

PUBLIC HEARING and REGULAR BOARD MEETING of October 20, 2004, with Mayor Buck Trott and Commissioners Amy Patterson, Hank Ross, H. N. James, Alan Marsh, and Dennis DeWolf present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Larry Gantenbein, Kim & Jim Lewicki, Melody Spurney, Ginger Slaughter, Alan and Jane Lewis, Rick Siegel, Bob Wright, Sue Potts, Bill Aaron, Eric Pierson, John Cleaveland, Bronce Pesterfield, Gloria Pariseau, Steve Hamm, King Young, and others.

A. Public Hearing.

The Mayor called the Public Hearing to order at 7:00 p.m. and stated that the purpose of the hearing was to receive comments on a proposed subdivision variance for Sequoyah Point Subdivision; the request was to reduce the required road width from 18 feet to 12 feet, and it was reported that the Planning Board had recommended approval.

Bronce Pesterfield, engineer for the subdivision, spoke in favor of the variance. He also submitted a revised drawing showing a modified entrance for the road at US-64 which he said satisfied the one dissenting vote at the Planning Board meeting.

There were no further comments, and the Mayor closed the hearing at 7:04 p.m.

B. Regular Board Meeting.

I. Call to Order.

The Mayor called the regular Board meeting to order at 7:04 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Clerk noted that two items of old business could be deleted, and he also requested that, at the request of Comm. DeWolf, the scheduled Closed Session include a discussion of acquisition of real 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 October 6 Regular Board Meeting had been distributed by mail. Comm. DeWolf wished the minutes to include the comments he had made under Recreation Department report that the major roof leak at the Civic Center had been controlled.

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

IV. Reports.

1. The Mayor reported that the Macon County Chapter of the Healthy Carolinians had received an award as the best in the State. He also reported that the influenza vaccine would be available before January and he was trying to improve the system of notification. John Cleaveland was present and said he thought when the new vaccine arrived the shots should be given in Highlands; he felt that the Health Department owed it to the people in Highlands and thought the Board should insist upon it. Mayor Trott agreed; he said that he had been in communication with the Director and felt that they were working on the problem. He also reported that he would be attending a North Carolina Local Government Caucus meeting in Marion this weekend, and would then be attending the League of Municipalities Annual Convention in Raleigh with the Town Administrator, returning on October 27. He also reported that the Macon County Board of

Commissioners would be meeting in Highlands on November 1 at 6:00 p.m. and he urged Board members to attend.

The Town Administrator reported that the Main Street Trick or Treat holiday would be held on November 1 at 6:00 p.m., the Christmas Tree lighting would be held on November 27, and the Christmas Parade would be held on December 4.

2. Each Board member had been provided with a copy of minutes of the Public Works Committee's meeting of October 14. Comm. Ross noted that the Committee had also discussed the need for a sidewalk along the east side of Third Street just north of Spring Street, as well as a pedestrian node on that corner instead of the existing stop sign and wood barrier. Comm. James said that the Committee had also discussed the need for sewer service in the Smallwood Avenue area; he felt that the Town should request cost estimates from engineers for a preliminary study for sewerage the area, and the Board approved by consensus.

Comm. DeWolf reported that one of the twelve Biological Station interns had scheduled a hike on the Greenway Trail at 10:00 a.m. on October 23, and he invited Board members to attend and to spread the word.

3. The Town Administrator reported that, contrary to earlier report, the Town would be receiving reimbursement for Hurricane Frances from FEMA. He also reported that the following vehicles had been replaced with new vehicles and he recommended selling them to the highest bidder:

<u>Year Model</u>	<u>Minimum Bid</u>
1984 International Line Truck - Electric	\$2,000
1988 Ford F-250 Service Truck - Street	500

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADVERTIZE FOR BIDS FOR THE FOREGOING VEHICLES.

V. Old Business.

1. The Town Administrator reported that after the action taken to close 4½ Street at the previous meeting he had contacted the Town Attorney and also discussed it with the Mayor; the Town Attorney had advised that that action was not effective to close the street.

Town Attorney Bill Coward was present and confirmed that, if closed permanently, a statute required a public hearing to close a street, and if closed temporarily another statute required that it be closed by Ordinance. Permanent closing also resulted in the adjoining landowners obtaining title; temporary closing did not, but reserved the right to open at a future time. Comm. Patterson asked what would be the situation if the Board had never authorized it to be opened.

