

REGULAR BOARD MEETING of September 15, 2004, with Mayor Buck Trott and Commissioners Amy Patterson, Hank Ross, Alan Marsh, and Dennis DeWolf present; Comm. H. N. James was out of Town.

Also present were Richard Betz, Lamar Nix, Larry Gantenbein, Kim and Jim Lewicki, Amelia Pavlik, Lewis Doggett, Ginger Slaughter, Earl Jones, Alan and Jane Lewis, Bob Wright, Hunter Coleman, Mozelle Edwards, Bill Mann, Jack Bournemann, George Mathis, Mario Gomes, Bronce Pesterfield, Christy Kelly, Kitty Byers, John Hammer, Debbie Putney, and others.

I. Call to Order.

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

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Mayor said that Earl Jones had spoken to him and requested to be added to the agenda to further discuss 4½ Street. Comm. Patterson said he felt such an issue should be properly advertized on the agenda, since it was an issue that concerned lots of folks in the area. Mr. Jones was present, said he had driven from Knoxville, and asked when this issue could be discussed; the Mayor said that it would be placed on the agenda of the next meeting, October 6. The Town Administrator noted that an item of Old Business and an item of New Business could be deleted.

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

III. Approval of Minutes.

Copies of the minutes of the September 1 Regular Board Meeting had been distributed by mail. The Clerk reported that the minutes of the September 8 Special Meeting had been prepared and would be mailed with the minutes of this meeting.

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

IV. Reports.

1. The Mayor reported that a letter had been received from Lewis Doggett, member of the Planning Board and Land Use Planning Committee, resigning for personal reasons. It was agreed that filling the vacancy would be placed on the agenda of the October 6 meeting and that nominations would be forwarded to the Clerk for tabulation. Comm. Ross said he was sorry to hear he was leaving; Mr. Doggett said he was sorry he had to leave. The Mayor thanked him for his hard work on the Planning Board.

Each Board member also received a copy of a letter written by the Mayor to the N. C. State Bar concerning Richard Melvin. as directed by the Board at the September 8 meeting.

2. The Town Administrator had distributed copies of letters from Alan & Jane Lewis, Ran & Margaret Shaffner, and James & Maxine Ramey, removing themselves from the Edwards case; a letter had also been received from Virginia Fleming saying that she did not want to pursue a lawsuit. A letter had also been received from Earl Jones concerning 4½ Street.

The Town Administrator also reported that he had met with Brian Tripp, W. K. Dickson Co. consulting engineer, and the Wastewater Treatment Plant permit appeared to be on schedule, as reported at earlier meetings; bids could be awarded in December if no delays were encountered.

He also reported that an extensive system of storm drains, building drains, and waterproofing had been installed behind the Town Hall by both private contractors and Town employees; it was hoped that this work would prevent flooding from Hurricane Ivan such as had occurred the previous week due to Hurricane Frances.

V. Old Business.

1. The Board discussed the permit issued at previous meetings for use of Town right-of-way for construction by Old Edwards Inc.; the Town Administrator reported that there had been no complaints concerning parking enforcement, and the work on South Fourth Street appeared to be nearing completion with the last two "nodes" at the corners of Church Street being installed. Bronce Pesterfield said that this work would be completed as soon as the rain stopped.

The Town Administrator also reported that he had received a drawing prepared by Mr. Pesterfield showing removal of the portion of the wall on Spring Street which extended into the right-of-way. The Mayor asked Mario Gomes how long the removal would take and was told two weeks.

John Hammer was present to speak about the wall on Spring Street. He said that he had no axe to grind but he felt that, although the Town had the duty to enforce its rules, he wanted to appeal to common sense concerning removal of the wall. He felt that the Town should have done more up front to prevent the encroachment, and pointed out that several other sidewalks in Town did not meet standards. He also pointed out that, although it extended 15 or 16 feet into the right-of-way, 50 or 60 feet of it was behind the right-of-way more than required. The Mayor thanked him for his comments.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE CONTINUATION OF THE PERMIT ISSUED AT THE PREVIOUS MEETING UNTIL OCTOBER 6.

The Board also discussed the permit issued at the previous meeting for use of Town right-of-way for construction by the Highlands Community Child Development Center. Bob Wright requested an extension beyond the October 1 deadline.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE CONTINUATION OF THE PERMIT ISSUED AT THE PREVIOUS MEETING UNTIL OCTOBER 6.

The Board also discussed the permit issued for use of Fifth Street in front of the Highlander Newspaper building, which was scheduled to expire. Debbie Putney said that an extension of time was needed, but the contractor had not been able to attend this meeting due to illness.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE CONTINUATION OF THE PERMIT UNTIL OCTOBER 6.

