

REGULAR BOARD MEETING of November 5, 2003, with Mayor Buck Trott and Commissioners H. N. James, Hank Ross, Mike Cavender, and Amy Patterson present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Larry Gantenbein, Selwyn Chalker, Jerry Cook, Cindy Sprouse, Kim Lewicki, Alan Marsh, Dennis DeWolf, Nin Bond, Gordon Hamlin, Clair Herrington, Eugene Brigham, Bill Staley, Dave Harris, Bronce Pesterfield, Jim Lewicki, Ginger Slaughter, Rick Siegel, Alice Nelson, Steve Pierson, and many 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 Clerk reported that Bronce Pesterfield had requested permission to make a proposal to the Board concerning a handrail in front of Old Edwards Inn on East Main Street.

The agenda as so amended was approved by consensus.

III. Approval of Minutes.

Copies of the minutes of the October 15 Public Hearing and Regular Board Meeting had been distributed by mail.

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

IV. Reports.

1. The Mayor reported briefly on the Town election that had taken place the previous day. He thanked outgoing Commissioner Mike Cavender for his service on the Board for the past four years, congratulated Comm. James for his re-election, and welcomed Commissioners-elect Dennis DeWolf and Alan Marsh.

2. Each Board member had received a copy of the Public Services Administrator's written report for the month. Lamar Nix reported that, as noted in his report, two property owners along the north side of Spring Street--Jerry Pair and A. L. Williams--were in the process of designing sidewalks as required by the Master Sidewalk Plan. He said he had informed the engineer for the Williams project, and would also inform the other property owner, that Town policy was to place a six-foot sidewalk at road grade. He reminded the Board, however, that the rest of the sidewalk on that side of the street had been placed two feet on private property owned by Reeves Hardware, John Lupoli, and the Methodist Church, and he asked the Board for permission to request a similar easement from these two property owners in order to continue the same design. The additional two feet would make diagonal parking possible while providing a wider travel surface on Spring Street. He said that Bronce Pesterfield, engineer for Mr. Williams, had proposed a meandering sidewalk located out in the Town right-of-way in order to avoid removal of several trees, but his advice to the Board was to affirm its policy.

Mr. Pesterfield was present and displayed a plan showing the Town design, a design proposed at the Zoning Board meeting for the Williams project, and a third alternative design. He said that the Town design would result in the removal of 12 trees, although it would provide for nine parking spaces rather than the two shown on the plan for the meandering design. Comm. James said that a D. O. T. study conducted several years ago had valued parking spaces in the downtown area at \$120,000; he did not think that the taxpayers should be asked

to give up property having that value. He also pointed out that the Town had just finished a long court case protecting Town rights-of-way, and he could not see giving this one away. Larry Gantenbein clarified that the Planning Board had approved brick sidewalks for this area if the Town would provide the brick; the Zoning Board approval had been contingent on the Town Engineer finalizing the details. After some additional discussion, the Board agreed by consensus to ask the Street Committee to review the proposal.

3. Each Board member had received a copy of the Police Chief's written report for the month; Jerry Cook was present to answer any questions. The Mayor commended Chief Cook for his involvement in apprehending the driver of a stolen car in Franklin the previous week.

4. Each Board member had received a copy of the Recreation Director's report for the month; Selwyn Chalker was present to answer any questions. The Mayor commended him for the successful Halloween Celebration on Main Street the previous week.

5. Each Board member had received a copy of the Town Planner/Zoning Administrator's report for the month; Larry Gantenbein was present and reviewed the report. The report included a recommendation from the Planning Board that that Board and the Appearance Commission be separated, with different members appointed to each Board when possible and as current terms expire, that they meet on different nights, that each Board have seven members, and that no more than two members of the Planning Board reside outside of the Town limits. The Board took the recommendations under advisement.

6. 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.

7. The Town Administrator reported that he, the Mayor, and the Town Engineer had met with Mike Osborne the previous afternoon, and he had briefed them on the Wastewater Treatment Plant expansion. As reported last month, all of the State agencies had now reviewed and signed off on the project, and he expected the FONSI, or "Finding Of No Significant Impact," to be published toward the end of the month in the local paper. In the meantime, plans were being prepared, surveying and geo-tech work had been done, and Mike Houston had made another trip to the Aquaerobics facility to help evaluate final equipment selection. The plans should be ready to submit to DENR for a construction permit in January, and approval was expected to take about 90 days. The Town should then be able to advertize for bids in mid-April, receive them in May, and award a contract in June.

