

REGULAR BOARD MEETING of December 18, 2002, with Mayor Buck Trott and Commissioners H. N. James, Mike Cavender, Hank Ross, and Amy Patterson present; Comm. Ron Sanders was not present.

Also present were Richard Betz, Lamar Nix, Larry Gantenbein, Jerry Cook, Bob Wright, Jolene Niblack, Dennis DeWolf, Bill Mann, Robert Wyatt, Don & Carole O'Neal, Rick & Helene Siegel, Eddie Madden, Lewis Doggett, Farrell Zehr, Kim Lewicki, and others.

I. Call to Order.

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

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Town Administrator reported that one item had been deleted from New Business, and that a letter had been received from the Jackson/ Macon Conservation Alliance to be added to New Business.

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

III. Approval of Minutes.

Copies of the minutes of the November 20 Regular Board Meeting had been distributed by mail.

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

IV. Reports.

1. The Mayor reported that the Christmas Tree Lighting on November 30 and the Christmas Parade on December 7 had gone well; he thanked those who had participated in the events.

2. The Town Administrator reported that he had reviewed the agenda with the Town Attorney and learned that the Edwards case was scheduled for August 4, 2003. He also distributed copies of a letter dated December 17 from the Attorney concerning the right-of-way of the "Town" portion of Bowery Road; it indicated that the Town had a prescriptive easement on the road to the width to which it had been used and maintained, which might not include enough for ditches, and culverts. The Town Administrator added that he understood that the original developers of Sagee Mountain Subdivision had retained the 60-foot right-of-way shown on the subdivision plat, and if so the Town could attempt to obtain it from them. The Board asked him to have the Town Attorney contact these developers, determine if they did retain the right-of-way, and see if they would be willing to donate it to the Town.

3. Each Board member had received a copy of the Public Services Administrator's written report for the month. Lamar Nix was present and reviewed the report. He also said that the State compliance officer had met with the Water Plant operators to further discuss the use of chlorine at the Water Treatment Plant. He said that tighter standards for chlorine by-products might require the Town to look at alternative treatment methods in the future, but in the meantime the operators had begun monitoring and collecting data. He also reported that the Lofquist & Associates hydraulic water study was well underway and was generating good GIS data, including mapping of all water valves.

He also reported that he had met with officials from Highlands Country Club and the Property Owners Association on December 10 to discuss a continuing water line problem on Hill Road. The problem was caused by a 2" PVC water line, which he had determined

was inadequate for the pressure and recommended replacing with 6" ductile iron. The cost would be approximately \$8,000, the work could be done by the Water Department, and paving would be coordinated with the Club; he would like to begin work after the first of the year because resurfacing by the POA was scheduled in early Spring.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO APPROVE THE WATER LINE REPLACEMENT PROJECT.

Comm. Ross noted that the Street Department had been very helpful in the Leadership Highlands tree-planting project on Maple Street, and he expressed his appreciation.

4. Each Board member had received a copy of the Police Chief's written report for the month. Jerry Cook was present and reported that, effective December 7, Police Officer Tony Carver had resigned on good terms in order to take a position as a School Resource Officer for the Sheriff's Department. A review of applications was scheduled for Closed Session later in the meeting.

5. Each Board member had received a copy of the Recreation Director's report for the month. Selwyn Chalker was out with minor surgery, but the Town Administrator reported that he was recovering well; he added that the gym resurfacing, referred to in the report, had been completed.

6. Each Board member had received a copy of the Town Planner/Zoning Administrator's report for the month. Larry Gantenbein was present and offered to answer any questions. He also reported that the Zoning Board, prompted by denial of a variance request from the School Board, had agreed at its last meeting to ask the Board to consider a relaxation of the variance standards by insertion of so-called "weasel words" relating to the requirement that an applicant demonstrate that he can "secure no reasonable return from, nor make reasonable use of, his property." He said that the Zoning Board felt that the phrase, strictly interpreted, put them in a position where a variance could not be granted in most cases, especially with respect to setbacks, since another reasonable use could always be found. Comm. James expressed a concern about the potential danger of "weasel words;" he noted that the language had not been much of a problem in the past. Comm. Cavender also did not feel there was a good reason to amend the Ordinance, particularly since the Zoning Board had been provided a memorandum from Mr. Gantenbein on the subject providing a legal rationale for granting variances under the existing standards. Comm. Ross felt that the Planning Board already had enough to do, the matter was not urgent, and he was not sure that the Board needed to do anything. Comm. Patterson felt that the process had worked well.

