

REGULAR BOARD MEETING of July 11, 2001, with Mayor Buck Trott and Commissioners Zeke Sossomon, Amy Patterson, H. N. James, Ron Sanders, and Mike Cavender present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Maureen Lackey, Jerry Cook, Selwyn Chalker, Kim Lewicki, Bob Wright, Moyna Monroe, Mildred Johnson, Charlie McDowell, Hank Urbanek, Virginia Fleming, Rosemary Fleming, Louise Meisel, Jim Graham, Clem Patton, Tom Olsen, Debbie Grossman, Lewis Doggett, and Stephanie Harmur.

I. Call to Order.

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

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Clerk reported that Debbie Grossman had asked for permission to speak to the Board above Town paving and was present tonight.

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

III. Approval of Minutes.

Copies of the minutes of the June 20 Regular Board Meeting and the June 27 Budget Hearing and Special Board Meeting had been distributed by mail.

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

IV. Reports.

1. The Mayor reported that, through the efforts of Bob Wright and the Upper Cullasaja Watershed Association, the USGS had re-established a stream gauge in the Cullasaja River. The cost was \$20,000 initially and \$12,000 annually, and would be funded by the State and Federal governments. The Mayor thanked Mr. Wright for his efforts.

2. The Mayor then yielded his time to Debbie Grossman, owner of Fresser's Eatery. Ms. Grossman said that she was speaking on behalf of Barbara Cusacks and other business people in Highlands Village Square concerning the paving of Fifth Street between Pine and Main on July 3. She said that it had affected a lot of businesses in the area, delayed deliveries, and caused some near accidents, and no prior notice had been given. She was also concerned about a possible drainage problem from the new paving.

The Mayor asked Ms. Grossman and Ms. Cusacks to meet with the Town Engineer to discuss the drainage problem. Lamar Nix said that the timing of the paving had been based on the bid opening and the 30-day window provided in the bids; if it was a problem, the Town could consider scheduled paving in the downtown area in an earlier month.

3. The Street Committee, consisting of Comms. Cavender and Sossomon, had separately looked at the driveway at the corner of Fourth and Spring Streets, as discussed at the previous meeting. Comm. Sossomon said he felt the problem was not with the parking space on Spring Street but with the location of the driveway which, though in existence for years, was too close to the intersection. He did not feel it was a problem if a van which had been parking in the adjoining parking space parked elsewhere. The Board agreed for the Mayor to write to the property owner concerning this matter.

4. 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. He said that the Water

Treatment Plant had been damaged by a lightning strike on July 3 and repairs were being made; it had not affected operation of the Plant. He also said that the Arnold Road pump station was nearly operational. He reported that the contract on the Maple Street Project had expired, and he had received a request for an extension of time until August 31; he felt the extension was justified due to delays caused by Verizon in re-routing a fiber optic telephone cable.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO APPROVE THE EXTENSION OF THE MAPLE STREET CONTRACT UNTIL AUGUST 31.

Mr. Nix also reported that he had asked the D.O.T. for an encroachment permit for possible parking along Chestnut Street, as discussed at the previous meeting. He also said that he had received a request for a handicapped parking space on Oak Street across from the Fire Department; the Street Committee agreed to review this request.

Comm. Cavender asked if increased siltation in Big Creek after the recent rains had affected operation of the Water Treatment Plant. Mr. Nix said that it had; when turbidity was high, the plant was not operated.

5. Each Board member had received the Police Chief's written report for the month. Jerry Cook was present and reviewed the report with the Board. Comm. Patterson asked about the traffic signals on Main Street and traffic backing up on Fourth Street. Chief Cook explained that much of the problem had been caused by the paving and the Duke Power utility work on US-64, as well as the pedestrian crosswalks.

6. Each Board member had received a copy of the Recreation Director's report for the month. Selwyn Chalker was present and reviewed the report with the Board. He said that the softball league was going well, and that everything was running well at the pool except for a heater at the children's pool. He thanked the Police Department and the Fire Department for their excellent help during the Fourth of July festivities. He also said that he had obtained, at the Mayor's request, a price of \$1295 including installation for a surge protector for the Performing Arts Center. Comm. Patterson said she understood the electrical plans for the building were being reviewed by an electrical engineer to ensure that the surge protector would be adequate. It was also reported that the fireworks display on July 4 had cost \$5,000 and was funded by the Chamber of Commerce.

7. 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. She reported that she had received some information on the North Carolina Environmental Program Capstone course and student internship program through the Highlands Biological Station. Comm. Cavender reported that several other interns would be working in the area as part of the program. Ms. Lackey also reported that Jim Tate had been elected Chairman, and Allan James had been elected Vice Chairman, of the Zoning Board the previous night.

