

REGULAR BOARD MEETING of March 17, 2004, with Mayor Buck Trott and Commissioners Amy Patterson, Hank Ross, H. N. James, Dennis DeWolf, and Alan Marsh present.

Also present were Richard Betz, Lamar Nix, Larry Gantenbein, Kim Lewicki, Jim Lewicki, Ryan Chambers, Bob Wright, Bill Rethorst, Linda and Tom Clark, Jack Bournemann, John Lupoli Jr., 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 Clerk reported that he had been notified that Eleanor Matthews, the principle partner at Marketek, would be unable to attend the meeting due to a sudden medical emergency; the Board agreed for him to see if the presentation of the population study could be re-scheduled for April. He also reported that Bob Wright was present with a plan for steps in the raised sidewalk in front of the Presbyterian Church, as discussed at the previous meeting, and that the Mayor had requested permission to go into Closed Session to discuss the price for acquisition of a piece of property.

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

III. Approval of Minutes.

Copies of the minutes of the March 3 Regular Board Meeting had been distributed by mail.

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

IV. Reports.

1. The Mayor reported that he had talked to all of the property owners in the area of the proposed Model A Ford Hill Climb scheduled for September 10, discussed at the February 4 Board meeting, and they had not objected to the event.

He also reported on his recent trip to Washington with the WNC Caucus and to Haywood County to meet with Elizabeth Dole.

2. The Town Administrator reported that the Public Works Committee had met and he had prepared a summary of its recommendations for the March 24 meeting. Dennis DeWolf reported that the Recreation Committee was reviewing a proposal submitted by a roofing contractor for repairing the Civic Center roof.

3. The Town Administrator distributed copies of a letter from Sue Potts to the Mayor and Board dated March 15.

He also reported that he had informed Northland Cable and Verizon of the amendment to the Pole Attachment Ordinance requiring 52" clearance where possible. He said that Northland Cable had asked if they would be required to direct Verizon to lower its lines in order to comply, and he had told them he did not think that had been the intention of the Board; the Board agreed by consensus with that interpretation. He also said that Northland Cable had asked if the 52" clearance would apply when poles were being changed out after the pole audit had been completed; the Board agreed by consensus that it would apply.

He also reported that he had met with Paul Schmitt and agreed that

the Town would pay 30% now and 70% upon completion for the pole audit; the inventory would be completed by October 1, and a conference was scheduled next week to begin work.

He also reported that the cost of the water fountain in front of the Thomas Craig building, discussed at the previous meeting, would be \$1415; the Board agreed by consensus to install it.

He also reported that the Town Engineer had met with Old Edwards Inn and discussed improving the right-of-way along the south side of Spring Street in order to provide space for parking and storage of materials, as discussed at the previous meeting, and they had indicated a willingness to do so. The Board agreed for Mr. Nix to provide a sketch of the proposed area for review at the next meeting.

Most of the materials on the right-of-way had been moved, and the two-hour parking was being enforced. Comm. James suggested that the Board consider revisiting the hours for the two-hour parking, 10:00 - 4:30 p.m.; he pointed out that somebody could park in one of the spaces from first thing in the morning until noon without penalty.

V. Old Business.

1. Bob Wright was present again on behalf of the First Presbyterian Church with a plan for a proposed set of steps inset into the Main Street sidewalk in front of the church, discussed at the previous meeting. The plan showed steps in the center of two planters, with the sidewalk stepped back on the church property, where two benches would be located. Mr. Wright said that the work would either begin on the day after Easter in order to be completed before Memorial Day, or would be postponed until the end of the season. Comm. Ross suggested that he take the design of the benches to Larry Gantenbein for a recommendation. Comm. DeWolf asked if trash cans were proposed near the benches; Comm. Ross indicated that the Streetscape Committee would be reviewing the spacing of trash cans along the street. The Board approved the plan by consensus.

VI. New Business.

1. Each Board member had received a petition for annexation from Jack Sawyer and Bill Torres for a 1.03 acre parcel, contiguous to the corporate limits, on the west short of Lake Sequoyah; the lot was located down a spur road called Trively Road off Arnold Road, and contained a small residence which was proposed to be replaced with new construction. The applicants had requested sewer service, and understood that water service was not available unless a water line was installed at their expense. A plan submitted indicated that the new structure would meet the setbacks and the 50-foot natural vegetative buffer requirements from the Lake for R-1 and WS-III-CA zoning; because it exceeded one acre in area, no built-upon limit was required. The Board discussed the petition at some length.

