

PUBLIC HEARING and REGULAR BOARD MEETING of October 15, 2003, with Mayor Buck Trott and Commissioners H. N. James, Hank Ross, Amy Patterson, and Mike Cavender present.

Also present were Richard Betz, Lamar Nix, Jerry Cook, Cindy Sprouse, Kim Lewicki, Sarah Kucharski, Clem Patton, Alice Nelson, Lynn Deville, Kevin Waller, Bill Hogue, Bob Wright, Bill Emerson, Nin Bond, Bill Staley, Jack Corley, Lee Johnson, David Johnson, Junior Bateman, Dennis DeWolf, Bill Basham, Morris Williams, Karen Hawk, Georgia Sanders, Alan Marsh, Kenton David, Gene Brigham, Gordon Hamlin, Fred Storie, Ed Engemann, David Johnston, Rick Demetriou, Chuck & Claire Harrington, and others.

A. PUBLIC HEARING.

The Mayor called the Public Hearing to order at 7:00 p.m. He said the purpose of the hearing was to receive comments from the public on the revocation of the franchise agreement between the Town and Highlands Cable Group (HCG), pursuant to motion made at the previous meeting. The hearing had been duly advertized in accordance with the Cable Television Ordinance, and at the beginning of the meeting those who desired to make comments had been asked to sign their names on a list of speakers.

The Mayor read the entire contents of his letter of October 1 to Highlands Cable Group, approved at the previous meeting. The letter HCG that the Town intended to request termination of the Cable Television Franchise Agreement, cited the authorization in the Cable Television Ordinance, and noted specific violations, notifications, and failures. He then asked for the speakers who had signed up to make their comments.

Kenton David said that he did not live in Town, but had been served by HCG for over a year; he also had a high-speed modem, and had been broadcasting his weather station over HCG's system as a public service at no charge.

Bill Hogue said that he had several questions; he wanted to know how many violations and of what type there had been of the National Electric Safety Code (NESC) by HCG, and how many by Northland and Verizon. The Town Administrator said he did not know the precise number, but that as violations by Northland and Verizon had been discovered, they were being asked to correct the violations. The Town Engineer said that out of the first 60 poles there had been 40 violations.

Gene Brigham said that he was a member of the HCG Advisory Board, and that he and the other Board members had close ties to the Community and wanted to do what they could to make it work. He was impressed by HCG's service, and thought that it was important for people in Highlands to have it. He felt there had been some misunderstanding concerning the complicated codes involved, and therefore the Board had brought in an expert, Gordon Hamlin, an attorney with 20 years experience representing cable companies.

Gordon Hamlin then spoke, distributing copies of a written information packet, including an "Action Plan." He reviewed the written material, which described the lower prices, technological progress, and improved service provided by HCG and compared them with Northland Cable. He also commented that there was an appearance of a conflict of interest because the Town Attorney, Bill Coward, was representing Northland in a lawsuit. He said that the Northland system was under the same obligation to comply but had not, and he quoted the pertinent sections of the Pole Attachment Ordinance. He also distributed a map identifying the first 171 poles; of those he said there were 106 clearance violations, 19 violations of the 12" spacing requirement, and 46 poles with no violations. He proposed an action plan whereby Northland, Verizon, HCG, and the Town would meet and reach an agreement on the present violations, and those poles that needed to be changed out should be changed; HCG would provide engineers to assist in identifying poles that needed

to be replaced. He reiterated that Northland and Verizon should be required to comply with the Pole Attachment Ordinance in all respects; he thought that it was not fair that Northland had been allowed to continue to operate, and they and Verizon were both under an obligation to notify the Town of any of their own violations. He also said that there was a difference of opinion concerning spacing with respect to streetlights, and he then distributed copies of several photographs of alleged existing violations.

Lee Johnson, representing Northland Cable, said that it was correct that they had safety problems, but they were ready to fix them and had offered to do so. Any time a new entity attached to a pole, however, there was a proper procedure for calling the pole owner, then those attached, presenting a make-ready plan, and then a plan to correct violations; it was the responsibility of the last person to connect to pay the cost. That had not been done in this case, and he alleged that HCG had moved Northland and Verizon cables, creating dangerous situations. A letter had been distributed in the agenda package notifying the Board of these violations and expressing concern over the need for immediate correction. He thanked the Town for temporarily correcting a Verizon cable that had been lowered by HCG on Mirror Lake Road before someone was electrocuted. He also said that Northland was providing internet service and also 145 channels.

Fred Storie, representing Verizon, said that they had also experienced problems with HCG moving cables, and thereby creating safety problems that needed to be corrected. He admitted that they had some safety problems of their own, but HCG had lowered Verizon's lines, removed guys and grounds, and created problems that would take time to fix; no make-ready or notification had been provided to the others attached to the poles.

