

PUBLIC HEARING and REGULAR BOARD MEETING of November 16, 2005 with Mayor Pro Tem Amy Patterson, Hank Ross, H. N. James, Dennis DeWolf, and Alan Marsh present.

Also present were Richard Betz, Lamar Nix, Larry Gantenbein, Bill Coward, Bill Harrell, Kim Lewicki, Adam Thompson, Mayor-elect Don Mullen, and a large crowd. In addition to the 132 seats which had been set up in the largest meeting room in the Highlands Civic Center, approximately 50 to 100 others people stood in the rear and along the sides of the room and in the corridor outside.

A. Public Hearing.

Mayor Pro Tem Amy Patterson called the Public Hearing to order at 7:00 p.m. and stated that the purpose was to receive comments on the following four proposals:

1. Adoption of extraterritorial jurisdiction (ETJ), as set forth on a map displayed in the room, in accordance with G. S. §160A-360.
2. Amendment of the Zoning Ordinance in order to exercise extraterritorial jurisdiction in accordance with G. S. §160A-360.
3. Amendment of the Zoning Ordinance by adopting a new Section 209(A), WS-II-BW Watershed Overlay District.
4. Adoption of an ordinance imposing a moratorium on commercial development and commercial signs in the extraterritorial jurisdiction for a period of 120 days.

Those entering the room had been asked at the door to place their names on a sign-up sheet indicating they wished to make comments to the Board at the hearing. County Commissioner Allan Bryson was present and stated that he thought occupancy of the room exceeded the capacity permitted by the Macon County Fire Marshall. The Mayor Pro Tem indicated that in absence of the Fire Marshall making such a determination the hearing would proceed; she noted that many people had come to make comments and she did not want to inconvenience them by moving to another location. She then asked each of those who had signed up to make their comments by coming forward to a microphone set up in the front of the room and connected to a public address system, although some speakers did not approach the microphone; she did not limit the time allowed for speakers nor the number of speakers pro or con. The following people made comments:

1. Harold Neely spoke in opposition to the proposals.
2. Ralph Johnson spoke in opposition to the proposals.
3. Bob Zoellner spoke in opposition to the proposals.
4. Kim Thompson, President of Highlands Hills, spoke in favor of the proposals.
5. Bill Watkins spoke in opposition to the proposals.
6. Dave Register, representing Cullasaja Club, spoke in opposition to the proposals.
7. Dennis Graves, also representing Cullasaja Club, spoke in opposition to the proposals.
8. Mike Bryson spoke in opposition to the proposals.
9. Andrew Pitts, representing Highlands Falls Country Club, spoke in opposition to the proposals.
10. John Schiffli Sr. spoke in opposition to the proposals.
11. Dale Sticka spoke in opposition to the proposals.
12. Karen Hawk spoke in favor of the proposals.

During the hearing, Town Fire Chief James Manley entered the room and declared that the room exceeded safe capacity; he said only 130 people were permitted in the room. The Mayor Pro Tem declared a brief recess and asked members of the public who were not seated to proceed through an open door into the adjoining gymnasium in the Highlands Civic Center. The gymnasium was closed to athletic activities or other activities that could have interfered with the participation of the public or impeded their ability to hear. One of the two loudspeakers for the public address system was carried

into that room so that the overflow crowd could hear, and the door remained open throughout the hearing. During the hearing, members of the public who could not hear those who were speaking complained to the Board from time to time, and the volume or microphone was adjusted accordingly, so that those in both rooms could hear the proceedings and could participate fully in the hearing, just as if it had been conducted entirely in the meeting room. The Mayor Pro Tem asked for the public hearing to continue.

13. Carl Zoellner spoke in opposition to the proposals.
14. Mitch Gurganis spoke in opposition to the proposals, and also submitted into the record several photographs of alleged violations of the Town Soil Erosion Ordinance.
15. Baker Crane spoke in opposition to the proposals.
16. Clarence Wilson spoke in opposition to the proposals (he did not come forward to the microphone).
17. David Hourdequin spoke in opposition to the proposals (he did not come forward to the microphone).
18. Lonnie Manley spoke in opposition to the proposals.
19. Merlin Crowe spoke in opposition to the proposals.
20. Charlie McDowell spoke in opposition to the proposals.
21. Allan Bryson, Chairman of the County Commissioners, spoke in opposition to the proposals. He also asked the Mayor Pro Tem not to vote on the matter because she owned property in the ETJ.
22. Tommy Chambers spoke in opposition to the proposals.
23. Roger Pratesi spoke in opposition to the proposals.
24. Jim Whitehurst spoke in opposition to the proposals.
25. Ralph Thomas spoke in opposition to the proposals.
26. Lee Hodges spoke in opposition to the proposals.
27. Lynn Long spoke in opposition to the proposals.
28. Rick Rawlins spoke in opposition to the proposals.
29. Thomas Craig spoke in favor of the proposals.