Comm. Ross noted that there were continuing problems at this site due to the sidewalk being blocked with tape and equipment; he asked Ms. Putney to have the contractor leave the sidewalk open, and she agreed to do so.

VI. New Business.

1. The Clerk reported that Summerour & Associates had asked to be placed on the agenda to discuss encroachment of a 2-inch rock veneer wall on Church Street on the old Gem Shop building, but nobody was present to represent them. Bronce Pesterfield reported later in the meeting that the architects wished to withdraw the request.

2. The Town Administrator reviewed the recommendations of the Finance Committee concerning funding of non-profits, which had been distributed in the form of a memo at the previous meeting. The

recommendations had been as follows:

1. Hudson Library - \$21,500. The Committee felt this request met the criteria; purchase of books is not an operating expense, and the benefit is to a wide segment of the general population. **Recommended \$10,000.**
2. Peggy Crosby Center - \$32,500. The Committee felt this request met the criteria; the expenses identified were for capital projects, and the Center benefits a wide segment of the general population. **Recommended \$15,000.**
3. Historical Society - \$20,000. The Committee felt this request met the criteria; the expenses were again for capital projects of "start-up" nature, and (as the attached letter from Lewis Doggett) preservation of history benefits a wide segment of the general population. **Recommended \$15,000.**
4. Highlands Community Child Development Center - \$30,000. The Committee could not agree whether this request met the criteria; although it is a one-time "start-up" contribution to capital costs and might be considered as providing a service that government might otherwise have to provide, it arguably benefits a relatively small segment of the general population. **Did not make recommendation.**
5. Macon County Humane Society - Unspecified Amount. Although this request met the criteria of providing a service the Town might otherwise have to provide, the Committee was concerned over the lack of a detailed budget and unresolved questions from Macon County over accountability. **Recommended not to fund this year.**
6. Literacy Council - \$6,473. The Committee agreed that this request was entirely for operating expenses. **Recommended not to fund.**
7. Jackson Macon Conservation Alliance - \$4,118. The Committee agreed that, unlike the Board's previous direct donation to efforts to control the hemlock woolly adelgid, this request was for funding a fund-raising event. **Recommended not to fund.**
8. Highlands-Cashiers Chamber Music Festival - Unspecified. The Committee agreed that this request did not benefit a wide segment of the general population, and was also entirely for operating expenses. **Recommended not to fund.**

Comm. Marsh asked about the Humane Society; he wondered what would happen to stray animals if they would not accept them, and he also said that he understood the County had approved \$30,000 and that County Comm. Simpson was working with the organization to obtain better financial information.

Comm. Patterson pointed out that the Town is part of the County, and would therefore be funding it twice. At the time the Finance Committee had met, the Society would not release financial records to the public; she wondered what the Town was funding if they did not open their books. She also said she understood the Society would not turn away a stray dog, nobody where it was from, unless it did not have any room.

Comm. Dewolf spoke in favor the HCCDC. He felt it had a significant impact on the ability of younger families to contribute to the community and to have jobs; it had been in place for a good while, was a strong and viable entity, and he had personally supported it as a business and felt others should.

Rev. Hunter Coleman said that the HCCDC was no longer part of the

Presbyterian Church, but a separate entity. He said that it supported the backbone of the community, the young men and women who worked here.

Bob Wright read an excerpt from an article by Region A which pointed out that affordable child care was important for economic development. He said the HCCDC was the only licensed, full-time, year-round child care in the community, and although they may live elsewhere the families it served worked here.

Comm. Ross thought that the HCCDC should be commended for taking on this construction project; a lot of people had contributed to it, and he felt that the Town should. He did not see why it did not fit the criteria for funding non-profits since it was a capital project.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, TO GRANT \$10,000 TO THE HCCDC, AND APPROVE THE REST OF THE RECOMMENDATIONS OF THE FINANCE COMMITTEE.

Comm. Patterson said that, as one member of the Finance Committee, she had felt that the HCCDC met the criteria since it was not an operating expense; she did not want non-profits to build grants from the Town into their annual budgets. She briefly reviewed the recommendations of the Committee, pointing out that the Library, Peggy Crosby Center, and Historical Society all provided tangible assets to the community.

Kitty Byers asked why the Literacy Council had not received any funding. Comm. Patterson said that, although she was a member of the Literacy Council and also a tutor, she felt that the request was for an operating expense. Ms. Byers commented that the Literacy Council only had operating expenses, yet the service was a continuation of the work of the HCCDC; she was troubled by concentrating on bricks and mortar at the expense of children, and asked the Board to continue to study this, as she felt the Town had a responsibility in this area. Comm. Patterson said she did not deny it was a great cause, but there were a lot of great causes; she hoped that the Board could help projects on a one-time basis.