Mr. Gantenbein also reported, later in the meeting, that he had received a letter from an attorney for Mitch Gurganus concerning a one-lane loop road at Shelby Place accessing Lot 95; the Board had addressed the matter in July of 2000, ruling that this was a "driveway" and not a "road," and stating that it could not be used to access the lots in that area. He had responded to the letter by declining to authorize use of the loop road, pursuant to the action of the Board; however, he understood the property owner wished to apply for a variance from the Subdivision Ordinance. The Board agreed that the procedure would be to apply first to the Planning Board for a recommendation, then bring the request to the Town Board pursuant to the Ordinance. Comm. James stated, however, that he felt the Shelby Place Homeowners Association should be contacted and that they should participate in the variance request, since they would have to approve any change in the subdivision.

7. 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.

8. The Town Administrator reported he had informally polled the

Board on December 4, after the meeting had been cancelled due to inclement weather, and the following Christmas bonuses had been approved for full-time employees:

Less than one year of service.....\$150.00
Between one year and ten years of service.....\$200.00
More than ten years of service.....\$250.00
More than twenty years of service.....\$300.00

It had also been agreed that part-time employees should be given hams as in past years.

He also reported that the first half of the S. B. Association sewer connection fees had not all been received to date; all of the Country Club portion had been received, and approximately 60% of the 63 residences had been received. He had spoken to Tom Walker earlier in the day and learned that more fees had been collected, but Mr. Cheney was ill and the secretary for the Association was out of Town; he expected to receive the balance before the end of the year.

He also reported that the new Recreation Department pickup truck had been received, making possible the sale of a surplus pickup truck, as well as several other vehicles:

<u>Vehicle</u>	<u>Department</u>	<u>Recommended Minimum</u>
1989 Ford 555C Backhoe	Street Department	\$5,000
1991 F-450 Bucket Truck	Electric Department	4,000
1996 Ford Crown Victoria	Police Department	2,000
1990 Dodge Dakota 4X4	Sewer Department	500

The Board approved accepting informal bids for the vehicles at the next meeting.

He also reported that he had spoken to Paul Schmitt earlier in the day concerning repairs at the Highlands Playhouse, which thus far had exceeded the estimate of \$19,400 approved by the Board on April 17, 2002. He understood that there was a substantial amount of work still remaining, and he had asked Mr. Schmitt to provide a report and revised cost estimates at the next meeting.

V. Old Business. None.

VI. New Business.

1. Each Board member had received a copy of a memorandum from the Town Planner dated December 4, 2000, and also a memorandum to the Planning Board dated November 18, concerning non-conforming uses and buildings. Mr. Gantenbein explained that, while he had drafted language which would permit the rebuilding of certain historic buildings, the Planning Board had agreed that it could recall few uses where it had been an issue and had recommended that the Ordinance not be amended. He said the Board had agreed with Comm. Patterson's comment at a previous meeting, that once a historic building was destroyed its historical significance was also destroyed. The Board had agreed that the Zoning Board should be trusted to provide relief from hardship through the granting of variances. He said that his research had shown that other jurisdictions treated commercial buildings in a similar way to the Town's Ordinance, but many also had ordinances which protected residential property. A wide-ranging discussion then ensued.

Comm. James felt that the recommendation of the Planning Board should be accepted. He also felt that buildings like Highlands Inn or Main Street Inn, which encroached on Town right-of-way, should not be re-constructed out in the street right-of-way if they were destroyed by fire, but should be brought into compliance.