Comm. Ross was concerned about police protection and garbage pickup, since the property was contiguous only to Lake Sequoyah, unlike previous annexations. The Town Administrator said that he felt the ad valorem taxes and the garbage user fee would far exceed the cost of these services. Comm. James was concerned that under the Zoning Ordinance there was no built-upon limit for the property, a concern that he had raised at previous meetings. The Zoning Administrator said that the Ordinance could be amended so that the "built-upon" percentage limits would apply to all lots, regardless of size. The Town Administrator said that the exemption had been in the Ordinance since 1994; he thought it possible that the Division of Environmental Management would have to approve any amendments to the watershed requirements of the Zoning Ordinance. Comm. Patterson expressed support for the better land use controls that would be in effect, but also felt that the Board's priority should be water quality. The Mayor asked about other properties in the area; Comm. DeWolf also wondered if the entire area should be reviewed, rather than address in a piecemeal fashion. John Lupoli was present and

indicated that his clients had not explored other options, such as septic system.

MOVED BY COMM. JAMES, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO TAKE THE PETITION FOR ANNEXATION UNDER ADVISEMENT UNTIL THE FIRST MEETING IN APRIL, AND IN THE MEANTIME TO ASK THE TOWN PLANNER TO CHECK WITH THE DIVISION OF ENVIRONMENTAL MANAGEMENT TO SEE WHAT WOULD BE INVOLVED IN AMENDING THE ZONING ORDINANCE.

2. Town Planner Larry Gantenbein asked the Board to reconsider a requirement in the Code that the Chair of the Planning Board reside within the Town limits, which had been in effect for a number of years. The requirement did not apply to any other Boards, had not been followed when Dave Clary had served as Chair for many years, and had caused the Planning Board not to appoint qualified members from outside Town. With two new members on the Board and two experienced members scheduled to rotate off this June, he felt that the Board might want to consider changing the requirement to open up the field. The Town Administrator pointed out that there could also be a legal problem with the Vice Chairman, who lived outside of Town, chairing a meeting.

The Board discussed the policy at some length. Comm. Patterson did not think it was an issue; Comm. James agreed, and added that if it created a problem after appointments in June the Board could deal with it then. Comm. Ross felt that the Chairman should probably live inside Town, but did not feel strongly about the issue one way or another. Comm. Marsh felt that no more than two members should live outside of Town, although he had no problem with the Chair living outside of Town if he owned property in Town. The Board took no action.

Comm. Ross said that, with the Land Use Planning Committee meeting soon, he was concerned that Geoffrey Willett might not be able to facilitate all of the meetings, and he wondered if it would be a problem. Larry Gantenbein said that he thought the Committee could meet twice a month, and he felt Mr. Willett could attend every other meeting. Comms. Ross and DeWolf both expressed a concern over lack of continuity; Comm. Ross pointed out that there were other facilitators available. Mr. Gantenbein felt that it was important for a facilitator to know Highlands and its planning program well as Mr. Willett did, and Comm. James agreed. Mr. Gantenbein pointed out that he was a trained facilitator and arbitrator, and he would be glad to act as facilitator if the Town Board and Planning Board would sit down and come up with a list of what it wanted the Committee to review. He also said that he felt the existing Land Use Plan was an excellent document that accurately describes the Town and that it did not need to be studied over several months. He felt that several Ordinances needed to be brought up to date, such as the built-upon limits discussed earlier in the meeting, the noise ordinance, parking, and several other issues. Linda Clark, Chair of the Planning Board, was present, and said that she agreed the Land Use Plan was a good one, but pointed out that it called for regular updates. She also pointed out that Mr. Gantenbein had opinions and was not disinterested, which is why he should not facilitate. After some additional discussion, the Board agreed for Mr. Gantenbein to talk to Mr. Willett and find out how much time he would have to facilitate these meetings.