Construction was projected to take between 9 and 12 months and be completed by the summer of 2005.

He also said that McGill Associates consulting engineer Harry Buckner had reported that the Hospital Water Line Project was nearly ready to go to bid. Due to a new EPA requirement for advertizing for bids, however, the earliest the Town could receive bids was January 6, and a contract could not be awarded before January 7.

He also reported that Town staff had been reviewing accounting and utility billing software for several weeks in the Town Office. After viewing first-hand demonstrations of five different programs, obtaining costs, and evaluated the pros and cons of each, he recommended a software called "Asyst." The windows-based program would cost approximately \$18,000, just under budget; some of the advantages would be reliable support and proven track record, redundant data back-up features, enhanced ability to generate reports and extract information, use of hand-held meter-reading devices, and better security options.

Data conversion would start this month, with a projected time frame of the first of February or March for full implementation.

He also reported that a letter of resignation had been received on October 14 from Brooks Bennett from the Planning Board and Appearance Commission due to personal reasons.

V. Old Business.

1. The Town Administrator reminded the Board that it had adopted a resolution on August 20th requesting the D. O. T. to assume maintenance of a portion of Bowery Road, beyond the portion currently in litigation. In discussing this with the Town Attorney and District Engineer Brian Burch, it became apparent that the Board needed to transfer or convey right-of-way in order for the D. O. T. to assume maintenance. Town Attorney Bill Coward was present with a non-warranty deed that he had prepared, conveying all of the right-of-way that the Town had along the road to the D. O. T.

Comm. Cavender asked if the Town in fact had all of the right-of-way along the road. Mr. Coward replied that in his opinion it did. The only question might relate to issues similar to those which had been raised in the recent right-of-way case. Comm. Cavender said that he felt the Town should have some design control. Comm. Ross agreed, and said that he would like to meet with the District Engineer to look at the alignment of the road; from what he could tell, they had done a good job staking the right-of-way, but he would like to review it in more detail. The Town Administrator agreed to contact Mr. Burch and set up a meeting.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND CARRIED TO AUTHORIZE THE MAYOR TO EXECUTE THE NON-WARRANTY DEED PREPARED BY THE TOWN ATTORNEY. Comms. James, Patterson, and Ross voted "aye;" Comm. Cavender voted "nay."

2. The Town Administrator reported that at the last meeting, the Board had agreed for Highlands Cable Group, Northland, and Verizon to meet with the Town Engineer and evaluate the first 63 poles to which HCG had connected, pole by pole. That meeting had been scheduled for October 21, and all parties had met in the Conference Room and then proceeded to go out into the field; included in the agenda package was a copy of the minutes of the meeting. He said that the pole evaluations had come to a standstill after only 4 poles. Verizon maintained that all of its cables had been constructed in the mid 80's to the NESC standards then in effect and were "grandfathered." Northland maintained that it would not cooperate at all unless Highlands Cable Group removed all of its illegal cables and restored the Northland system to its original condition, which it alleged Highland Cable Group had interfered with by moving brackets, grounds, etc.; it also maintained that its cables were "grandfathered." Highlands Cable Group maintained that many Northland and Verizon connections did not meet NESC clearances and were not "grandfathered," and that they must begin correcting this without delay. Because some questions had been raised about clearances, Staff had consulted further with Dave Harris, and had also asked him to be here tonight. Mr. Harris had provided to the Town detailed information on the industry standards for clearances, which were generally 18 feet over any road and 15.5 feet elsewhere, and 12" between cables; he had also said that in his opinion connections were not "grandfathered," but must meet the current codes. The Town Administrator also pointed out that, in the correspondence he had mailed each Board member from both Northland and Highlands Cable Group, Northland had advised that HCG had illegally connected or re-connected several customers that had been disconnected on September 29th when several segments of cable had been cut by the Town. He said the Town Engineer and Electric Department Superintendent, as well as Dave Harris earlier in the day, had verified that that was the case, and he understood several Commissioners had also viewed these re-connected cables first-hand; the re-connections were made by cables lying on the ground or across shrubbery in various areas of Town. He also raised a concern over the CD deposited by HCG over three months ago as a Performance Bond, which had matured as of last Wednesday, October 29, but had not been

converted into a Bank Letter of Credit as agreed. Late this afternoon, after the office had closed, Jim Mullen of Regions Bank had brought him paperwork renewing the CD for 30 days, but the new CD was jointly owned by HCG and the Town and did not reference any Performance Bond. He said he had some doubts that this would provide any protection in the event of default.