Comm. Ross was not so certain that the variance procedure would protect a property owner; he felt that the character of the Town

was changing, and the Town should do what it needed to protect historical and other non-conforming buildings.

Comm. Cavender felt that when a person purchased property, government should protect that investment. He felt that properties that could be brought into compliance should do so, but properties destroyed should be permitted to re-build to the extent they now exist, no larger, without having to obtain a variance.

Lewis Doggett explained that the Planning Board had also noted that several historical buildings had changed hands many times, and the owners had been well aware that they could not be re-constructed if destroyed; the Board had also expressed concern over buildings which were not listed on the National Register but had some historical value, such as the Main Street Inn, which would be deprived of protection. Farrell Zehr, owner of Main Street Inn, was present and said that he felt the destruction of his building would not only affect him, but would also detract from the Town. Rick Siegel felt that it was unfair that new laws made buildings non-conforming which had been legally constructed long ago.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, TO ADOPT THE AMENDMENT SUBSTANTIALLY AS DRAFTED BY MR. GANTENBEIN IN HIS MEMO, FOLLOWING PUBLIC HEARING AS REQUIRED.

Comm. Patterson expressed some reservations with buildings in the right-of-way.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, TO AMEND THE MOTION BY INCLUDING LANGUAGE EXEMPTING RE-CONSTRUCTION IN THE TOWN RIGHT-OF-WAY.

Mayor Trott said that he felt the Zoning Board already had the authority to issue variances; he didn't think the Town should make a blanket law that would cover everything. Comm. James felt that such an amendment would water down the Ordinance so that the Town would have no zoning. Comm. Cavender disagreed; he felt that the issue was property owners being reluctant to place their financial security before the Zoning Board, and that it was reasonable to be willing to help them protect their investments; he could not see how it would be detrimental to the Town. Comm. Patterson pointed out that past Boards had amended the Ordinance for good reason, and asked why non-confirming buildings should operate under different laws than new buildings.

THE MAYOR CALLED THE QUESTION. COMMS. CAVENDER AND ROSS VOTED "AYE," COMMS. JAMES AND PATTERSON VOTED "NAY," AND THE MAYOR VOTED "NAY" TO BREAK THE TIE; THE MAYOR RULED THAT THE MOTION HAD NOT CARRIED.

3. Eddie Madden was present as Chairman of the Deacons of First Baptist Church and also Chairman of the Long-Range Planning Committee. He said that he had discussed the Church's situation with respect to parking requirements with interim Zoning Administrator Richard Betz several months ago; the property was zoned B-2, which did not require setbacks, but did require parking. A proposed amendment, copies of which had been distributed with the agenda package, would add the phrase "except that they [off-street parking requirements] should not apply to churches and other places of public worship" to Section 205.9. He noted that the church had always used on-street parking on Oak Street and Second Street, rather than off-street parking; if required to provide parking, future plans would be restricted. Landscape Architect Phil Ward had determined that it would be nearly impossible to provide parking due to topography; although a parking garage could be constructed, it would only provide 10 to 15 spaces. The church was the only one on Main Street that was faced with this requirement, and while there were no immediate plans, there was a critical need for Sunday School, kitchen, fellowship hall, and administrative office space.

Comm. James felt that it would be good for the Planning Board to review the proposed amendment, but he also felt that it should look at clarifying what the definition of a church was; he suggested that

the Town Planner work on some language.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO REFER TO PROPOSED AMENDMENT TO THE PLANNING BOARD FOR REVIEW.

3. Each Board member had received a letter from Don and Carole O'Neal dated November 18 concerning the recent approval of a duplex on the Highlands Biological Station property, and they were both present to discuss the letter with the Board. Mr. O'Neal said he had heard several comments earlier in the meeting concerning property values; he said that his family had owned the property at 858 Horse Cove Road, adjacent to the Valentine House, for 37 years, and he pleaded for a change in the Ordinance to protect that investment. He said that the current Ordinance gives the Biological Station the right to build anything they want anywhere they want, and he also noted that this would apply to any future property they might obtain. He felt that with 22 acres available there had been no need to place the duplex ten feet from the property line, and he was concerned over future phases of development; he noted that he had already had problems with noise from the Valentine house. He felt that the Board should consider closing this loophole, which would permit them to build pig pens and raise hogs if they wanted to study breeding habits. Carole O'Neal added that this was residential property.