The Mayor Pro Tem then asked for comments from those who had been moved into the adjoining room.

30. Larry Rogers spoke in opposition to the proposals.
31. Donnie Edwards spoke in opposition to the proposals.

Harold Neely than asked to be permitted to make more comments, and he reiterated his earlier opposition to the proposals. Allan Bryson also asked to speak, and stated that there were 105 people in the adjoining room. He then asked Baker Crane to offer a prayer, and Rev. Crane did so.

The Mayor Pro Tem asked if there were any others who wished to speak, in either room, whether they had signed up to do so or not, and there were none. She thereupon closed the public hearing at 8:30 and declared a brief recess while several members of the public began to leave the room.

B. Regular Board Meeting.

I. Call to Order.

The Mayor Pro Tem called the Regular Board Meeting to order at 8:36 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Town Administrator requested that one item be added, consideration of a resolution approving application for a Clean Water Management Trust Fund grant for a Stormwater Master Plan.

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

III. Approval of Minutes.

Copies of the minutes of the November 2 Public Hearing and Regular Board Meeting had been distributed by mail.

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

IV. Reports.

The Town Administrator reported that certain items were required by law to be entered into the record of this public hearing and meeting. He then entered into the record the Certification of Compliance required by G. S. §160A-360(a), certifying that individual notices of this hearing had been sent by first class mail as of October 19, 2005, to the owners of all parcels of land as shown on the Macon/Jackson County tax listing as of August 1, 2005, within the proposed area to be established as an extraterritorial jurisdiction of the Town.

He also entered into the record all of the written comments which had been received to date, including a total of 24 letters in opposition to the proposals--including petitions from approximately 75 people in Highlands Falls Country Club and from 190 people in Cullasaja Club--and a total of two letters in favor of the proposals.

He also stated that residents of the area had the right to apply to the Board of County Commissioners to serve as representatives on the Planning Board and Zoning Board, and said that the Town would be sending a formal request to that effect to the Board of Commissioners.

V. New Business.

1. The Board discussed the adoption of extraterritorial jurisdiction (ETJ), as set forth on a map displayed in the room, in accordance with G. S. §160A-360.

MOVED BY COMM. MARSH, SECONDED BY MAYOR PRO TEM PATTERSON, THAT THE TOWN ADOPT ETJ PURSUANT TO THE MAP.

The Board then discussed the area to be included in the ETJ at some length. Comm. Marsh said he felt Cullasaja Club should be excluded from the ETJ because only a portion of it was located within the one-mile boundary. Comm. Ross said he would like to see the area include the commercial corridors, but everything else was open to discussion. He felt that the potential for commercial development was high, and with the County discussing a Water and Sewer Authority for the area it was primed for growth. However, both Cullasaja Club and Highlands Falls Country Club had their own regulations in place and were residentially developed, and he felt they could be excluded.

Comm. DeWolf agreed. He said that the proposals before them had been a "wake-up call" from many minds on the Planning Board which had worked on them for some time. He agreed with Comm. Ross that there was a real possibility of money and development moving into the area, and he said he had heard many proposals for high-density development that would make your hair stand on end. He also commented that Highlands Country Club had been annexed 25 years ago in an equally controversial action and were now part of the community. Comm. Marsh agreed that Highlands Falls Country Club, like Cullasaja Club, should be excluded from the ETJ. He also said that the Macon County Ordinance regulating high-impact land uses permitted those uses, but required buffers and setbacks. County Comm. Allan Bryson was present and said that was not true. Comm. Marsh felt that ETJ offered protection for both residents and their neighbors. Comm. James said he was opposed to all of the proposals; he thought Highlands had done pretty well in spite of all of us, and would continue to do so.

Mayor Pro Tem Patterson then spoke in reply to several comments heard during the public hearing. She said that she could not recuse

herself, but instead had a statutory obligation to vote unless there was a direct financial benefit to her, which was not the case. She also said that appointments to the Planning and Zoning Board would be made proportionate to population. Many of those present had objected to not being permitted to vote on the question, but she asked how many County Commissioners they knew; she said those present knew her and the other Board members personally and had access to them. In addition, many residents in the ETJ were not residents and therefore could not vote. She also said that annexation was a process not related to ETJ; although ETJ was often the precursor for annexation, that was another fight. She also said she felt many in the ETJ would not be affected by the proposed regulation. The ETJ map had been prepared showing the full one-mile extent of the jurisdiction in order not to give the appearance of picking and choosing some areas over others. She pointed out that the Town had always included residents outside the Town in its decisions, and Comm. Allan Bryson had even served on the Planning Board in the past. She felt that the proposals ensured residents that if they were in residential areas they would remain residential.