Mr. Coward said that there had been testimony at the trial that it had been opened; the question of improving it or restricting it was another matter.

John Cleaveland was present and read a letter that he had received in 1997 when he had been Mayor from Dennis Wilson, who could not be at the meeting. The letter said that Mr. Wilson was interested in opening both 4½ Street and Poplar Street due to traffic congestion and the possibility of a serious accident. Mr. Cleaveland added that the Town had just spent \$182,000 to open this street which it already owned and which the Edwards family had enjoyed for 126 years.

He wondered why the Board had bothered to fight the lawsuit if it did not want to open the only two unopened streets in Highlands. Traffic had become worse, Rotary used the street often, Wilson Gas needed another route, people needed a way around Town, and it was on the D.O.T. Thoroughfare Plan; he could not understand why one particular place in Highlands was special ground.

Rick Siegel reiterated comments made at the previous meeting; he said that opening the street would open the residential area to commercial traffic, and he felt that municipalities should work to

keep that from happening because people lived there and raised children there.

Steve Hamm said that the letter Mr. Cleaveland had read supported the idea that the street had never been officially opened; he asked when the Board had voted to open it.

King Young said that the main problem seemed to be traffic turning left from Poplar Street onto US-64; he suggested opening the street to one-way traffic.

Charlie McDowell commented that if the road was opened, it would put noisy trucks into the area, and he noted that Dennis Wilson did not live there. He also said he did not see why his diesel fuel and propane gas operation was allowed in Town at all.

The Board then discussed the action taken at the previous meeting at some length. Comm. Patterson said that the Board had made its intent plain at the last meeting; she felt that the street should not be "closed" but that it should be restricted to emergency vehicles and families that lived on the street. Comm. Ross felt the street should only be used as a walkway, and that a physical barrier should be erected; he also reiterated his previous comments that the entrance to US-64 had never been properly studied, and he thought it would be feasible to re-locate the entrance of Poplar Street through the Conference Center parking lot. Comm. Marsh suggested posting signs initially, and if that did not work considering further steps. Comm. James agreed with Mr. Cleaveland that the street should be opened.

Mayor Trott reminded the Board that the street had been added to the D.O.T. Thoroughfare Plan in 1998 for good reason. Comm. DeWolf said he felt that all neighborhoods were special and that truck traffic disintegrated neighborhoods; he felt that the Town had the obligation to go to Court to protect the street for the sake of the future, but that it should not be opened at this time.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND CARRIED TO REQUEST THE TOWN ATTORNEY TO DRAFT AN ORDINANCE FOR THE NEXT BOARD MEETING RESTRICTING TRAFFIC ON 4½ STREET, AND TO POST SIGNS PROHIBITING COMMERCIAL TRAFFIC.

2. The Board discussed the permit issued at previous meetings for use of Town right-of-way for construction by Old Edwards Inn Inc.

The Town Administrator reported that he had not received complaints about parking violations and that the construction activity was restricted to the areas approved by the Board several months ago.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE CONTINUATION OF THE PERMIT ISSUED AT THE PREVIOUS MEETING UNTIL NOVEMBER 3.

The Board also discussed the permit issued at the previous meeting for use of Fifth Street in front of the Highlander Newspaper building.

There had been no complaints, and it was noted that the sidewalk on Fifth Street had been kept open.

MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE CONTINUATION OF THE PERMIT UNTIL NOVEMBER 3.

VI. New Business.

1. The Board considered at length the application for a variance from the Subdivision Ordinance by Sequoyah Point for road width, subject of a Public Hearing preceding the meeting. Comm. James said he did not see why the variance was needed; he said that he had remembered previous variances granted for a subdivision on Satulah Mountain, but that had been based on the narrow width of Worley Road.