3. Each Board member had received a copy of a proposed amendment of the Highlands Code regulating use of Town streets and sidewalks during construction activities, drafted by the Town Administrator and the Town Attorney. Comm. DeWolf asked if a more stringent penalty than the \$100/day civil penalty had been considered; the Town Administrator pointed out that Zoning Certificates could also be revoked, which could prevent potential "lease" of Town property for \$100/day. Comm. Patterson felt that a provision spelling out why the Board could deny permission should be deleted; she pointed out that the Board could always deny use of the right-of-way for any reason. The Board agreed. Comm. James said that he had not received a copy of the Ordinance and did not feel that he could vote to approve it.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND CARRIED TO ADOPT THE FOLLOWING ORDINANCE. Comms. Marsh, Patterson, Ross, and DeWolf voted "aye;" Comm. James voted "nay."

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Section 13-18. Use of streets and sidewalks during construction activities.

(a) Any person engaged in Construction Activities (as defined below, and sometimes referred to herein as "construction") who requires the use of any portion of a public street right-of-way (as described below) for such construction shall first make written application to the Town Clerk. Applications shall be made at least forty-eight (48) hours prior to the proposed construction.

Application shall include a description of the use of the street; the number of parking spaces that will be required to be occupied during the activity, if any; a description of the method of re-directing vehicular and pedestrian traffic during construction; and the period of time required for the activity.

(b) The Town Clerk is authorized to permit use of public street right-of-ways immediately adjacent to a construction site for a period of time not to exceed three (3) days, provided such use does not interfere with traffic flow, adversely affect the public health or safety, or create an unreasonable inconvenience to property owners or businesses in the immediate vicinity. In accordance with Section 13-16, adequate passageways shall be constructed for pedestrians where sidewalks are present.

(c) The Town Clerk may in his sole discretion deny permission for use of public street right-of-way when in his opinion such use does not conform to the provisions of the preceding paragraph. Appeals from his decision may be taken to the Board of Commissioners at the next regularly scheduled meeting.

(d) Application for use of public street right-of-way for a period of time exceeding three (3) days, or appeals of denial of use by the Town Clerk, shall be made directly to the Board of Commissioners and shall be scheduled at the next regularly scheduled meeting. Applications shall include a description of the use of the street; the number of parking spaces which will be required to be occupied during the activity, if any; a description of the method of re-directing vehicular and pedestrian traffic during construction; and the period of time required for the activity. Use of the streets during pendency of the appeal shall not be allowed.

(e) The Board of Commissioners is authorized to permit use of public street right-of-ways immediately adjacent to a construction site for stipulated periods of time, provided such use does not interfere with traffic flow, adversely affect the public health or safety, or create an unreasonable inconvenience to property owners or businesses in the immediate vicinity. In accordance with Section 13-16, adequate passageways shall be constructed for pedestrians where sidewalks are present.

(f) Use of public street right-of-way for longer than the period permitted by either the Town Clerk or the Board of Commissioners shall be punishable by a civil penalty of one hundred dollars (\$100) per day; each day continuing violation shall constitute a separate offense. In addition, for good cause shown, including repeated violation of this ordinance, the Board of Commissioners may order that the Zoning Certificate for the construction

activity be revoked.

(g) Persons using public street right-of-way shall be responsible for removing all broken materials and other debris and returning the street or sidewalk to its original condition. Failure to do so shall be punishable by a civil penalty of one hundred dollars (\$100) per day; each day continuing failure to restore the street or sidewalk to its original condition shall constitute a separate offense. The Town may in its discretion elect to remove broken materials and other debris and return the street or sidewalk to its original condition, and in the event of such election, the adjacent property owner shall be liable for the reasonable costs of such remediation.

(h) Definitions.

(1) Construction Activities. As used herein, the term "construction activities" shall be construed to include any and all activities in any way related to the improvement of properties as contemplated by the zoning certificate, including by way of example and not by way of limitation, surveying, grading, construction, blasting, demolition of existing structures, installation of utilities, landscaping, disposal of waste materials and other debris.

(2) Public Street Right-of-Way. As used herein, the term "public street right-of-way" shall mean the areas lying adjacent to the owner's boundary along the streets and alleys of the Town, as shown on the survey of the owner presented in connection with the zoning certificate.

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4. MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. 143-318.11(A)(5) TO DISCUSS THE PRICE FOR ACQUISITION OF A PIECE OF PROPERTY. All present left the meeting room except the Clerk.

The Mayor reported that he had been asked to determine if the Board would be interested in acquiring a piece of property at a price that he named, and the Board discussed the proposal. The Board asked the Town Administrator to retrieve assessed tax value information on the property from his office, and took a brief recess while he was gone.

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

VII. MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 8:40 p.m.

Richard Betz, Town Clerk