

REGULAR BOARD MEETING of February 2, 2000, with Mayor Buck Trott and Commissioners Amy Patterson, Zeke Sossomon, H. N. James, and Mike Cavender present. Comm. Sanders was absent due to illness.

Also present were Richard Betz, Lamar Nix, Maureen Lackey, Kim Lewicki, Eric Pierson, Jim Tate, Hank Ross, Sherry & Buddy Kremser, Philip Carson, Alan Marsh, and others. Bill Coward arrived after the meeting had begun.

I. Call to Order.

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

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Clerk asked that two items be added to the agenda: application for Police Patrol Officer, and the appearance before the Board of Sherry & Buddy Kremser under New Business.

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

III. Approval of Minutes.

The minutes of the January 5, 2000 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

IV. Reports.

1. The Mayor reminded the Board that he had scheduled a dedication for the clock and bell in the Town Hall cupola for Sunday, February 2, at 1:00 p.m. He also said that there would be a short ceremony for retiring Police Officer William Perkey at the Highlands Civic Center immediately following the dedication.

The Mayor also reported that he and many Town employees had honored retiring Water Department employee Mike Burrell at a luncheon earlier in the day.

He also commended the Street Department on the excellent job they had done in removing snow over the past several days.

2. Each Board member had received the Public Services Administrator's written report for the month. Lamar Nix was present and reviewed the report with the Board.

Lamar Nix also reported that he had exchanged several letters with George Eager in recent months concerning a request for water service to his residence at the top of Billy Cabin Road. Mr. Eager had claimed that he had once had access to Town water in the 1970's, but in the late 1970's he and a neighbor had drilled a well and he had not been on the Town system since then. In the meantime, the line feeding him had been abandoned. Mr. Eager had submitted a letter dated May 1975 from then-Town Clerk H. N. James, granting water service.

Comm. James pointed out that Mr. Eager had once had Town water, but then chosen not to have it; he felt he was no longer in the Town service area, and the Town was not obligated to provide it.

MOVED BY COMM. JAMES, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO DENY THE REQUEST.

3. Each Board member had received a copy of the Recreation Director's written report for the month. The Clerk reported that Selwyn Chalker was attending the Director's Conference, and added that work had begun on the children's pool.

4. Each Board member had received a copy of the Town Planner/ Zoning Administrator's report for the month. Maureen Lackey was present and reviewed the report with the Board.

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

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

6. Town Administrator Richard Betz reported that the Town had received a copy of a "Notice of Recommendation for Enforcement" addressed to S. B. Associates Inc. The letter requested that the Town not issue new Zoning Certificates or Certificates of Compliance for any buildings connected to S.B.'s sewer system.

He also reported that the Town had received word two weeks ago that the Environmental Review Commission was meeting in Raleigh on January 20 to consider adding the Cullasaja River to the Natural and Scenic River system. He reminded the Board that it had opposed this designation in a resolution adopted May 19, 1999. He said that Mayor Trott had been discussing this matter with Senator Bob Carpenter and more information was being sought.

He also reported that the Town had received \$4000 in donations to the Bowery Road condemnation escrow fund.

#### V. Old Business.

1. Each Board member had received an updated copy of the Wireless Communications Amendment of the Zoning Ordinance, including all of the corrections made to date, including the changes drafted by the Town Attorney following the January 5 Board meeting relating to Special Use Permit conditions.

Comm. Cavender asked about Section 510.3(D), which stated that "the height of the proposed wireless communication facility shall not exceed the height of the tallest tree within a 100-foot radius of the proposed wireless communication facility by more than ten (10) feet;" he asked what the height would be if there were no trees in the vicinity. After some discussion, the Board agreed by consensus to add the words "or, in the absence of any tree within such a radius, a height of eighty (80) feet."

The Board agreed to defer adoption of the amendments until the facilities leases had been finalized. The moratorium on wireless communications facilities was not scheduled to expire until March 15, 2000.

2. The Town Administrator reported that he had still not received a final report from Metrosite Management on the existing and requested leases for antenna sites, although he had received lease forms for sites, towers, and facilities, and had forwarded them to the Town Attorney for review.

3. Each Board member had received a copy of a revised escrow agreement for funds raised for the condemnation of Bowery Road, as discussed at the previous meeting, including a memorandum from Town Attorney Bill Coward. Comm. James commented that the revised agreement was pretty straightforward.