Ms. Lackey then read into the record a letter of resignation dated July 11.

Kim Lewicki asked the Board if they had a response to the allegations in the letter.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ACCEPT THE RESIGNATION OF MAUREEN LACKEY, AND TO NOT REQUIRE HER TO WORK A TWO-WEEK NOTICE.

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

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

9. The Town Administrator reported that he, the architect, the Fire Chief, and a Fire Department Building Committee had met and reviewed the bid from R.G.E. Associates for the Fire Department addition. A schedule of values and references had been reviewed, and the contract had been signed the previous day; work would begin as soon as the electrical service behind the building could be re-routed.

He also reported that Comair had agreed to sign the lease for its antennas on Big Bearpen at the lease amount approved by the Board.

However, Currahee Paging had requested through SpecraSite a reduction of the lease amount from \$200 to \$100 per month. By consensus, the Board agreed to deny the request.

#### V. Old Business.

1. Each Board member had received copies of an analysis of revenues and expenditures for the proposed annexation of the Highlands-Cashiers Hospital and Chestnut Hill, which had been prepared for the November 15, 2000 meeting. The Mayor said that he understood the hospital wanted to know, before proceeding with seeking funding for a water line, if the Town would be willing to provide water service if it petitioned for annexation. The Board discussed this matter at length.

Comm. Cavender said he was concerned over the development that would be opened up in the unincorporated area between the Town and the Hospital. He said that he would like to see the Planning Board, with the help of the Division of Community Assistance, review the matter and get a clear picture of what it would mean. He did not want to see piecemeal development.

Comm. James said that he did not think that possible annexation in the area should be piecemeal, but he also did not think it should affect the hospital's request.

Comm. Patterson pointed out that a sewer line had been in place for 10 years along the highway and there had not been a problem with development.

Charlie McDowell asked if the request would include Chestnut Hill, and then said that he opposed the idea. He said that there was no map on record of what is contained in Chestnut Hill, and he doubted that any lawyer would give title insurance for the development; he felt that furnishing water and sewer for a project outside the city limits would be in violation of the Town's subdivision regulations.

He also said that he had understood Chestnut Hill was to have been a money maker for the hospital, but he did not think it had ever made a dime; all it was doing was filling up the Town's sewer plant.

Comm. Sossomon said he understood that the hospital owned the land under Chestnut Hill, and the units were leased; Clem Patton confirmed this arrangement.

Bill Coward pointed out that the General Statutes required the Town to review annually the amount charged for water, sewer, and other enterprises in a satellite annexation area, and to adjust it if necessary so that expenditures did not exceed revenues.

Bob Wright said that he agreed with Comm. Cavender; studies had shown that a water or sewer line would stimulate development, and he felt that matter ought to be studied.

The consensus of the Board was that a petition for annexation would be considered if submitted.

#### VI. New Business.

1. The Town Administrator said that, rather than filling Gary

McCall's position at the Civic Center, he and the Recreation Director had considered contracting out the service to Johnny Stanfield, the individual who cleaned the public rest rooms. He said that an informal proposal had been received for cleaning the building for \$375/week, which would be between \$2000 and \$7000 less in cost annually than salary and benefits for filling the position. Selwyn Chalker said that they had been using Mr. Stanfield on a trial basis for two weeks and it seemed to be working well; the building was cleaned after it closed for the day, five days per week as needed.

He suggested that he and the Town Administrator work on a contract and a punch list schedule of what needed to be cleaned.

MOVED BY COMM. SANDERS, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO CONTRACT THIS SERVICE ON A TRIAL BASIS THROUGH THE END OF OCTOBER AT THE PRICE QUOTED.

2. Several amendments of the Soil Erosion Ordinance regarding a Hillside Overlay District had been distributed with the agenda. Planning Board member Lewis Doggett was present, but he said that Maureen Lackey's resignation earlier in the meeting was unexpected and he was not prepared to present the proposal on behalf of the Planning Board. The Board agreed by consensus to consider the proposal at the August 15 Board meeting.

3. Sherri Kremser was present, and asked about a sidewalk to her new shopping center in front of the Mountain Fresh property. The Town Administrator said that he had been discussing this with the Town Engineer, and a price was being obtained for such a sidewalk; he said he would discuss this with Ms. Kremser after the meeting and bring the matter before the Board when all of the information had been received. Ms. Kremser also asked about Christmas lights and a free-standing sign at her shopping center.

4. MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPOINT RICHARD BETZ INTERIM ZONING ADMINISTRATOR.

Moyna Monroe objected to the appointment. The Mayor stated that this was a Board decision.

5. Moyna Monroe said that she had been instructed by her attorney to read the following letter into the record:

"I object to the Town Board going into closed session to discuss matters pertaining to the Bowery Road because I believe that what you propose to do goes beyond the law.