The Mayor asked Dave Harris, the Town's telecommunications consultant, to provide his opinion on the situation. Mr. Harris said that in his professional opinion, there were two issues impacting the Town and its citizens. First, it was very obvious that HCG was illegally connected to Town poles and was in fact trespassing on the Town's public ways; it had not complied with the Cable TV Ordinance, the Franchise Agreement, or the Pole Attachment Ordinance.

Second, in reviewing the poles today, it was apparent that Verizon and Northland were also out of compliance with NESC and D.O.T. policy and the Pole Attachment Ordinance; these non-compliance areas could be documented, and the two companies should be notified to comply and when in compliance issued a certificate of completion. In the meantime, he was concerned that by not notifying them, the Town was exposing itself to liability. He said that the Board should be prepared to ask the questions today that it may have to answer 30, 60, or 90 days from now. Those questions, in his opinion, were:

(1) Has HCG complied with the Town Ordinances? In his opinion, the answer was no. It was well-documented in the many letters, meetings, and Town directives that HCG had not complied. (2) If the franchise is revoked, had the Town followed the revocation procedures? In his opinion, the meetings, directive letters, and letters to cease and desist had been timely, to the point, and clear; HCG had failed to respond, and the Town had followed the correct procedures in a timely manner. Mr. Harris added his professional observation that Custom Communications had first become associated with the Town in 1996, and in good faith had assisted in the negotiation of a franchise agreement with HCG. The Board in good faith had adopted that franchise agreement; its intent is and was to provide the best and most reasonable service to the citizens of Highlands. In good faith, the Board had extended the construction and financial qualifications for two years. HCG had not responded in good faith to the citizens of the Town, and had violated good order, safety, the NESC, and the Town's Ordinance. But what was so frustrating, he said, was that when told to stop, they continued to build illegal plant, going as far as to re-connect with improper cable those areas where the Town had cut down the out-of-compliance cable. This flew in the face of good safe business practice and revealed to him that HCG believes that for some reason they are above the law and do not have to show good faith to the Town. His recommendation was that the Board revoke the franchise agreement of Highlands Cable Group and order them to remove all cable and other equipment within 14 days.

Comm. Cavender asked how many illegal connections he had observed earlier in the day. Mr. Harris said that every one he had looked at was illegal, perhaps 20 to 30 poles. He had taken photographs documenting that, where the Town had cut wires, shortly thereafter somebody had hooked them back up.

Gordon Hamlin, attorney representing HCG, was present and said that he was surprised to hear the report. He had proposed at the previous meeting taking down the wires, but had understood that the Town did not want them to be removed. He had acknowledged that no permits had been issued, but had gone out in good faith to evaluate the poles until Northland and Verizon had stopped the process.

The Mayor asked if this was how his customers were hooked up, with wires on the ground. Comm. Patterson said that the Town had specifically cut out-of-compliance cables, yet HCG had deliberately re-connected them, knowing that they had been told not to do so. He had jeopardized his entire franchise for five or six customers.

The Town had been trying to be reasonable, and she did not think he would go back and re-attach the cables. Mr. Hamlin said that he didn't know anything about that, but that he thought it had happened before the October 15 meeting. Comm. Patterson said that if she

had know that at the October 15 meeting, she would have voted to revoke the franchise at that time; it was very clear that HCG had deliberately flaunted the Town.

Nin Bond commented that the re-connections had been a temporary situation made with the customers' approval. The Mayor asked how their approval could take the place of the NESC. The Town Administrator pointed out that cables lying on the ground met no clearance standard. Comm. James said he did not see how this was going to work; this issue had been here since July, and he did not know what else the Board could do.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO REVOKE THE FRANCHISE AGREEMENT BETWEEN THE TOWN AND HIGHLANDS CABLE GROUP.

