

PUBLIC HEARING and REGULAR BOARD MEETING of February 16, 2005, 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, Selwyn Chalker, Jerry Cook, Kim Lewicki, Jim Lewicki, Candice Cunningham, Ginger Slaughter, Chuck & Wanda Cooper, Griffin & Glenda Bell, Rick Siegel, Gary Schmitt, Mario Gomes, Greg Elliott, Jody & Caroline Cook, Horace Duncan, David Bock, Gary Schmitt, and many others.

A. Public Hearings.

1. Amendment of Zoning Ordinance.

The Mayor called the first public hearing to order at 7:00 p.m. and declared that its purpose was to receive comments from the public on a proposed amendment of the Zoning Ordinance; notice had been provided pursuant to law. Town Planner Larry Gantenbein explained that the amendment consisted of changing the word "building" to "property" in Section 501.1(A), thereby requiring review of temporary sheds and similar structures by the Zoning Board through the Special Use Permit process. The proposal had been reviewed by the Planning Board. There were no comments from the public. The Mayor declared the hearing closed at 7:01 p.m.

2. Petition for annexation from Tug Wa Ridge Land LLC.

The Mayor called the second public hearing to order at 7:01 p.m. and stated that its purpose was to receive comments from the public on a petition for annexation from Tug Wa Ridge Land LLC for 16.62 acres contiguous to the corporate limits on the Dillard Road. The Town Clerk submitted a letter stating that he had investigated the sufficiency of the petition and it conformed to the requirements of G. S. §160A-31(b). He had also prepared an Annexation Ordinance, which had been reviewed by the Town Attorney and adoption of which was on the agenda under New Business later in the meeting. There were no comments from the public. The Mayor declared the hearing closed at 7:05 p.m.

B. Regular Board Meeting.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:05 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Town Administrator reported that an item of Old Business, the petition for annexation from Thomas Eubanks and Gibson Investments LLC, would again need to be deferred because the purchase of the entire tract had not been finalized.

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 January 19 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 reminded the Board of the joint meeting with the County Commissioners scheduled for February 21 at 6:30 p.m. at the Prime Steak House in Franklin.

2. Comm. Ross requested a meeting of the Public Works Committee; the Committee agreed to meet at the Town Hall at 8:30 a.m. February 24.

3. Town Attorney Bill Coward was present in order for the Board to consult with him in Closed Session later in the meeting.

4. Each Board member had received a copy of the Public Services Administrator's written report for the month; Lamar Nix was present to review the report. He said that the tractor/mower and the excavator had been received and that the utility truck in the Water Department was expected soon, at which time he would be asking the Board for permission to sell several Town vehicles.

5. Each Board member had received a copy of the Police Chief's written report for the month; Jerry Cook was present to review the report. Chief Cook said that he was in the middle of an investigation with the S.B.I. and asked to be excused, and the Mayor excused him.

6. Each Board member had received a copy of the Recreation Director's report for the month; Selwyn Chalker was present to review the report. He reported that the public input session for the County's Master Comprehensive Recreation Plan had taken place on February 9 with approximately 20 people in attendance.

7. Each Board member had received a copy of the Town Planner/ Zoning Administrator's report for the month; Larry Gantenbein was present to review the report.

8. Each Board member had received a copy of the Treasurer's Report for the month.

MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ACCEPT THE TREASURER'S REPORT.

V. Old Business.

1. The Board discussed the permit issued at previous meetings for use of Town right-of-way for the Highlander Newspaper building. The Town Administrator reported that he had received no complaints on the sidewalk being closed; Larry Gantenbein confirmed that he had met with the contractor and the project was expected to be completed within 30 days.

MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE CONTINUATION OF THE PERMIT ISSUED AT THE PREVIOUS MEETING UNTIL THE MARCH 16 MEETING.

2. The Board had received additional information on the rent for WHLC-FM since the previous meeting: the agenda package included a letter dated February 15 from Steve Chenoweth, and it was reported that a letter had also been received by the Mayor from Lauch Magruder. The Town Administrator had also received a letter from the Town's wireless communications consultant, Karen Hallett, recommending that the rent be raised to between \$500 and \$750 per month. He explained that the rent was currently \$500 per month, and that the lease would expire in 2009, with another option to review rent in 2007; WHLC's rent was not collected by MetroSite, as the lease had been approved prior to the Town's management agreement with that company.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, TO APPROVE CONTINUATION OF THE RENT AT \$500 PER MONTH.

