Administrator if he had had the opportunity to look into the discrepancy between the bid price accepted and the actual expenditure for paving, briefly discussed last month. Richard Betz explained that the paving bid had been accepted based on unit prices; additional leveling and paving up to the budget amount of \$75,000 had been approved by him on recommendation of the Public Services Administrator. He said he understood this had been the practice in past years; he explained that the exact amount of asphalt used for leveling was not known until paving was completed, and that there were cost savings in additional paving since the contractor's equipment was already mobilized. Comm. Patterson felt that additional paving over the bid price should be approved by the Board, and the bid on paving should be a "not to exceed" amount; the Board agreed.

V. Old Business.

1. The Town Administrator reported that he had received three informal bids on a geotechnical report for the Big Bearpen Tower site, as follows:

- Froehling & Robertson.....\$1680, or up to a maximum of \$2350 if rock boring required.
- Bunnell-Lammons Engineering.....\$1950, with additional unspecified amount if rock boring required.
- Law Engineering.....\$2113, with additional unspecified amount if rock boring required.

He said that once the geotechnical report had been completed, it would be forwarded to Rohn Tower—which had bid \$10,195 on a tower, as reported last month—for foundation design. He was still awaiting a third bid on erection of the tower, but it appeared that the total cost of the project would not exceed the \$40,000 budgeted.

MOVED BY COMM. SANDERS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ACCEPT THE LOW BID, NOT TO EXCEED \$2350.

2. The Board discussed appointment of a member to the ABC Board to replace retiring chair Fred Hovey. The Mayor said he felt that an existing member should be appointed chair; Georgia Sanders had said she would serve in this capacity, but David Wilkes had declined. The Board discussed several candidates.

MOVED BY COMM. SANDERS, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO APPOINT GEORGE SCHMITT AS A MEMBER OF THE ABC BOARD.

Steve Pierson was present and asked if this would be a conflict of interest, since Mr. Schmitt also served on the Scholarship Committee.

The Mayor said he did not feel it was a conflict, since the proceeds contributed by the ABC store to the scholarship fund was strictly an administrative decision set by statute. Mr. Pierson also asked if ABC Board members were paid. The Mayor reported that members were paid \$75/month, and the chair was paid \$125/month; the Board met monthly.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. SOSSOMON, AND CARRIED TO APPOINT GEORGIA SANDERS AS CHAIRMAN OF THE ABC BOARD. Comms. Patterson, Sossomon, McCall, and James voted "aye;" Comm. Sanders abstained.

3. The Board again discussed the problem of commercial vehicles parking within the right-of-way of Laurel Street. Eddie Madden reported that he had discussed this matter with Richard Ducker of the Institute of Government, who had commented that he felt the proposal discussed at the previous meeting was too restrictive. Mr. Madden had prepared four alternatives, which had been distributed with the agenda package; they included enforcement of the Zoning Ordinance with respect to commercial uses in residential districts, in that the public right-of-way was also zoned residential, as well as three amendments of the Highlands Code with respect to parking regulations. Comm. Patterson felt that residential zones should be residential; if a person owned a home, he would not want a bulldozer parked next to it. The Mayor and Comm. James both felt that they did not like any of the parking regulations, although Mr. Madden and Comm. James were exploring another alternative which would prohibit parking of commercial vehicles on public property for the purpose of conducting a business. Comm. James noted that perhaps there was a need for a zoning district where such equipment would be parked. Mr. Madden explained, in answer to a question from the Town Administrator, that a notice of violation had been issued several months ago with regard to the situation on Laurel Street; the next enforcement step would be a citation. The consensus of the Board was that the Zoning Ordinance should be enforced, and no further Board action was necessary.

Tony Chambers was present, and commented that commercial vehicles and motor homes often parked on Fifth Street for several days.

4. The Board agreed to meet in a work session as part of the August 19 Regular Board Meeting to discuss the recommendations of the Land Use Planning Committee.