Comm. Marsh was concerned that the HCCDC served students who did not live in Highlands. He agreed, however, that it was a jewel for the business community, and he suggested that Room Occupancy Tax money should be used to fund it; he felt that the Town should provide \$5,000, and ask the Chamber of Commerce to provide \$10,000 from room tax revenues. Christy Kelly pointed out that in the past the Chamber had funded the Presbyterian Day Care. Bob Wright said that the HCCDC was pursuing matching funds for a \$25,000 challenge grant; the project budget was \$1.75 million, and \$1.35 had been raised.

THE MAYOR CALLED THE MOTION, AND IT CARRIED; COMMS. ROSS, PATTERSON, AND DEWOLF VOTED "AYE," AND COMM. MARSH VOTED "NAY."

The Mayor asked if the Board felt it should write a letter to the Chamber of Commerce in support of funding for the HCCDC; the Board agreed by consensus. Bob Wright said that the HCCDC would appreciate such a letter. Christy Kelly expressed thanks on behalf of the Peggy Crosby Center, and also pointed out that the Red Cross Disaster Shelter was ready in the event that it was needed due to the impending hurricane. Lewis Doggett expressed his thanks on behalf of the Historical Society.

3. Each Board member had received at the previous meeting a copy of a proposed amendment of the Highlands Code prohibiting overnight parking by recreational vehicles, as follows:

Add the following to Section 7-102, Parking for Certain Purposed Prohibited:

"In addition, no person shall park a recreational vehicle on public streets or public property between the hours of 10:00 p.m. and 6:00 a.m. Recreational vehicle means any

trailer, camper trailer, boat and trailer, camper, mobile home, motor home, or similar vehicle including vans or van conversions being used for habitation purposes. Any recreational vehicle in violation of this section may be removed and impounded."

MOVED BY COMM. MARSH, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ADOPT THE AMENDMENT.

4. Each Board member had received a copy of a proposed amendment of the Police Policies & Procedures Manual concerning Taser weapons, reviewed by the Police Chief, the Town Attorney, and the Town Administrator, as follows:

* * *

REPLACE CHAPTER IV (STANDARD OPERATING PROCEDURES), SECTION 17 (USE OF FIREARMS/USE OF FORCE IN ARREST), WITH THE FOLLOWING:

Section 17. USE OF FORCE.

It shall be the policy of the Highlands Police Department that a police officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary, subject to the provisions of G.S. §15A-401. The level of force used shall be dependent upon the officer's perception of the resistance and whether the resistance is placing the officer or others in jeopardy of serious injury or death.

Each officer's perception of danger and level of resistance shall be based upon the officer's training, experience, and knowledge. Varying levels of force may be justified depending upon the dynamics of the situation.

For each situation, use of force is restricted to that force necessary to control and/or terminate unlawful resistance and to preclude any further attack against the police officer or any other persons.

A. Less than Lethal Weapons.

In order to successfully deal with situations requiring use of reasonable force and to minimize risk to the public and the officer involved, less than lethal weapons are authorized for use by officers who have successfully completed the Town's or the Criminal Justice Training Commission's approved course of instruction for each weapon. The following less than lethal weapons are authorized for use by the Highlands Police Department:

1. Oleoresin Capsicum spray (OC Pepper Spray). Each officer will employ OC spray only in a manner consistent with Department training or directives. While on duty, members shall carry only those OC sprays that have been approved and issued by the department.

Information and facts regarding the use of OC spray shall be included in regular offense and arrest reports submitted by the officer. Before employing the use of OC spray officers should be trained by the North Carolina Criminal Justice Training Commission or an instructor certified by the Commission to instruct in the use of this weapon.

Off-duty use of OC spray is discouraged and limited to the defense of self or others and will require a report to the Chief of Police. OC spray may be used by an officer in the performance of normal duties as follows:

a. Whenever the officer is in danger of bodily injury and physical contact with the other person is inadvisable.

b. When necessary to overcome actual physical resistance to an arrest. The degree of resistance

must be such that an officer reasonably believes that further attempts at physical restraint will be likely to produce bodily injury to the suspect, to the officer, or to another person.

c. When necessary to prevent the commission of any crime likely to produce bodily harm.

d. When lawfully suppressing a disturbance where physical contact is not advisable.

2. PR-24 Straight and Collapsible Batons.

The PR-24 straight or collapsible batons are primarily defensive weapons and should be used as such. In the event that they must be used as an offensive weapon, officers will abide by Department training and directives. Hitting suspects in the head or groin area should be avoided unless required for the protection of the officer and others from serious injury. Before employing the use of a PR-24 straight or collapsible baton, officers should be trained by the North Carolina Criminal Justice Training Commission or an instructor certified by the Commission to instruct in the use of these weapons. Off-duty use of the batons is discouraged and limited to the defense of self or others and will require a report to the Chief of Police.