MOVED BY COMM. JAMES, SECONDED BY COMM. SOSSOMON, TO APPROVE THE AGREEMENT.

Comm. Cavender said that he still did not like the idea of a cap

of \$400,000. He said that the proponents of improving the road had said they would pay what it would cost, and the Town had then passed a resolution accordingly. He felt the property owners had then gotten nervous, and he did not like the idea of the Town left holding the bag; he felt they ought to be held to the original agreement.

Philip Carson was again present, and questioned the legality of the agreement. He said that the so-called POP program applied to the D. O. T., not the Town. He also questioned taking money, then giving it back to one person to dole out to others. He said the agreement and the process were both fatally flawed, and he asked the Board to consider jointly asking the Attorney General of North Carolina whether or not the Town of Highlands had the authority to enter into this sort of agreement. He also said that he remembered a Commissioner stating in an earlier meeting that the costs could go to \$1 million; he didn't think it could be done for that.

Comm. James pointed out that nobody knew what the cost would be, but that the \$400,000 was based on, and in fact higher than, an estimate made by the Town Attorney.

Mr. Carson also said that the Town Board was entitled to know what had happened in subdivisions on the Bowery Road. He felt the Board should ask the Zoning Administrator to pull all of the subdivision files together and make a report on whether the Zoning Ordinance had been complied with. Finally, he reminded the Mayor that he had stressed the safety issue in the past due to construction and emergency vehicles on a one-lane road; he didn't disagree, but he felt that if the Town continued to give building permits in the area, it was contributing to the problem.

Comm. Sossomon asked Mr. Carson what he proposed to do to solve the problem, assuming the Town did not condemn anybody else's property. He pointed out that beyond the 0.7 mile section of road in contention, there was a 60-foot right-of-way. The bottleneck was a State road, and it was apparent that the State wouldn't do anything about it. He said the Board knew what the problem was, but questioned whether the solution was to condemn someone else's property. Building an alternate route would require going down Horse Cove Road, turning back up the mountain, and cutting a 60-foot-wide swathe of trees; what would be gained by doing that, rather than widening the existing road ten feet?

Mayor Trott said that, at the recent School for Mayors and New Board Members in Asheville, he had been told by both Fleming Bell and David Lawrence of the Institute of Government that cities were authorized to enter into this type of agreement.

Town Attorney Bill Coward arrived.

Comm. Cavender asked if there was any reason why the Town should not ask the Attorney General for an opinion. Bill Coward said there was not; however, he said the Attorney General normally interpreted statutes, and to date he had not found any statute that would explicitly prohibit the Town from entering into the agreement.

Comm. Sossomon felt the Town should consider approving the agreement, but also asking the opinion of the Attorney General.

The Mayor called the question. THE MOTION TO APPROVE THE AGREEMENT CARRIED, WITH COMMS. JAMES AND SOSSOMON VOTING "AYE," COMMS. PATTERSON AND CAVENDER VOTING "NAY," AND MAYOR TROTT VOTING "AYE" TO BREAK THE TIE.

Comm. Sossomon then made a motion to send the question to the Attorney General for an opinion. Comm. James seconded the motion, then withdrew his second; Comm. Cavender then seconded the motion. The Mayor called the question. THE MOTION CARRIED, WITH COMMS. SOSSOMON, CAVENDER, AND PATTERSON VOTING "AYE," AND COMM. JAMES VOTING "NAY."

The Mayor then read the following statement into the record, stating

that it was his opinion and he wanted to put it on record:

"Now that we have adopted the Escrow Agreement, we expect that the necessary funds will be raised and we will proceed with condemnation as quickly as possible. Our Town Attorney has advised us, and consultants with the Institute of Government have confirmed, that both the condemnation of this right-of-way for the public use and benefit, and also this type of agreement, is within our legal authority as a municipality.

We want to reiterate that this condemnation action is being brought only because all other efforts to improve the road have been exhausted. The Bowery Road Committee found that the property owners along the road were unwilling to grant sufficient right-of-way for any kind of road. However, if at this time any of the property owners want to meet with Town officials and negotiate donation of a sufficient right-of-way, the Town will welcome that opportunity.