5. The Town Administrator provided each Board member with a copy of an updated draft of the Morris Subdivision Escrow Agreement, incorporating changes suggested by David Hourdequin and approved by Town Attorney Bill Coward. The changes included a change in name to Synergistics Inc.; a cost of construction of \$13,800, based on an estimate by W. K. Dickson Company; expected construction date of August 31, 1999, or 12 months from date of final approval; and expected completion time of three months. He said that in reviewing the construction costs with Lamar Nix, however, they had agreed that costs should be included in the escrow account for contingency (10%), legal/administrative (5%), and engineering (\$1500), bringing the total cost of improvements to \$17,370; he had given David Hourdequin this information, and had asked Mr. Coward to insert the new figure in the agreement. The agreement, together with the final subdivision plat, could be approved when the State had approved the plans.

VI. New Business.

1. The Board considered the amendments of the Zoning Ordinance individually, as follows:

- Add the following to Paragraph (2) of Appendix A:

"Re-painting of parking lots approved under this Ordinance— where the parking lot has been re-surfaced, or re-configured, or where the original stripes can no longer be seen—shall not be permitted except upon issuance of a Zoning Certificate."

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ADOPT THE FOREGOING AMENDMENT.

- Replace the second sentence of Section 407.2 with the following:

"All non-conforming signs made non-conforming by an amendment to this Ordinance shall either be made to conform to all provisions of this Ordinance or shall be removed within three years after the date of such amendment, unless explicitly prohibited by federal or state law."

MOVED BY COMM. MCCALL, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO ADOPT THE FOREGOING AMENDMENT.

- Delete Section 702.2(B) and replace with the following:

"Where no commercial building project is planned or anticipated, no large or medium tree eight (8) inches DBH or more in diameter in any commercial zoning district shall be removed except upon issuance of a permit by the Zoning Administrator for one of the following reasons:

(1) when the tree is dead, diseased, infected, or infested; and

(2) when the tree, as a result of storm, fire, accident, or other acts of nature, places life, limb, or property in immediate jeopardy."

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO ADOPT THE FOREGOING AMENDMENT.

- Add the following as second sentence to Section 702.3(B):

"If no right-of-way is defined among the public records of Macon County, North Carolina, no such structure may be erected within thirty feet of the road centerline of a North Carolina or U. S. primary route, nor within fifteen feet of the road centerline of any other public or private road."

Planning Board Chair James Tate said the Planning Board had not recommended approving this amendment; they had felt it was a little extreme for one-lane roads, and was also unfair in instances where roads did not follow property lines. Comm. James said he felt it was fair, since structures were already prohibited where road rights-of-way were defined.

MOVED BY COMM. JAMES TO ADOPT THE FOREGOING AMENDMENT. There was no second to the motion, and the Mayor ruled that it failed to carry.

- Add the following definition to Article 900: DEFINITIONS

"• Basement: The lowest level of a building that is wholly or partly below ground. For the purposes of this Ordinance, a basement shall not be deemed a habitable story if it is 50% or

more below grade, and is used only for storage and mechanical space; a basement that is less than 50% below grade, or is used for any other purpose, shall be deemed a habitable story."

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ADOPT THE FOREGOING AMENDMENT.

- Delete Section 304(B) and replace with the following:

"(B) All off-street parking spaces required by this Ordinance shall be provided on the same parcel of property on which the principal use is conducted."

The Board discussed a second alternative to the foregoing amendment, which would continue to permit off-street parking within a 400-foot radius provided it was located on the same side of the street and within the same block as the use; Comm. James said he favored that alternative. It was reported that the Planning Board had approved the foregoing amendment, although it had not reviewed the alternative.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. PATTERSON, AND CARRIED TO ADOPT THE FOREGOING AMENDMENT. Comms. Sossomon, Patterson, Sanders, and McCall voted "aye;" Comm. James voted "nay."

2. The Board considered preliminary and final plats for the Charles F. Arwood subdivision, as discussed at the previous meeting. The plat dated June 17, 1998, had been prepared by W. Edward Hall, and had been approved by the Planning Board on June 29, 1998; it indicated a "proposed drive" off Clear Creek Road, a public road with a 60-foot right-of-way. Each Board member had received copies of a letter from John N. Randolph dated July 8.