Ed Engemann said he was a long-time resident of Highlands Township; he agreed with the comments about the Town Attorney, and he also thought that more time should be provided to resolve the problems.

David Johnston said that he would like to see the Town do more to assist companies to provide high-speed internet and similar services, possibly through financial support, rather than being in an enforcement mode.

Dennis DeWolf commended the Town Board for bringing this matter to a head; it was unfortunate that these problems could not have been resolved before now, but it was good to hear the comments.

Rick Demetriou said that he was a new resident who had looked forward to the new technology. As a financial consultant, he needed the best technology available to run his business, and he would like to find a way to make it work. He thought that providing this kind of technology was needed by the Town for improvement of the quality of life.

Lee Johnson commented, in regard to the earlier comments, that Northland had asked Bill Coward to file a lawsuit on its behalf when HCG had destroyed its property in Macon County outside of Town; Northland had been aware that he was the Town Attorney, but at the time it did not involve a Town matter. The Town Administrator added that Mr. Coward had disclosed the fact that he represented Northland; he said that Dave Harris, the Town's telecommunications consultant, had been providing advice rather than Mr. Coward in this matter.

Claire Harrington pointed out that Northland had not improved its service before HCG had come into the area.

The Mayor said that he had been shocked to learn that three public utilities had not been in compliance with the Town's ordinances, but he commented that two wrongs don't make a right. He said that, when dealing with safety, these ordinances were written in blood. He assured those present that the Town would ensure that everybody complied, no matter who it was, for the safety of all concerned.

There being no further comments, the Mayor closed the hearing at 7:40 p.m.

B. REGULAR BOARD MEETING.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:40 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Town Administrator said that it had been requested that Item No. 3, Highlands Chamber of Commerce proposal for the Pine Street Pavilion, be deferred to a later meeting.

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 October 1 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 just returned from the League of Municipalities convention in Winston-Salem. The League had asked him to send a letter to its congressional delegation in support of the Internet Sales Tax Bill, HB-3184, and he said that he would be providing a copy to each Board member for review. He understood that lack of this sales tax revenue had cost cities one billion dollars.

2. The Town Administrator reported that the right-of-way along the "Town" portion of Bowery Road had been staked by the D.O.T., and he asked each interested Board member to review it if they wished. He also said that he had received a letter of resignation from Jim Graham from the Advisory Committee for the Scholarship Endowment Fund. He also said that he had discussed the request from John Gorman for a sewer connection with Mr. Gorman, the General Manager of Highlands Country Club, and the Town Attorney; he said that he and the Town Engineer would like to meet with the Utilities Committee to obtain some direction on the request, and the Committee agreed to meet.

V. Old Business. None.

VI. New Business.

1. The Board discussed termination of the Highlands Cable Group franchise at some length. Comm. Cavender told Mr. Hamlin that he had been impressed with the maps presented, but asked why they had not been presented earlier; he read from the minutes of the July 2 meeting at which he had made this request and Mr. Bond had offered to provide them. Mr. Hamlin replied that there seemed to be some misunderstanding. Comm. Cavender said he welcomed a second company, and he agreed that Northland would not be upgrading its service now if not for the competition, but he had seen the improper work done by HCG, including moving of lines. If the Board decided not to terminate the franchise, he asked what assurance the Town would have of compliance; would he, or Mr. Brigham, be watching Mr. Bond like a hawk?

The Mayor said that the communication problem had occurred when Mr. Bond had said that he understood the 40" clearance rule, and then the next day went out and violated it anyway. Mr. Hamlin said that there was a difference in interpretation of the NESC. The Town Administrator added that one of the problems was that Town staff could not trust the information given. He also said that the Town had been told at a public meeting that there would be no pole change-outs because Mr. Bond would go underground wherever he ran into a clearance problem. Comm. James said that he would like to see some kind of plan if the investors could assure the Town that it would work. Mr. Hamlin said that Mr. Bond had been asked to build a system in a short period of time. The Mayor commented that he had had since 1998, and should have had adequate plans developed before now. Comm. James agreed; adequate plans would have shown these problems.

Comm. Ross said he could not understand why HCG would string cables in obvious violation; why would they take that risk? To him, the Northland and Verizon violations were another issue, but to string new cable in violation was ridiculous. He was in favor of seeing that the process would work, but had absolutely no confidence that it was going to happen. Mayor Trott said he felt sure that Mr. Bond had known in 1998 that Northland's violations were out there, since he had been the one who had put them in place. Comm. James agreed; he said the Board had been told that he knew of the violations when he said he would go underground when he came to them.

Comm. Cavender asked the Town Engineer about the "Action Plan" proposed. Mr. Nix said that the only kind of plan that would work in his opinion was to evaluate each section, pole by pole, and determine what has to be done to correct the violations and handle another cable; it would involve a lot of work, but the only way to proceed was to correct the violations before they connected.

