

REGULAR BOARD MEETING of September 17, 2003, with Mayor Buck Trott and Commissioners Hank Ross, Mike Cavender, and Amy Patterson present. Comm. James was absent due to illness.

Also present were Richard Betz, Lamar Nix, Larry Gantenbein, Ryan Chambers, Cindy Sprouse, Kim Lewicki, Alan Marsh, Stan Cochran Ferrel & Jan Zehr, Bill Bassham, Gloria Pariseau, and others.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:00 p.m. He then asked for a moment of silence for Dave Clary, who had passed away on September 15; Mr. Clary had served with distinction on the Planning Board for 15 years.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail.

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

III. Approval of Minutes.

Copies of the minutes of the September 3 Public Hearing and 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 he had received a resolution recognizing Highlands Country Club, which was celebrating its 75th anniversary; a copy had been included in the agenda package.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ADOPT THE RESOLUTION.

2. The Town Administrator reported that the Public Services Administrator had prepared specifications for a service truck for the Street Department and a garbage truck for the Sanitation Department, which were in the FY 03-04 budget; he expected bids could be received at the October 1 or October 15 meeting.

He also reported that the parties in the Bowery Road injunction case had filed notice of appeal to the State Supreme Court.

He also reported that he had spoken to Kendall Hobson, subsequent to his letter of August 17 discussed at the previous meeting, concerning amendment of a deed restriction for the Town's water tank lot on Satulah Mountain in order to provide parking for people hiking to the summit. Mr. Hobson had informed him that the family felt a parking lot would make the summit more accessible and could create more problems, and they were unwilling to amend the deed.

He also distributed copies of a letter of thanks from the Hudson Library, a letter of complaint about tax revaluation from G. B. Brinson, and a letter from Rufus Broadaway, M. D., Chair of the Crosby Center Board; the latter stated that the Board had not intended to request funding from the Town for the emergency center, as reported at the previous meeting, and apologized for the misunderstanding.

The Town Administrator had also prepared for the agenda package a memorandum to the Mayor and Board dated September 17 concerning Highlands Cable Group, and including letters and documentation referred to; it read as follows:

I am writing this memorandum to document and to make the Board aware of several ongoing problems with Highlands Cable Group.

Following the Board meeting of August 20 (excerpt of minutes attached), at which Nin Bond was present and stated that he understood the right-of-way requirements, I wrote a follow-up letter dated August 26 (copy attached). On the same day, Lamar Nix wrote a letter, clarifying his requirements for more detailed plans indicating exactly where underground cable would be installed (copy attached).

We heard no reply from Mr. Bond until September 11, when it was reported in our office that Highlands Cable Group was installing cable in the Mirror Lake area. No plan had been received, no workers compensation certificate had been received, and no pole attachment fees had been paid. I contacted Mr. Bond by telephone, and when he came into the office he stated that he had "misunderstood" the letters he had received. Mr. Nix and I reviewed the letters with him again and asked him to stop work until the information had been provided.

On September 15, we again received a report that Mr. Bond was working in the same area. I again contacted Mr. Bond and when he came into the office later in the day he said that his men were "not supposed to be working." He gave me the attached letter, workers compensation certificate, and a plan. I told him to stop work until the plan had been reviewed. Mr. Nix reviewed the plan and found that it was the plan that he already had, with street names highlighted with a blue marker.

On September 16, Mr. Nix and Craig McCall again found that cable was being installed on Netsi Place and Chowan. They then checked cable clearances on the poles, which is required to be 40 inches by the National Electric Safety Code. The first pole checked did not meet clearances, as did several others. Mr. Nix asked Mr. McCall to take an inventory of poles to which Highlands Cable Group had illegally attached cable. Mr. McCall informs us that, as of 1:00 p.m. today, September 17, 58 poles have been attached to (and work is continuing); of those 58 poles, 40 of them do not meet required clearances.