I am advised that it is legal for you to get advice from your lawyer and give him instructions in closed session. It is unlawful for you to discuss, deliberate, or make decisions regarding the Bowery Road condemnation and/or your attempts to block the Bowery Road Historic District application in closed session.

I request that you, as required by law, insure that detailed minutes of the discussions and actions taken by the Board in closed session are kept in order that they may be reviewed by a court should this be necessary."

6. MOVED BY COMM. CAVENDER, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318(A)(3) TO CONSULT WITH THE TOWN ATTORNEY CONCERNING PENDING LITIGATION REGARDING BOWERY ROAD CONDEMNATION AND THE TOWN V. EDWARDS ET. AL.; AND PURSUANT TO G. S. §143-318(A)(6) TO DISCUSS A PERSONNEL MATTER CONCERNING MAUREEN LACKEY.

Tom Olson asked the Board if a discussion on litigation that was pending was proper in closed session. The Mayor told him that it was proper.

Comm. James asked Kim Lewicki to remain outside the room; he said the Board would discuss the personnel matter involving Maureen Lackey first, then open the meeting to give her a statement.

All present left the meeting room except the Clerk, the Public Services Administrator, the Police Chief, and the Town Attorney.

The Mayor read the following statement to the Board:

"At the June 20 Board meeting, Moyna Monroe read a written statement, saying that she had discussed matters discussed in Closed Session with a board member. I want to remind the Board of the importance of keeping confidential any discussion in Closed Session when consulting with the Town Attorney. Breaching this confidentiality limits the ability of our attorney to advise the Board, lessens the chance of success, increases the cost of litigation, and decreases the public's confidence in the Board. I would hope that all Board members would respect this confidentiality in the future."

The Board then discussed Maureen Lackey's letter of resignation dated July 11 and the allegations contained therein with the Town Attorney. It was agreed that the Town Attorney should make a statement in open session regarding the letter.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION. Kim Lewicki was invited into the room.

Town Attorney Bill Coward stated that the Board had just received Ms. Lackey's letter of resignation and had not had time to review it thoroughly. What it had had time to review at this time, the Board denied. The Board expected to review if further in the future.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION TO CONFER WITH THE TOWN ATTORNEY ON THE LEGAL MATTERS PREVIOUSLY CITED. Kim Lewicki and the Police Chief left the meeting room.

- A. The Town Attorney updated the Board on Poyner & Spruill's handling of the Playmore/Bowery Road Historic District matter.
- B. The Town attorney reviewed the Board's options on the Town v. Edwards et. al. North Carolina Court of Appeals decision. The options discussed included pursuing the matter in Superior Court, to which it had been remanded; dropping the case; appealing to the N. C. Supreme Court; or condemnation of the property.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION. The public was invited back into the meeting room.

The Mayor generally summarized what the Board had discussed in Closed Session.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND CARRIED, TO APPEAL THE DECISION OF THE N. C. COURT OF APPEALS IN THE TOWN V. EDWARDS ET. AL. TO THE N. C. SUPREME COURT. Comms. James, Sanders, and Sossomon voted "aye;" Comms. Cavender and Patterson voted "nay."

Virginia Fleming asked how the Board could justify asking taxpayers to pay more to pursue the case. The Mayor said he felt that the cost of an appeal would probably not be as great as pursuing the matter in Superior Court.

Tom Olsen asked what the objective was. Comm. James said that he felt these rights-of-way were the birthright of the people of the Town of Highlands, and had been for 100 years; he felt that Mr. Melvin and others had tried to take that right away. Mr. Olson said that there was almost no support for pursuing the case. Comm. James said he disagreed; that was not what he understood. Mr. Olsen said he

felt opening the street would increase truck traffic on Fifth Street, changing the character of Highlands and the Kelsey preserve. Comm. James said that the objective was perhaps not to open the street now, but to retain the right to open it at some point in the future.

Town Attorney Bill Coward pointed out that the Town had offered early in this case not to open the street for a number of years if the right to open it at some time in the future could be retained. He felt that had been a wise and reasonable compromise, but it had been rejected out of hand; the Town had been told that even 100 years from now, the street could not be opened.

Charlie McDowell said that if the road was opened the Town would be throwing the Zoning and Subdivision regulations out the window by permitting industrial traffic in a residential zone.

Kim Lewicki asked Mr. Coward to elaborate on the offer that had been made. Mr. Coward said that the offer had been to reserve the right-of-way as a Town street, but to not touch the road for now; he remembered that the time period had been for the lives of the parties to the lawsuit. The offer had been rejected.

VII. MOVED BY COMM. JAMES, SECONDED 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 9:15 p.m.

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Richard Betz, Town Clerk