We also want to reiterate that the option of constructing a new road, as proposed by some of the property owners and by their attorney, has been thoroughly considered by this Board and deemed to be infeasible due to the cost of construction, the necessity of condemning a greater amount of land, and the very significant environmental impact. The Bowery Road Committee also rejected such an alternative because of the environmental consequences.

We also want to go on record refuting the allegations of the attorney for the property owners, stated at several Board meetings, that the Town has improperly approved subdivisions in the Bowery Road area. Much of this area was subdivided before it was annexed in 1980. Moreover, although a subdivider is required to provide local subdivision roads and collector roads, nothing in the Town's subdivision regulations would permit the denial of a subdivision because of inadequacies in the State thoroughfare system, especially in light of the previous efforts by the Town and the State to improve that system. We also believe that the Town would not be justified in declaring a moratorium on construction in an entire area of Town due to inadequacies in the State thoroughfare system. By the same logic, construction everywhere in Highlands should cease due to the narrow condition of US-64 to Franklin and Cashiers."

Comm. Cavender asked if the Town was willing to reconsider any kind of compromise, such as going back and revisiting the work the Bowery Road Committee had done. Comm. Sossomon said he had served on that Committee and he was not willing; the property owners had said they were unwilling to compromise by refusing to donate any land. Comm. James pointed out that if there was any desire for compromise, the Board would have heard from some of the property owners by now.

Philip Carson said that his clients were willing to meet with anybody and discuss the matter. Comm. Sossomon said he and Comm. Cavender were on the Street Committee; he agreed that if some workable alternative was proposed, he would have no problem listening to it. In his opinion, however, the Town had only two choices: to do nothing, or to do something; he felt the only reasonable solution was to expand the existing road, doing as little harm as possible. Comm. James said that Mr. Carson had come to this Board many times, and had not offered anything other than criticism. He said the Town had determined that the Bowery Road needed improving, and the only way to improve it was to condemn right-of-way because the property owners along the road would not give an inch.

The Clerk pointed out that meetings of the Street Committee would be subject to the Open Meetings Law, and public notice would have to be posted.

4. The Town Administrator reported that he understood negotiations were being pursued for the location of a cul-de-sac in Bob Morris's Satulah Vista Subdivision, as discussed at the January 5 meeting, on either Lot 5A or Lot 3. Mr. Morris had also forwarded a copy of the contract proposal in support of the \$14,400 for paving, signed by Richard Rhodes, and had indicated that he would also be forwarding a contract and additional amount for the grading and excavating. He asked that the matter be deferred until the next meeting, and the Board agreed.

5. The Town Administrator reported that he understood John Lupoli was pursuing some alternatives for sewer service at the Old Creek Lodge.

6. Each Board member had received a copy of a Hold Harmless Agreement between the Town, Northland, and WHLC, drafted by Town Attorney Bill Coward pursuant to the Board's request at the January 5 meeting. After some discussion, the Board agreed for the Town Attorney to add a provision specifying that the grounding for the tower becomes the property of the Town.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO APPROVE THE AGREEMENT.

The Board also agreed by consensus that Mr. Cooper should pay the Town Attorney's bill for developing the agreement.

7. Each Board member had received a report prepared by Town Planner Maureen Lackey on the temporary banner policies of other municipalities, as requested at the January 5 meeting. The Board then discussed temporary banners at some length.

Comm. James made a motion that the Town adopt the proposed amendment submitted last August permitting banners only on the fence at the Recreation Park for events held at the civic center; there was no second to the motion.

After considerable discussion concerning the meaning of "annual civic events and special holidays," Comm. Sossomon said he was prepared to recommend deleting the current Section 405.1(B).

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. JAMES, AND CARRIED TO DELETE SECTION 405.1(B) OF THE ZONING ORDINANCE. Comms. Sossomon, James, and Patterson voted "aye;" Comm. Cavender voted "nay."

8. The Board again discussed the Water & Sewer Facilities 10-Year Needs Assessment Study prepared by W. K. Dickson Company, copies of which had been distributed at the previous meeting and reviewed with Victor Lofquist. The Mayor pointed out that the Land Use Planning Committee had recommended annexing the areas identified in the study, and that Geoffrey Willett had agreed for the Division of Community Assistance to begin work on a complete Annexation Study pending a review of this initial study; the study had also been prepared as the Highlands portion of a comprehensive County water and sewer study by McGill & Associates.