Comm. James asked where the money would come from to pay for the pole change-outs. Mr. Hamlin said that there was a \$50,000 Performance Bond on deposit. Comm. James said that would not touch the cost. Mr. Hamlin suggested that the work could be done in a staged process. Chuck Harrington suggested that one way to proceed might be to leave the franchise in place and gather all parties together so that they could discuss it; if the franchise was terminated, nothing would happen. Comm. Patterson felt that was not unreasonable; she suggested that the Board could put HCG on a "short leash" and figure out what had to be done. The Mayor said that the problem was that Mr. Bond kept breaking the leash.

The Board then discussed getting the parties together, perhaps using a facilitator or the advise of Dave Harris if they could not agree.

Comm. Ross suggested that the first segment should be addressed first. Comm. Cavender agreed, and asked if it was clear that no new cables should go up until the Town Engineer had approved them; Mr. Bond was present and said yes. Lee Johnson then reiterated his comments about the very serious problem at Mirror Lake Road that needed to be addressed right away. The Mayor agreed; he felt the hazard was sitting like a time bomb waiting to go off, possibly injuring a child or damaging a house. Comm. Ross felt there were two issues: the immediate dangerous situations, and then the plan to go forward. The Town Engineer said that he felt the Town should back up and address the first 60 poles first, pole by pole; all parties should meet together and develop a list of the poles to be replaced to address the existing hazards. Craig McCall, the Town Electric Department Superintendent, pointed out that Northland was under no obligation to leave room on poles that it would be changing out to correct its own violations.

The Town Administrator asked if HCG was willing to remove all of its illegal attachments to Town poles, since it might have to be done in order to put the system back where it was and they did not have pole attachment permits in the first place. Mr. Hamlin said they would do so if that is what the Town wanted, but it did not make sense to remove cables that were already in compliance.

After some further discussion, the Board agreed by consensus that all parties--Northland, HCG, and Verizon--should meet with the Town Engineer on Tuesday, October 21, at 9:00 a.m., to evaluate the first 60 poles on a pole-by-pole basis. Comm. James commented that he approved the meeting if HCG would agreed to do what it was supposed to do; if not, he felt that the Board should not close the door on terminating the franchise. The Town Administrator pointed out that the required public hearing had already been held.

The Mayor called a short recess to permit those present for the HCG matter to clear the room. Christopher Ott, Jim Johnson, and Shirley Johnson arrived, and most of the others present left the meeting room.

2, Christopher Ott, a registered lobbyist and attorney for Kilpatrick Stockton, LLP, briefed the Board on his firm's efforts to obtain funding for addressing the siltation problem in Lake Sequoyah and Mirror Lake, as discussed at the August 20 Board meeting; the funds could possibly total as much as \$16 million. He said that Senator Elizabeth Dole had been approached and had agreed to sponsor the request for an appropriation, and he would be meeting again with her office before the end of the year. He felt that there was no chance that funds could be appropriated in Fiscal Year 04, but that there was a good change that the first stage could be funded in Fiscal Year 05, about a year from now. At that time the Town would need to have a staged plan for identifying priorities.

3. This was the time and place advertized for the award of informal bids which had been opened at 12:00 noon on October 10 by the Town Administrator and the Town Engineer. The bids were as follows:

GARBAGE TRUCK WITH 20 CU-YD. REAR-LOADING BODY  
[Budgeted \$85,000]

Nu-Life Environmental - Peterbilt	\$79,662.00
Nu-Life Environmental - Sterling	79,250.00
Nu-Life Environmental - International	82,805.00
Nu-Life Environmental - GMC	81,808.00
Carolina International	87,586.52
Lodal South - International	84,932.00
Carolina Environmental Systems - International	88,798.00

Staff recommended awarding the bid to the lowest bidder that meets specifications, Nu-Life Environmental Peterbilt (\$79,662).

STREET DEPARTMENT PICKUP TRUCK WITH UTILITY BODY  
[Budgeted \$40,000]

Tabor Chrysler Dodge Plymouth	\$31,480.00
Smoky Mountain Chevrolet	30,300.00
Jim Brown Chrysler Plymouth	31,200.00

Staff recommended awarding the bid to the lowest bidder that meets specifications, Smoky Mountain Chevrolet (\$30,300).

MOVED BY COMM. PATTERSON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO AWARD THE BIDS PURSUANT TO THE RECOMMENDATIONS.

The Town Engineer also recommended that the Town sell a surplus line truck; he said that he would obtain a minimum bid for the vehicle from a used equipment dealer.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO AUTHORIZE ADVERTIZING FOR BIDS FOR THE SURPLUS VEHICLE.

VII. MOVED BY COMM. CAVENDER, 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 9:00 p.m.

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Richard Betz, Town Clerk