Richard Randolph was present, and stated that he felt the subdivision plat was getting around the Subdivision Ordinance requirement of access for a driveway. He said he had been told that the owner would be putting in a "goat trail" or "jeep trail" off Clear Creek Road, while actually using an old driveway with a shared easement. This driveway had been built by hand 60 years ago with a team of oxen, was only eight feet in width, and had an extreme hairpin curve; he often met other cars on the driveway. His concern was that if the subdivision were approved, the new owner would give token lip service to providing access, while actually intending to use a driveway shared by three homes.

Town Planner Eddie Madden stated that he had issued a Land Disturbing Permit for construction of the new driveway shown on the plat, and he understood it was already under construction.

Comm. James asked who had the right to use the existing driveway. Mr. Randolph replied that his understanding was that it was a joint easement for two property owners; whether the new owner shared in that right was an issue the court could decide. Copies of the deed provision were then provided by Mr. Madden and reviewed briefly by the Board. The Mayor commented that he felt the deed appeared to provide an easement to "heirs, assigns, and successors in title." Comm. James pointed out that the Board was not in the business of enforcing deed provisions.

Mr. Randolph asked what recourse he would have if the road was torn up during construction? He said that another option would be for the subdivider to improve the road so that it was adequate for three homes.

Comm. Sossomon requested permission to abstain from the discussion due to a conflict of interest; he informed the Board that he had prepared a contract in this matter, the outcome of which was dependent on the vote of the Board.

Mark Meadows was present, and stated that he had been "up front"

about the intentions of the subdivider from the beginning. As a practical matter, he pointed out that the existing driveway would probably be used, because it was an easier way to access the property; he said, however, that he had never used the words "goat trail" or "jeep trail." When the property had been purchased, Mr. Arwood had obtained the legal right to use the driveway. He said that he understood Mr. Randolph had contacted every attorney in Town and attempted to interfere with the issuance of title insurance. Improvement of the existing driveway to a subdivision road was not practical because half of it was owned by Mr. Randolph. He did not want to mislead the Board; the old driveway would be used. However, he felt the subdivider had met the requirements of the Subdivision Ordinance. He also displayed photographs he had taken of the new driveway under construction.

Mr. Madden pointed out that the Planning Board had approved the subdivision plat. He also said that, in a memo to that Board reviewing the plat, Town Engineer Lamar Nix had recommended approval, noting that access to either the Walhalla Road or Clear Creek Road was available to Lots A and B. Mr. Madden said that was his interpretation as well; he felt that access had been provided, and in his opinion the requirements of the Subdivision Ordinance had been satisfied.

Comm. James asked if there was a definition of access. Comm. Patterson felt that, just because a parcel touched a road, it was not necessarily access. Comm. James said he felt that the Town Attorney should be asked to review this matter and decide what "access" meant in the Ordinance. Mr. Randolph asked if the subdivision could be approved contingent on access from the existing driveway being excluded. Comm. James said the Board did not have the right to do that. In his opinion, if the new driveway was installed, he would be satisfied; he did not feel use of the old driveway was the Board's problem.

Charles Arwood was present, and said that he was just as concerned as the Randolphs. However, he did not often meet others cars on the driveway, and he felt this matter had been blown out of proportion. He said if the plat met subdivision regulations, he would appreciate the Board approving it.

Mr. Randolph said that access was a way to get to the property; he felt this matter would be thrown into litigation because approving the plat would be a violation of the Ordinance.

The consensus of the Board was to ask the Town Attorney to review this matter.

3. Each Board member had received a copy of a proposed policy on pay increases prepared by the Town Administrator, as requested at the June 25 meeting. The Board agreed to defer action.