Mr. Nix then reviewed with the Board the clearance requirements of the National Electric Safety Code, using a diagram he had prepared; he said that the purpose of the code was to avoid electrocution of people climbing the poles.

The Board discussed the matter in some detail and asked what recourse the Town had at this point. Mr. Betz said that Highlands Cable Group was clearly in violation of the Pole Attachment Ordinance, which required a permit and payment of fees before attaching to poles; an application had been submitted but no permit had been granted, and thus attachment to Town poles was a trespass, despite several verbal warnings. He said that the Ordinance provided that the Town "shall have the right to remove immediately and without notice any attachment which could place the Town's equipment or the public in danger." He said that he intended to ask the Police Department to inform Mr. Bond's contractors on the following day to immediately cease work or the cable he was installing would be disconnected. He also said that, while he had been unable to contact the Town's Cable TV consultant to confirm this, he believed the Board had the authority to revoke the franchise agreement. The extension of the construction schedule on July 2 had been made contingent on submittal of make ready plans, which in his opinion and in the opinion of both the Town Engineer and the Electric Department

Superintendent were not adequate. He said that at this point, he would recommend that the Board consider revoking the Cable TV Franchise agreement.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED THAT HIGHLANDS CABLE GROUP BE NOTIFIED THAT IT HAS ONE (1) WEEK TO COME INTO FULL COMPLIANCE, INCLUDING SUBMITTAL OF AN ADEQUATE PLAN AND COMPLIANCE WITH THE TOWN'S POLE ATTACHMENT ORDINANCE, OR THE BOARD WILL REVOKE THE FRANCHISE AGREEMENT.

#### V. Old Business.

1. Town Planner Larry Gantenbein reported that the Planning Board had met with Shane Griffin, as requested at the previous meeting, concerning the request for street-level landscaping at Old Edwards Inn encroaching on the right-of-way of South Fourth Street. The Board had recommended that a continuous sidewalk seven feet in width be provided, with planters permitted on whatever was left.

MOVED BY COMM. ROSS, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO APPROVE THE PLAN SUBMITTED AT THE PREVIOUS MEETING, EXCEPT THAT THE SIDEWALK SHALL BE A CONTINUOUS SEVEN FEET IN WIDTH.

#### VI. New Business.

1. It had been reported that the Planning Board had also reviewed the provision in Section 8-9(9) of the Highlands Code regulating construction noise, as discussed at the previous meeting; it had recommended extending the hours during which construction noise was permitted to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and the hours of 10:00 a.m. and 6:00 p.m. on Saturdays, and in a business district, between the hours of 7:00 a.m. and 6:00 p.m. on weekdays and between the hours of 10:00 a.m. and 6:00 p.m. on Saturdays.

Comm. Cavender asked Bill Bassham what the Chamber of Commerce's position on the proposed amendment was. Mr. Bassham said that he thought the recommendation was a reasonable one. Mr. Cavender said that he had heard complaints from several inn owners who did not like extending the hours to include Saturdays. Comments were then received in opposition to changing the Ordinance from Jan Zehr, Gloria Pariseau, and the owners of the Christmas Tree, all of whom were present at the meeting.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED NOT TO AMEND THE ORDINANCE.

Bill Bassham commented that there had been some misunderstanding about what the Ordinance now requires. Comm. Patterson suggested that the Zoning Certificate form include the requirement. The Town Administrator said that he would inform the Police Department that the current Ordinance was to be enforced.

2. A request had been received from the Chamber of Commerce for permission to close Main Street between Third and Fourth on Saturday, November 29, for the annual Christmas Tree lighting.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE REQUEST.

A request had also been received from the Literacy Council requesting that Pine Street be closed between Fourth and Fifth on Saturday, October 18, in order to celebrate the 10th anniversary of that organization with a band at the gazebo and dancing. Comm. Patterson noted that this was one of the busiest weekends in Highlands and would affect a great deal of parking. Comm. Cavender suggested that a member of the Council be asked to

appear at the next meeting to answer questions, and that the request be postponed until then.