The Town Administrator apologized for an error he had made in talking to Ms. O'Neal last week; he had told her that buildings on the property were required to be set back only ten feet from the property line, but had learned later that the Zoning Administrator was interpreting the Ordinance to require that the duplex, and any other multi-family buildings on the property, be set back 40 feet from the property line. Zoning Administrator Larry Gantenbein confirmed the statement. Ms. O'Neal said that she would still like to see the problem addressed.

The Board agreed by consensus to take the matter under advisement.

4. MOVED BY COMM. PATTERSON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO APPROVE THE FIRE DEPARTMENT'S ELECTION OF JAMES MANLEY AS FIRE CHIEF FOR 2003, AND RE-APPOINTMENT OF OLAN VINSON AS ONE OF THE TOWN'S REPRESENTATIVES ON THE FIREMEN'S RELIEF FUND FOR A TWO-YEAR TERM EXPIRING DECEMBER 30, 2004.

5. MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO RENEW THE CONTRACT WITH J & J LAWN SERVICE FOR MOWING OF THE HIGHLANDS CEMETERY. The Town Administrator reported that the amount would be the same as the previous six years.

6. Jolene Niblack was present to express concerns over a rare *Franklinia* tree (*Franklinia alatahama*) planted 15 years ago by the Garden Club and the junior gardeners to beautify the area of Town right-of-way in front of the Episcopal Church and Library property. She displayed several photographs indicating that construction at the church was resulting in a dumpster and building materials to be placed near the tree, and although she had constructed a small fence around it, she feared that it had already been destroyed. She said she had spoken to the Mayor about the problem, and she was now asking the Board to have the contractor remove the dumpster and other materials from the area and provide a heavy-duty tiller to till the area. The Town Administrator noted that construction on zero-lot-line property often caused conflicts, but he felt the tree could be protected. The Mayor reported that he and the Town Engineer had responded to calls from Ms. Niblack, talked to the contractor, and asked him to protect the area; he said the Town would see what it could do to clear the area. Lewis Doggett felt that the matter should also be brought to the attention of church officials.

7. Each Board member had received a copy of a letter from Patricia Boyd of the Jackson/Macon Conservation Alliance, requesting a donation of \$15,000 from the Town as matching funds for a \$100,000 grant from the National Forestry Foundation to combat the wooly

adelgid; the funds would be used for a lab at Clemson University to begin production of beetles which would destroy the pest. The Board discussed the request and asked about the time frame. The Mayor said he understood they needed a reply by next month, but that only \$5,000 was needed this year. Comm. Cavender recommended that the Board take the request under advisement pending receipt of more information by the next meeting, and suggested that JMCA President Dave Barstow be contacted; the Board agreed by consensus.

8. The Board agreed by consensus to cancel the first meeting in January, scheduled for January 1; the next regular meeting will be held on January 15.

9. MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(6) TO REVIEW APPLICATIONS FOR EMPLOYMENT IN THE POLICE DEPARTMENT. All present left the room except the Clerk and the Police Chief.

The Police Chief reviewed with the Board an application from David Tippett; Mr. Tippett had been working as a Police Auxiliary Officer since September of 2000 and had recently returned from Afghanistan, and the Chief recommended employing him as a full-time Police Officer. He also recommended retaining Tony Carver, whose resignation he had announced earlier in the meeting, as a Police Auxiliary Officer.

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

10. MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO EMPLOY DAVID TIPPETT AS POLICE OFFICER AT A BEGINNING SALARY OF 11-1 (\$22,043), AND TO RETAIN TONY CARVER AS A PART-TIME POLICE AUXILIARY OFFICER AT A SALARY OF 9-1.

VII. MOVED BY COMM. CAVENDER AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:00 p.m.

Richard Betz, Town Clerk