Comm. Ross said that he thought the Town should consider a system for incremental increases in the future, perhaps tied to inflation.

Comm. Marsh felt that the rent had been the same for six years and

an increase to \$7000 per year would be justified; he thought the tower was an asset to the Town and the taxpayers should get a fair return. Horace Duncan spoke in favor of not increasing the rent; he felt that it was already high and that the radio station was a wonderful service to the community. Rick Siegel also spoke in favor of not increasing the rent; he thought WHLC was beneficial to the taxpayers and commented that it was always easy to get public service announcements on the air. Chuck Cooper referred the Board to information he had submitted from a certified public accountant at an earlier meeting indicating that the benefit to the Town over 35 years would be nearly half a million dollars. Jodie Cook spoke in favor of the benefit to the community of the station.

THE MAYOR CALLED THE QUESTION AND THE MOTION CARRIED. Comms. Ross, Patterson, James, and DeWolf voted "aye." and Comm. Marsh voted "nay."

3. Each Board member had received a copy of a Hold Harmless Agreement drafted by the Town Administrator and reviewed by the Town Attorney, which released the Town from any liability in the construction of a locust guardrail at the H. C. Dodson residence, as discussed at the January 5 meeting.

MOVED BY COMM. JAMES, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE THE AGREEMENT.

4. The Board had deferred until this meeting approval of a revised preliminary plat for the Brushy Face Subdivision, as discussed at the January 19 meeting. Griffin Bell Jr. was present and said that he and the other property owners had worked out an agreement with the subdividers concerning underground electric service prior to the meeting.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE REVISED PRELIMINARY PLAT AS RECOMMENDED BY THE PLANNING BOARD.

VI. New Business.

1. The Town Administrator reported that bids had been received on the Wastewater Treatment Plant expansion on January 20. The low bid was \$5,071,500, and the budgeted amount for the project was \$4,136,900, or \$934,600 more than budgeted. He had provided each Board member with a letter from W. K. Dickson consulting engineer Brian Tripp tabulating the bids, which were in effect for 90 days; in the meantime, he said that the bidding statutes permitted the Town to negotiate with the lowest bidder to bring the contract price closer to the funds available. He had asked Mr. Tripp to evaluate the project for potential cost savings, and after reviewing the plans and consulting with the contractor he had provided a breakdown of potential savings of \$346,605. He and the Town Engineer had reviewed the items identified and recommended accepting all of them except replacement of the stainless steel tanks. The recommended cost savings would be \$125,790, and if approved by the Board the low bid thus reduced through negotiation would be \$4,945,710, or about \$800,000 more than budgeted. He reported that he had contacted the Local Government Commission and discussed an installment purchase contract pursuant to G. S. §160A-20, like that used to complete the Water Treatment Plant several years ago; public hearing, adoption of a resolution, and scrutiny by the LGC would all be required. If the Board wished to pursue this route he thought that the public hearing could be scheduled as early as March 16.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO SET IN MOTION THE MECHANICS OF BORROWING THE NECESSARY FUNDS THROUGH AN INSTALLMENT PURCHASE CONTRACT.

Comm. DeWolf felt that the Board should also begin work on a long-term plan to extend the sewer collection system.

2. MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING RESOLUTION:

**RESOLUTION PROCLAIMING FEBRUARY 23, 2005
ROTARY INTERNATIONAL DAY IN HIGHLANDS**

WHEREAS, Rotary International, founded on February 23, 1905 in Chicago, Illinois USA, is the world's first and one of the largest non-profit service organizations; and

WHEREAS, there are over 1.2 million Rotary club members comprised of professional and business leaders in over 31,000 clubs in more than 165 countries; and

WHEREAS, the Rotary motto "Service Above Self" inspires members to provide humanitarian service, encourage high ethical standards, and promote good will and peace in the world; and

WHEREAS, Rotary funds club projects and sponsors volunteers with community expertise to provide medical supplies, health care, clean water, food production, job training, and education to millions in need, particularly in developing countries; and

WHEREAS, Rotary in 1985 launched Polio Plus and spearheaded efforts with the World Health Organization, U.S Centers for Disease Control and Prevention, and UNICEF to immunize the children of the world against polio; and

WHEREAS, polio cases have dropped by 99 percent since 1988 and the world stands on the threshold of eradicating the disease; and

WHEREAS, Rotary is the world's largest privately-funded source of international scholarships and promotes international understanding through scholarships, exchange programs and humanitarian grants; and

WHEREAS, more than 35,000 students from 110 countries have studied abroad since 1947 as Rotary Ambassadorial Scholars; and

WHEREAS, Rotary's Group Study Exchange program has helped more than 46,000 young professionals explore their career fields in other countries; and

WHEREAS, 8,000 secondary-school students each year experience life in another country through Rotary's Youth Exchange Program; and

WHEREAS, Rotary club members in countless clubs throughout this state sponsor service projects to address such critical issues as poverty, health, hunger, illiteracy, and the environment in their local communities, and abroad.