Comm. Ross also spoke in reply to comments heard during the hearing. He said that non-conforming buildings and uses would be grandfathered, contrary to one comment, and that farm animals would not necessarily be excluded. He felt that through these proposals the Town was looking at preserving Highlands and keeping things from changing.

Comm. Patterson then asked Comm. Marsh if he would like to amend his motion in light of his comments.

MOVED BY COMM. MARSH, SECONDED BY MAYOR PRO TEM PATTERSON, TO AMEND HIS MOTION, THAT THE TOWN ADOPT ETJ PURSUANT TO THE MAP, BUT EXCLUDING CULLASAJA CLUB AND HIGHLANDS FALLS COUNTRY CLUB. The motion carried, with Mayor Pro Tem Patterson, Comms. Ross, DeWolf, and Marsh voting "aye," and Comm. James voting "nay."

The Mayor Pro Tem then declared a brief recess while several other members of the public left the room.

2. The Board then considered amendment of the Zoning Ordinance in order to exercise extraterritorial jurisdiction in accordance with G. S. §160A-360.

MOVED BY COMM. MARSH, SECONDED BY COMM. ROSS, THAT THE TOWN ADOPT THE FOLLOWING AMENDMENT OF THE ZONING ORDINANCE EXERCISING ETJ. The motion carried, with Mayor Pro Tem Patterson, Comms. Ross, DeWolf, and Marsh voting "aye," and Comm. James voting "nay."

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Section 103(A). Extraterritorial Jurisdiction.

(A) Statutory authorization and purpose. The Legislature of the State of North Carolina has in Article 19 of Chapter 160A, Sections 360 and 362 developed a procedure for local governments to establish an extraterritorial jurisdiction within one mile of its corporate jurisdiction. The purpose of this ordinance is to establish an extraterritorial jurisdiction for the Town of Highlands (hereinafter "ETJ")

(B) ETJ boundary description. The ETJ boundary is drawn in accordance with the guidelines set forth in G.S. 160A-360(b). The boundary is shown on the attached map entitled, "ZONING MAP OF THE TOWN OF HIGHLANDS, NORTH CAROLINA", which is adopted simultaneously herewith. In cases where the boundary line follows a roadway, the centerline of said roadway shall be the ETJ boundary. In cases where the boundary line follows a property boundary line, said property line shall be the ETJ boundary. In cases where the boundary line follows a national forest boundary line, said national forest line shall be the ETJ boundary. In all cases where the ETJ boundary cannot be determined, the line shall extend along the nearest roadway centerline or property boundary line.

(C) Public record. The official copy of this ordinance and map shall be on record in the office of the Town Administrator and shall be available for public inspection during normal business hours at the Town office. The Town Administrator shall cause a certified copy of this ordinance and map to be recorded in the office of the Register of Deeds of Jackson and Macon Counties.

(D) Effective date. This Ordinance shall become effective upon adoption.

* * *

3. The Board then discussed amendment of the Zoning Ordinance by adopting a new Section 209(A), WS-II-BW Watershed Overlay District.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, THAT THE TOWN ADOPT THE FOLLOWING AMENDMENT OF THE ZONING ORDINANCE. The motion carried, with Mayor Pro Tem Patterson, Comms. Ross, DeWolf, and Marsh voting "aye," and Comm. James voting "nay."

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Section 209(A). WS-II-BW Watershed Overlay District.

209A.1 General description.

The WS-II-BW Watershed Overlay District is an overlay district located within the Balance of the Watershed—i.e., that portion of the watershed outside the Critical Area—of a Public Water Supply Watershed designated WS-II by the N.C. Environmental Management Commission to maintain a low to moderate land use intensity pattern.

209A.2 General regulations.

In addition to the general regulations set forth in Article 100 of this Ordinance, the Watershed Protection Rules set forth in this Section shall apply in the WS-II-BW Watershed Overlay District.

209A.3 Minimum lot size.

Single family residential development in the WS-II-BW Watershed Overlay District shall not exceed one (1) dwelling unit per acre on a project by project basis. No residential lot shall be less than one (1) acre, except within an approved cluster development per Section 209A.4 of this Ordinance.

209A.4 Cluster Development.

Clustering of development is allowed in the WS-II-BW Watershed Overlay District under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 209A.3. Built-upon area or storm water control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

(B) All built-upon area shall be designed and located to minimize storm water runoff impact to the receiving waters and minimize concentrated storm water flow.

(C) The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

209A.5 Permitted uses.

IN THE EXTRATERRITORIAL JURISDICTION OF THE TOWN OF HIGHLANDS

Section 1. Purpose.