3. Flashlights. Use of flashlights as less than lethal weapons shall be governed by the same standards as use of the PR-24 straight or collapsible batons.

4. Taser Electronic Restraint Device. The Taser is viewed as high on the continuum of less than lethal force and is authorized as an alternative to employing deadly force in situations where time and circumstances exist for its use. It is not intended to be used as a general substitute for other less than lethal force options. Before employing the use of a Taser Electronic Restraint Device, an officer shall be trained by a certified instructor in the use of this weapon. The Taser may be used when other less than lethal force options have been ineffective or when it reasonably appears that such options will be ineffective in subduing the subject.

(a) Examples of situations in which the Taser may be used include, but are not limited to, the following:

(1) Dealing with the mentally ill subject who is perceived to be violent.

(2) Armed subjects.

(3) Warrant service where the subject is perceived to be violent.

(4) Violent persons under the influence of drugs and/or alcohol.

(5) Persons expressing the intent and having the means to commit suicide.

(6) When deemed a reasonable alternative to lesser force options that will likely be ineffective or greater force options that may be inappropriate given objective circumstances.

(b) Whenever possible, the Taser operator should consult with a supervisor prior to use. The Taser should not be pointed at any individual unless the officer involved reasonably believes it will be necessary to use the device. The Taser shall not be used in the following situations:

(1) When the operator cannot, for safety or other reasons, approach the subject within effective range of the device.

(2) In proximity to flammable liquids, gases, blasting materials or any device, including but not limited to any subject who may have been contaminated with combustible liquids.

(3) When it is reasonable to believe that incapacitation of the subject may result in serious injury or death.

(4) In conjunction with another Taser or any other electrical restraint device that may collectively exceed electrical power levels on the subject.

(5) On individuals operating a motor vehicle.

(6) On a pregnant woman unless deadly force is justified.

(c) The primary target for Taser Probe deployment is the center mass of the subject's back, followed by either side of the body, or front center mass. A subject shall be handcuffed as soon as possible after being exposed to the Taser, and EMT or Paramedic personnel shall be immediately called to the scene to evaluate any suspect exposed to the Taser. Officers shall immediately remove the Taser probes unless there are other medical considerations present. Officers shall wear rubber gloves when removing probes from skin. An officer shall not remove a probe if the barb is imbedded so deeply as to prevent the probe from hanging loosely. Officers shall refrain from removing probes from the head, the face or neck areas, the groin area, or a woman's breasts, and medical personnel shall determine safe procedures for removal of probes from these areas.

B. Firearms.

Each officer of the Highlands Police Department is equipped with a firearm to defend himself or others against deadly force. The general policy of this department regarding the use of firearms or their deadly force by police officers, on- or off-duty, is that an officer will discharge his or her weapon at another person only when he or she is legally justified and only as a last resort.

When a firearm is used by an officer, it must be with the realization that the death of some person may occur, not necessarily with the intent that such will be the result. Justification for drawing and using a firearm must be limited to what reasonably appears to be facts known or perceived by a prudent officer at the time he decides to shoot. Experience has shown that the danger to an officer is not reduced by giving away his only chance for survival. Therefore, an officer should use every means at his disposal to avoid the surrender of his weapon.

In accordance with G. S. §15A-401, an officer is legally justified in using deadly physical force upon another person only when it is or appears to be reasonably necessary thereby:

"A. To defend himself or a third party from what he reasonably believes to be the use or imminent use of deadly physical force;

"B. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes

is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay."

Justification of the use of deadly force must be limited to what reasonably appears to be the facts known or perceived by an officer at the time he decides to use such force. Facts unknown to an officer, no matter how compelling, cannot be considered in later determining whether the shooting was justified. Regardless of the nature of the crime or the legal justification for firing at a suspect, an officer's basic responsibility is to protect the public. An officer is instructed to be particularly cautious when firing under conditions that would subject innocent bystanders to a substantial degree of danger.

The pointing of a less than lethal weapon or a firearm directly at any person shall be deemed as use of force.

* * *

MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADOPT THE AMENDMENT TO THE POLICE POLICIES & PROCEDURES MANUAL.

5. The Town Engineer reported that permits had been approved, plans prepared, and contract documents prepared and reviewed by the Town Attorney for the Holt Knob Water Project, budgeted for this year.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADVERTISE FOR BIDS FOR 2:00 P.M. ON OCTOBER 20 FOR THE HOLT KNOB WATER PROJECT.

The Town Administrator noted that Lamar Nix had prepared the plans and contract documents in house, had done an excellent job, and had saved the Town a great deal of money on engineering.

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

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 8:05 p.m.

Richard Betz, Town Clerk