NOW, THEREFORE, I, Allen L. Trott, do hereby proclaim February 23, 2005, as **Rotary International Day** in Highlands, and encourage all citizens to join me in recognizing Rotary International for 100 years of service to improving the human condition in local communities around the world.

Allen L. Trott, Mayor

3. The Board discussed a privilege license fee for a pawn shop proposed to be operated at Highlands Quick Mart. The Clerk said that the business appeared to meet all of the other requirements of the Statute but that the Town's Fee Schedule did not include a category for pawn shops. The maximum that could be assessed under the Statute by a municipality was \$275. Comm. Patterson asked how

much he would recommend, and he said Town policy had been to assess the maximum permitted by the State for each category of business.

MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO SET THE PRIVILEGE LICENSE FEE FOR PAWN SHOPS AT \$275 ANNUALLY.

4. The Town Administrator said that an application for use of the right-of-way for construction activities had been received from Old Edwards Inn for the parking area immediately in front of the former "Highlands Hiker" property on Church Street for new construction.

The request was for a movable chain-link fence to secure the area, which was to be used for both staging and storage. Greg Elliott was present representing the contractor, Hodges & Hicks, and confirmed that he had met with Town officials and had committed to better traffic control and management of construction. Materials would be stored across the street, and also at the Cherokee Drive receiving facility. Mario Gomes was present and confirmed that two storage trailers and construction materials would be moved from the front of that property. Comm. Ross expressed a concern about pedestrian traffic on Church Street, and felt that a temporary sidewalk should be provided.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE THE REQUEST ON A MONTHLY BASIS UNTIL THE MARCH 16 MEETING, CONTINGENT ON SUBMITTAL OF A PLAN AT THAT MEETING FOR A TEMPORARY SIDEWALK TO PROVIDE FOR PEDESTRIAN TRAFFIC ON CHURCH STREET.

5. The Board considered an amendment of the Zoning Ordinance, subject of a public hearing immediately preceding the meeting; the proposed amendment was as follows:

Replace the word "building" with the word "property" in Section 501.1(A), Special Use Permits.
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MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADOPT THE FOREGOING AMENDMENT OF THE ZONING ORDINANCE EFFECTIVE IMMEDIATELY.

6. The Board considered adoption of an Annexation Ordinance pursuant to petition for annexation by Tug Wa Ridge Land LLC, subject of a public hearing immediately preceding the meeting.

Comm. Patterson said that she did not feel the Board should rubber-stamp annexations such as this; she thought the Board should discuss them and they should not be entered into lightly. She felt that the Board needed to look at the benefit to the Town and the good of the community; unlike many communities, there would be no benefit from job creation, affordable housing, or significant revenue. While the annexation would bring zoning control, she wondered if the property could develop without annexation and the water and sewer service the Town provided. She felt that the term "carrying capacity" was not just a mathematical calculation used by demographers, but the population a community could actually sustain without degrading the environment. Increased population could create more traffic and more stress, for example, while many people came to Highlands because they experienced less stress; she would hate for the Town to lose those qualities that brought most of us here. She thought it would be a mistake to let developers determine how fast the Town ought to grow; that ought to be the Board's decision. Expanding the Town limits, with its accompanying need for more garbage collection and more police protection, was not necessarily a good thing. She pointed out that she had expressed this same idea in the past and had not voted for previous annexations.

David Bock, representing Tug Wa Ridge Land LLC, said that he could probably develop the property without annexation, although perhaps with more lots. He felt zoning control was a good thing, however, and he was not sure that the Town would grow more rapidly with annexation. His desire was to contribute taxpayers to the Town.

Comm. James felt that this annexation would result in more higher-end homes, which would be a better tax value than some other areas which were already developed with substandard systems; he thought that this would be a good annexation.