A request had also been received to close Main Street during the annual Highlands School PTO 5-K Run at 9:00 a.m. on October 25.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE REQUEST.

3. A proposed resolution had been distributed to each Board member, which the Town Administrator reported had been agreed to in a meeting between Town officials and the Wildlife Resources Commission and the Division of Water Quality on September 9. He said that the resolution would satisfy the WRC's concerns over the secondary and cumulative impacts of adding to the wastewater treatment plant; i.e., not the impact of the discharge itself into the Cullasaja River, which would be greatly improved by tertiary treatment, but the impact associated with connecting new users to the sewer system. The agency had agreed that these impacts would be minimal in the case of Highlands since the sewer would largely serve existing areas now served by septic tanks, and also would be mitigated by the Town's progressive land use ordinances. The WRC had asked, however, that the Town study the feasibility of expanding watershed regulations to include buffers around intermittent streams as well as permanent streams, and also to extend these regulations into the Chattooga watershed. The resolution would be incorporated into the FONSI, or Finding of No Significant Impact, for the project. The Environmental Assessment had also been amended to include confirmation of the Board's policy requiring annexation, and the concomitant applicability of its land use ordinances, as a prerequisite for the provision of sewer or water service.

Comm. Patterson expressed concern over the Town's authority to regulate areas of the Town that were not public water supply watersheds, or streams not referred to in the Watershed Protection Act. Mr. Betz said that this concern had been raised at the meeting and it had been the opinion of the DWQ that such regulations could be enforced as a matter of public health and safety. He said the resolution agreed for the Town to ask the Planning Board to study the feasibility of doing this, and he felt that this would be addressed either at that time or when any proposed regulations went to public hearing and were reviewed by the Town Attorney.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING RESOLUTION:

RESOLUTION OF THE TOWN OF HIGHLANDS  
AGREEING TO CERTAIN MITIGATIVE MEASURES  
IN CONNECTION WITH THE FINDING OF NO SIGNIFICANT IMPACT  
FOR THE TOWN OF HIGHLANDS WASTEWATER TREATMENT PLANT  
PROJECT  
INCREASING THE PLANT'S CAPACITY FROM 0.5 MILLION  
GALLONS PER DAY  
TO 1.5 MILLION GALLONS PER DAY

**WHEREAS**, the Board of Commissioners of the Town of Highlands has submitted this Resolution as part of the Environmental Assessment and Finding of No Significant Impact (FONSI) for the Highlands wastewater treatment plant (WWTP) expansion project; and

**WHEREAS**, the Board of Commissioners of the Town of Highlands understands the need for effective planning and management of growth within the Town in order to protect and sustain valuable natural resources; and

**WHEREAS**, an active collaboration between Town leadership and the DENR is important in order for the Town to demonstrate its willingness to reduce,

minimize, and mitigate unintentional impacts associated with large public projects of this nature;

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF HIGHLANDS THAT:**

1. The Town of Highlands agrees to continue to enforce its land use ordinances, including its Watershed Protection Rules, Soil Erosion Ordinance, Subdivision Ordinance, and Ordinance Regulating the Draining of Impoundments, in order to protect and improve Water Quality both within its jurisdiction and downstream in the Cullasaja River and Little Tennessee Watershed Basin.

2. The Board of Commissioners agrees to ask its Planning Board to study the feasibility of identifying significant intermittent streams within the Cullasaja River Watershed in order to expand its Watershed Protection rules to include buffer protection for such streams.

3. The Board of Commissioners agrees to ask its Planning Board to study the feasibility of expanding its Watershed Protection rules to streams in the Chattooga River Watershed.

4. The Town of Highlands agrees to keep the North Carolina Wildlife Resources Commission informed concerning the mitigative measures contained herein.

This resolution is adopted this 17th day of September, 2003.

VII. MOVED BY COMM. PATTERSON, SECONDED 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 7:45 p.m.

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Richard Betz, Town Clerk