The Town of Highlands, effective November 16, 2005, has adopted an ordinance exercising extraterritorial jurisdiction in accordance with G. S. §160A-360, as recommended in an update of its Land Use Plan prepared by the Planning Board and adopted by the Board of Commissioners on July 20, 2005. The Land Use Plan recommended that the Town exercise its extraterritorial jurisdiction to protect the highway corridors; protect environmentally sensitive areas, such as the watershed for the Town's water supply; identify and qualify areas for future annexation; reduce the potential for high impact development; and ensure compatible development adjacent to the Town limits through zoning. Such problems or conditions necessitate a moratorium on commercial development and commercial signs.

Section 2. Approvals subject to the moratorium.

The moratorium is intended to prevent commercial development while the Board of Commissioners of the Town of Highlands develops reasonable zoning regulations to address the problems identified in the foregoing paragraph, Section 1. Therefore, issuance of building permits for new commercial construction and sign permits for new commercial signs shall be subject to the moratorium. The moratorium shall not apply to any project for which a valid building permit has been issued by Macon County or Jackson County prior to November 16, 2005, or to commercial development set forth in a site specific or phased development plan permitted or approved by Macon County or Jackson County prior to November 16, 2005.

Section 3. Date for termination of moratorium.

The moratorium imposed by this Ordinance shall remain in effect for a period of one hundred and twenty (120) days from its adoption, and shall terminate on March 16, 2006. Such duration is necessary in order to develop and draft reasonable zoning regulations, permit them to be reviewed by the Planning Board, and allow time for public notice, hearing, and comment as required by law.

Section 4. Petition for Relief.

In the event a property owner believes this moratorium imposes an undue hardship they may file a petition for relief with the Clerk for the Town of Highlands that will be heard at the next regularly scheduled meeting of the Board of Commissioners. Said petition shall include a statement detailing the reasons for the hardship and five (5) copies of the plans and specifications for any proposed development related to the moratorium.

Section 5. Actions proposed to be taken during moratorium.

The Town of Highlands will develop reasonable zoning regulations during the moratorium to ensure that the objectives set forth in the recommendations of the Land Use Plan are met.

This Ordinance is adopted, and shall be in full force and effect, pursuant to public notice and a public hearing held on November 16, 2005, on this the 16th day of November, 2005.

* * *

5. The Board briefly discussed the petition for re-zoning of the Werder Property, denied by the Board on June 1, 2005. Comm. Marsh said he understood that the proposed Conditional Use Zoning procedure had been drafted and he hoped that this matter could be resolved at the next meeting. Comm. DeWolf agreed that it would be worthwhile to bring this matter up again given the new amendment to the Zoning Ordinance affecting the time limitation on petitions for re-zoning. The Board agreed by consensus to table the matter until the next meeting. Town Planner Larry Gantenbein reported that the proposal

had been drafted, had been approved by the Institute of Government, and would be included in the December 7 agenda package.

6. The Town Administrator reported that McGill Associates had learned that a \$10,000 match would be required from the Town for a Clean Water Management Trust Fund grant for preparation of a Stormwater Master Plan; the Board had agreed to apply at the previous meeting for a \$50,000 grant but the engineers had not been aware that a match would be required. He had also distributed copies of a resolution that was required to be adopted before the December 1 deadline for the grant application. Comm. James asked if the \$10,000 had been budgeted, and was told by the Treasurer that it had not; the budget would have to be amended or contingency funds used.

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

* * *

WHEREAS, the North Carolina Clean Water Management Trust Fund has authorized the making of grants to aid eligible units of government or non-profit organizations in financing the cost of improvements and/or studies that will impact the quality of affected waterways and

WHEREAS, the Town of Highlands has need for and intends to significantly improve its stormwater management system by preparing a stormwater master plan. The process involves extensive data collection and critique of existing system components. The final work product is a report with both infrastructure and policy recommendations.

WHEREAS, the Town of Highlands intends to request grant assistance from the State of North Carolina.

NOW, THEREFORE BE IT RESOLVED, BY THE BOARD OF COMMISSIONERS OF THE TOWN OF HIGHLANDS:

That the Town of Highlands will arrange financing for all remaining costs of the Project, if approved for a State grant.

That the Town of Highlands will perform the functions and obligations of the grant recipient as set out in a grant agreement should this project be chosen for funding.

That Richard Betz, Town Administrator, and successors so titled, is hereby authorized to execute and file an application on behalf of the Town of Highlands with the North Carolina Clean Water Management Trust Fund for a grant to aid in the construction of the project described above.

That Richard Betz, Town Administrator and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above, and to execute such other documents as may be required in connection with the application.

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VI. MOVED BY COMM. DEWOLF, 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 Pro Tem at 9:20 p.m.

Richard Betz, Town Clerk