Comm. DeWolf said that he thought the Town could be proud of its zoning laws, and if the Town could spread them into other areas he saw no reason why the Town could not look at properties like this on a case-by-case basis. Comm. Patterson agreed that the Town's zoning was something to be proud of, but pointed out that the Town could achieve the same control through extra-territorial jurisdiction (ETJ). Comm. James said that he felt ETJ was designed for areas which the Town eventually planned to annex; he felt that if you were going to control property, it ought to be annexed.

Comm. Ross pointed out that the County's lack of zoning put a lot of pressure on the Town to extend its jurisdiction. He thought that a water and sewer authority in the County would only add to the likelihood of rampant development.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND CARRIED TO ADOPT THE ANNEXATION ORDINANCE FOR TUG WA RIDGE LAND LLC EFFECTIVE MARCH 1, 2005. Comms. James, Marsh, DeWolf, and Ross voted "aye," and Comm. Patterson voted "nay."

7. The Town Administrator reported that informal sealed bids had been received on February 10 for the Highlands Country Club Fairway No. 1 Sewer Line Extension. Only one bid had been received from Larry Rogers Construction Co. Inc. for \$57,551.65. Including a construction contingency of \$10,000, pre-construction engineering of \$22,120.30, and construction and post-construction engineering of \$12,070, the cost of the project would be \$101,741.95; the Town's share would be \$25,435.49, and the Property Owners' share would be \$76,306.46. An agreement had been drafted similar to that for the NC-106 sewer line, reviewed by the Town Attorney, and funds were being collected by the engineer, Bronce Pesterfield. The Town Administrator recommended awarding the bid contingent on collection of the funds; notice to proceed could only be executed upon approval by the State, which had not yet been received.

Comm. James said that he remembered the cost of the project had been estimated at \$83,000 in the meeting in November at which this project had been presented by the engineer, which he had assumed had included engineering costs. The Town Administrator said that he had called Mr. Pesterfield after talking to Comm. James earlier in the day and expressed the concern of Town officials over the engineering costs; he had been told that the \$83,000 estimate had been for construction only, not engineering. Comm. James felt that the engineering fees were much more than normal and that this information should have been provided to the Board originally. He felt that a letter should be drafted to the engineer expressing the Board's disappointment that all of the costs had not been provided to it in the beginning. He also felt that the Town should do the construction observation for the project.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO AWARD THE BID TO LARRY ROGERS CONSTRUCTION CO., CONTINGENT ON COLLECTION OF FUNDS FROM THE PROPERTY OWNERS; CONSTRUCTION OBSERVATION IS TO BE DONE BY THE TOWN RATHER THAN THE ENGINEER, AND A LETTER IS TO BE DRAFTED TO THE ENGINEER EXPRESSING THE BOARD'S DISAPPOINTMENT.

8. Larry Gantenbein reported that he had discussed with the Town Attorney a problem that had come to his attention concerning abandoned, unsafe, and partially demolished buildings, such as the old post office property on Fifth Street and other buildings. He had talked to the Health Department but they apparently could only act on public health grounds; such properties could be required to be sealed off and made inaccessible, but could not be removed. After some discussion, the Board asked the Town Attorney to review similar ordinances from other municipalities and draft an ordinance addressing the problem.

9. The Town Administrator reported that Bob Carlton, owner of Sweet Treats, had been approved for a 50-seat restaurant by the Zoning Board the previous week; he had subsequently questioned the sewer connection fee of \$100 per seat, which made no distinction between types of restaurants. Mr. Carlton was present and said that his proposed soup, salad, and sandwich operation would have a minimal impact on the sewer, and that the Health Department did not require a grease trap. At the same time, other food establishments and caterers which were considered "take-out" because they had no seating contributed to the grease problem because of cooking. After some discussion the Board agreed to take the question under advisement until the next meeting.

10. MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(3) TO CONSULT WITH THE TOWN ATTORNEY ON PENDING BOWERY ROAD LITIGATION, AND PURSUANT TO §143-318.11(A)(6) TO REVIEW AN APPLICATION FOR EMPLOYMENT IN THE TRIMMING CREW. All present left the room except the Clerk, the Town Attorney, and the Public Services Administrator.

- A. The Board consulted with the Town Attorney on the pending Bowery Road litigation.
- B. The Board reviewed an application for employment from Edwin Wade Shope for the Trimming Crew. The Public Services Administrator recommended employing him at the beginning salary (10-1).

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

11. MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO EMPLOY EDWIN WADE SHOPE IN THE TRIMMING CREW AT THE BEGINNING SALARY OF 10-1 (\$22,258).

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 9:30 p.m.

Richard Betz, Town Clerk