The Town Administrator asked if the Board also intended to order removal of HCG's equipment as recommended, and also asked about the status of the CD on deposit. Dave Harris said he recommended that a time limit be established, between 14 days and 30 days, for removal of the equipment, and if not the Town should use part of the Performance Bond to do the work. Northland and Verizon could then place part of their equipment back into compliance. He offered then to work with the Town Administrator in coming up with a plan to bring Northland and Verizon into compliance, pole by pole.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO ORDER HIGHLANDS CABLE GROUP TO REMOVE ALL OF ITS CABLE AND EQUIPMENT WITHIN THIRTY (30) DAYS; OTHERWISE THE PERFORMANCE BOND WOULD BE USED TO PAY THE COST OF DOING SO.

The Town Administrator said that he was obtaining cost estimates from several GIS, electric utility, and engineering consultants for not only identifying the poles that were out of compliance, but also mapping the Town's entire electrical system; he expected to have a proposal by the first meeting in December. Mr. Harris estimated that the process of identifying all of the illegal connections, asking them to bring them into compliance, and mobilizing work crews to correct the problems could take as long as three to four months.

Kim Lewicki asked if there was any way that HCG could try again. The Mayor said that another franchise could be granted. Dave Harris said that the Town would want to be very cautious about the legal, technical, and financial qualifications in the event of another franchise.

VI. New Business.

1. The Town Administrator reported that he had received a request from a resident of Wyanoak Drive to turn that private road into a one-way street. Leigh Rodenbough, a retired attorney, was present, said he lived on top of the hill on Wyanoak Drive, and presented a drawing of the area. He said that he was concerned over the possibility of accidents on the road, and suggested that the Board consider regulating directional travel on the road, one way or another; he suggested that the Board talk to postal and other officials to determine the appropriate direction. He said that even though the road was private the Town had exercised its police powers by posting speed limits signs, and he felt the Town had the authority to do so. Town Attorney Bill Coward agreed that the Town had this authority. Comm. James said that he was concerned that, if the Board started designating one-way private roads, it would set a precedent. He also felt that the Board needed to hear from other property owners in the area; he suggested that they could get together, obtain sufficient right-of-way, and widen the road. After some additional discussion, the Board agreed by consensus to refer this matter to the Street Committee for review.

2. Brian Starnes was present from Martin Starnes & Associates to present the Town's FY 02-03 audit. He said that everything had gone well with this year's audit, despite the computer problems which

the Town had experienced this year. He pointed out that the new issue for the coming fiscal year was GASB-34, the new reporting model, which would have some major implications on depreciation of fixed assets. He also said that, in common with most small Towns, an issue had been noted on segregation of duties. The Town Administrator pointed out that the new accounting software would be GASB-34 compliant, and that new security options would also help address segregation of duties. Mr. Starnes then reviewed the report in some detail; he noted that the Town had excellent capital reserves.

3. A petition for re-zoning had been received from Lois Keener on behalf of the Estate of A. B. & Pearl Potts, for property on the north side of Spruce Street east of the Mountain Findings property, which had been zoned B-4 on March 2, 2002. The property was currently R-2, and the requested zoning designation was to B-3 or B-4.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO SUBMIT THE PETITION TO THE PLANNING BOARD FOR REVIEW AND RECOMMENDATION.

4. Bronce Pesterfield was present on behalf of A. L. Williams regarding a handrail along the south side of East Main Street that he said was in a state of disrepair. He understood that the Town was obtaining informal bids on repairing the handrail and brick sidewalk, which extended a distance of 500 feet from the Old Edwards Inn to the east end of the Presbyterian Church. Mr. Williams proposed submitting a design for the handrail that would be compatible with the handrails on the rest of his project, constructing it, and then asking that the Town reimburse in the next fiscal year the cost it would have spent on the sidewalk. Comm. Ross felt that the Appearance Commission should review the handrail since it was a component of some of the streetscape designs it had been reviewing; he also suggested that, if the sidewalk was replaced, the slope at the east end should be corrected to meet the 1:12 ADA standard. The Board agreed to the concept by consensus, and asked Mr. Pesterfield to present a design at the next Board meeting.

VII. MOVED 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.

Richard Betz, Town Clerk