4. MOVED BY COMM. JAMES, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING RESOLUTION:

A RESOLUTION  
CERTIFYING REVIEW OF PLANS AND SPECIFICATIONS  
OF THE MAIN STREET IMPROVEMENTS PROJECT  
BY THE BOARD OF COMMISSIONERS

**WHEREAS**, the Board of Commissioners of the Town of Highlands, in order to replace deteriorating sanitary sewer lines and construct storm sewers in the Town of Highlands, has approved a project to accomplish these objectives; and

**WHEREAS**, the Appalachian Regional Commission has approved a project for assistance under the Appalachian Regional Development Act of 1965, entitled "Highlands Main Street Sewer Improvements, Macon County, NC-12772-I-214;" and

**WHEREAS**, plans and specifications have been prepared by the Project Engineer, Stephen L. Nix, P. E., and were presented to the Board of Commissioners in regular session assembled on July 1, 1998.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Commissioners of the Town of Highlands hereby approves the plans and specifications for the aforesaid project.

This resolution is adopted this 15th day of July, 1998.

The Town of Highlands

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Allen L. Trott, Mayor

(TOWN SEAL)

ATTEST:

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Richard Betz, Town Clerk

5. The Mayor reported that the Fire Department had voted to submit a request for possible re-evaluation of the Town's insurance rating; the rating was currently a "5," and the Department felt it could be reduced to a "4."

MOVED BY COMM. SANDERS, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO AUTHORIZE THE FIRE DEPARTMENT TO SUBMIT THE REQUEST.

6. The Board discussed a final subdivision plat for Henrietta Marett subdivision, which had been approved by the Planning Board on July 13. The plat had been prepared by Sylvester and Company, with the last revision dated July 6, 1998. Comm. James felt that the 60-foot right-of-way indicated on the plat was inaccurate; he thought it should be 66 feet. Comm. Sossomon said that it was an interesting question whether the 60-foot D. O. T. right-of-way would have precedence over the 66-foot Kelsey right-of-way.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE FINAL SUBDIVISION PLAT.

7. John Lupoli Jr. was present to request access to the Town sewer from his property on the northeast corner of Spring Street and Third Street by means of either a gravity line, which would become public upon construction, or a private pressure line. The gravity line would be installed pursuant to plans prepared several years ago by Baldwin & Cranston, along the northern margin of Spring Street to a manhole at Second Street. He said, and the Town Administrator confirmed, that Town Engineer Lamar Nix had agreed to seal and submit the plans to the State if the Board approved; there was no objection to the Town Engineer sealing these plans at Mr. Lupoli's expense. The second alternative, a pressure line, would require a pump station accessing the pressure line in Spring Street. Approximately seven connections would be involved, and plans had already been approved by the Zoning Board.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE EITHER OF THE ALTERNATIVES, PROVIDED THE COST IS PAID BY MR. LUPOLI.

Mr. Lupoli asked if assistance from the Town was available for installation of the line, perhaps in the form of recouping of costs in the future when others connected to the line. The Town Administrator pointed out that current sewer extension policy provided for cost sharing by the Town, in its discretion, only in

the case of a petition and assessment procedure. The policy also provided that any individual could request extension of the sewer to a limited service area if he agreed to pay 100% of the cost, as Mr. Lupoli had done. Other funding alternatives had been discussed prior to adoption of the sewer extension policy last year, but had not been adopted. Comm. McCall felt that the Town ought to share in the cost of the line. Comm. James also felt the Town ought to look into a policy of sharing the cost for a gravity line such as this.

8. The Clerk reported that an individual had offered to donate \$10,000 toward the Tennis Court Fund, and had requested that the new courts be named in his honor. The donor proposed paying for a 10" X 20" brass plaque indicating that the courts had been made possible through the efforts of himself and other Recreation Center tennis players, and with grant assistance from the Parks and Recreation Trust Fund.

The Board discussed policy on erection of such plaques at some length. The consensus was that, although the offer of a donation was appreciated, erecting a plaque might set a bad precedent for others wishing to make donations.

VII. MOVED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at approximately 9:50 p.m.

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Richard Betz, Town Clerk