The Mayor read the first of the four conditions for granting a subdivision variance, and the Board discussed it at length: "That there are special circumstances or conditions affecting said property

such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his land." It was pointed out that if any of the conditions was not met the Board was required to deny the variance. The variance application noted that the subdivision was on a narrow peninsula and a wider road would necessitate the removal of trees. Comm. Patterson said that every property in Highlands could fall into that category. Comm. James agreed; he did not feel the application met this or the next two conditions. Comm. DeWolf asked if a pull-off could be provided; Bronce Pesterfield said that it could. Gloria Pariseau said that her intention was to develop a beautiful, low-density subdivision, and she would not want to take down trees; she felt that an 18-foot wide road would take away from the beauty of the property. Comm. Patterson commented that the Town should throw out the Subdivision Ordinance because everyone could use that argument; she said she did not like to cut trees either, and she could understand the earlier grade variance granted, but not a road width. Ms. Pariseau noted that the subdivision was a tiny one containing five lots; she did not feel a narrow road was a hazard. John Cleaveland said he did not feel the application met the standard of "reasonable use." Larry Gantenbein said that the Town's standards were similar to zoning variance standards and were more stringent than the State. If interpreted literally, the Board could never grant a variance; however, he noted that the Board had granted similar variances in the past and felt that it had some latitude in deciding that saving trees, for example, could be considered reasonable justification.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, TO DENY THE VARIANCE.

The Board discussed the motion. Comm. DeWolf said that he did not disagree with Comm. Patterson that the Town had to have a standard it could live with, but he hated to lose the character of roadways, especially in low-density areas like this; that was why he had suggested pull-offs. Comm. Ross agreed; he felt that the Town was losing the character that every Mission Statement he had read said we should try to preserve. He knew the property and he felt that an 18-foot wide road would change the character of the peninsula. He suggested that the Town should consider amending the Ordinance to provide more flexibility. Larry Gantenbein said that recent seminars he had attended had encouraged planners to recommend loosening standards to account for rural area, the character of the land, and low-density development, and he said the Land Use Planning Committee would be looking at this issue. Comm. James felt that the application could be withdrawn and submitted at a later date, but that was not what was before the Board tonight. Comm. Patterson also noted that this parcel had been re-zoned from R-1 to R-2 several years ago in order to permit a bed-and-breakfast operation.

THE MAYOR CALLED THE QUESTION, AND IT CARRIED, WITH COMMS. JAMES, MARSH, AND PATTERSON VOTING "AYE," AND COMMS. DEWOLF AND ROSS VOTING "NAY."

2. The Town Administrator reported that one bid had been received at 12:00 noon and opened pursuant to invitation for informal bids for the Holt Knob Water Improvement Project; the bid was from Stillwell Enterprises for the amount of \$140,358. He reported that \$150,000 had been budgeted for the project in FY 04-05 and he recommended awarding the bid.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO AWARD THE BID TO STILLWELL ENTERPRISES.

3. Comm. James said that he and the Town Engineer had been discussing creating and improving parking in several locations in the downtown area; the labor could be performed by Town forces, and Mr. Nix had obtained estimates, as follows:

(a) Parking along the north side of Oak Street from the Cannon property west, approximately 500 feet; the cost of gravel and paving would be \$6,300, and the cost of a sidewalk with curb and gutter would be \$37,000. Comm. James suggested that a monolithic sidewalk

could be constructed at a lesser cost.

(b) Parking along the south side of Oak Street west of the Mountain High Motel driveway; the cost of gravel and paving would be \$3,000.

(c) Parking along the east side of Third Street south of Spring, and along the south side of Spring Street east of Third; the cost of gravel, paving, and 100 feet of drainage pipe would be \$21,000.

Comm. Marsh suggested including a sidewalk, Comm. Ross agreed, but the Board agreed by consensus to consider this later but not to include one at this time.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO PROCEED WITH THE PROJECT.

4. Comm. DeWolf had prepared a report on the Town Hall architectural study, and he distributed copies to the Board and reviewed it in some detail. He said that he wished to continue the discussion, which concerned the possible acquisition of real property to relocate the Town Hall, in closed session. The Board took the report under advisement.

5. MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(3) TO DISCUSS THE BOWERY ROAD LITIGATION WITH THE TOWN ATTORNEY, AND PURSUANT TO G. S. §143-318.11(A)(5) TO DISCUSS THE ACQUISITION OF REAL PROPERTY. All present left the room except the Clerk, the Town Engineer, and the Town Attorney.

A. The Town Attorney briefed the Board on the Bowery Road litigation.

B. Comm. DeWolf discussed with the Board the possible acquisition of real property.

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

VII. MOVED BY COMM. DEWOLF AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:40 p.m.

Richard Betz, Town Clerk