Comm. James said that the study led him to conclude that the Town ought to concentrate on providing service inside of Town. If anything, he felt the W. K. Dickson figures might be low.

The Board then discussed the study at some length.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED NOT TO PROCEED WITH THE ANNEXATION STUDY.

Mayor Trott pointed out that the Study had prompted him to ask the Board to seriously think about the capacity of the Town's Wastewater Treatment Plant, which last year had exceeded 50% of capacity on more than one occasion. He said that the new sewer line down Cullasaja Drive, and the proposed West Shore Lake Sequoyah sewer

line, would add even more users. He felt the Town should consider asking its consulting engineers, W. K. Dickson Company, to prepare some sort of study.

Comm. Cavender asked what kind of impact the projected connections would have on capacity. Town Engineer Lamar Nix pointed out that the S. B. Associates plant alone could add a potential 55,000 GPD, in addition to Mountain Club and V-Z Top; the potential increase could be 20% of current capacity. Comm. James said that he remembered discussing this matter with State officials last year, and they had recommended that the Town begin looking at expanding capacity.

By consensus, the Board agreed for the Mayor and the Town Administrator to talk to W. K. Dickson Company and find out what would be involved in an analysis.

## VI. New Business.

1. A petition for re-zoning had been received from John & William Tate for a portion of a 2.44-acre parcel on the corner of First and Oak Streets, from R-2 to B-3. Jim Tate was present, and when asked what use he intended to make of the property, said that it could be used for anything eventually, but for now simply for expanding his nursery business on Main Street.

Comm. James said he felt the Land Use Planning Committee should have dealt with the property during its study. Mr. Tate said that, as Chairman of that Committee, he had not felt that it would be proper to propose the re-zoning at that time. However, he felt the property was on one of the main corners of Town and close to the urban areas, and he also said the Committee had wanted to "clean up the map." Comm. James also pointed out that the Town had recently denied a similar re-zoning request for the A. B. Potts property.

Comm. Patterson said that one of the emphases of the Land Use Plan for the past 10 years had been to restrict commercial development.

Comm. Cavender agreed; he said he saw no reason to expand the commercial area.

There being no motion to send the petition to the Planning Board for a recommendation, the Mayor declared the petition denied.

2. Sherry Kremser was present, and said that she had spoken to both Joel Setzer and Lloyd Clark with the District Office of the D. O. T. concerning drainage from her property on East Main Street, where construction of a shopping center was currently underway. She said the State had agreed to install culverts in front of her property if the town would make a formal request. She also wondered if the Town would consider sharing the cost of the sidewalk she would be constructing along Main Street if it was upgraded to brick.

The Town Engineer said that he had spoken with the D. O. T. at Ms. Kremser's request, and he understood the improvements could be funded through Small Urban Funds. The Board agreed that Ms. Kremser should submit plans on exactly what she proposed doing to Mr. Nix for consideration at the next meeting.

3. MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION TO REVIEW APPLICATIONS FOR EMPLOYMENT FOR ASSISTANT WATER/SEWER MAINTENANCE WORKER II AND POLICE OFFICER, PURSUANT TO G.S. §143-318.11(A)(6). All present left the room except the Clerk and the Public Services Administrator.

The Board reviewed several applications for the Water/Sewer Maintenance Worker II position vacated by Stanley Houston.

The Public Services Administrator recommended employing Kenneth Norris in the position.

The Clerk reported that Police Chief Jerry Cook had recommended

that Police Auxiliary Officer Matthew Pellicer be employed as full-time Patrol Officer.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION.

4. MOVED BY COMM. PATTERSON, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO EMPLOY KENNETH NORRIS AS WATER/SEWER MAINTENANCE WORKER II AT A SALARY OF GRADE 9, STEP 3 (\$18,475).

The Board also authorized advertizing for a position in the Sanitation Department.

5. MOVED BY COMM. PATTERSON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO EMPLOY MATTHEW PELLICER AS A PATROL OFFICER, ON THE POLICE CHIEF'S RECOMMENDATION, AT A SALARY OF GRADE 11, STEP 1 (\$19,411).

VII. MOVED BY COMM. SOSSOMON, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:40 p.m.

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Richard Betz, Town Clerk