

REGULAR BOARD MEETING of April 19, 2006, with Mayor Don Mullen and Commissioners H. N. James, Dennis DeWolf, Alan Marsh, Amy Patterson, and Hank Ross present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Kim & Jim Lewicki, Adam Thompson, Mario Gomes, George Mathis, Bronce Pesterfield, Mai-Beth Ketch, Craig Justus, Bob Long, Andrew Parker, Bill Nellis, 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 Town Attorney had requested deferring the discussion of the proposed Subdivision Ordinance amendment under New Business to Closed Session in order to discuss its legal implications, and the Town Administrator asked that review of an employment application for the meter reader position be added.

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 April 5 Regular Board Meeting had been distributed by mail.

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

IV. Reports.

1. The Mayor reported that he and several Commissioners and staff had met with Graham Fields, Western Regional Representative for Elizabeth Dole's office, on April 6; Mr. Fields had been very positive about the possibility of funding to address the silt problems in the lakes.

2. Comm. Ross reported that the ETJ Liaison Committee had nearly completed answering questions raised at previous ETJ public meetings, and had scheduled meetings for the final three ETJ areas on May 11 and May 25.

3. Comm. Patterson reported that the Finance Committee had met and reviewed the applications for funding from non-profit organizations; recommendations would be incorporated into the budget next month.

4. The Town Administrator asked the Board to set a date at which abandoned vehicles currently stored on Town property could be sold.

MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADVERTIZE FOR THE SALE OF THESE VEHICLES AT 7:00 P.M. ON JUNE 7.

He also reported that George Schmitt had resigned from the Scholarship Committee the previous year; the Committee would be meeting soon to review scholarship applications.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPOINT BUD POTTS TO FILL MR. SCHMITT'S UNEXPIRED TERM.

He also reported that informal bids had been received the previous day for pole change-outs, as discussed at a previous meeting, as follows:

..... ! M. B. Haynes.....	\$131,375.00
..... ! Dillard Smith.....	147,445.68

There was \$110,540 remaining in Capital Outlay in the Electric Department after completion of the re-conductoring project. Town Engineer Lamar Nix said that the project would consist of 91 poles in the Mirror lake, Webbmont, Arnold Road, Mt. Lori, and Holt Knob area, and that there was adequate contingency.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE PROJECT, BUT CONTINGENT ON REDUCING THE AMOUNT OF WORK TO \$110,540 OR LESS.

V. Old Business. None.

VI. New Business.

1. The agenda package had contained an order drafted by Town Attorneys Bob Long and Andrew Parker concerning the Old Edwards Inn projects denied at the previous meeting, as well as correspondence to and from the Town Administrator, Craig Justus, Bronce Pesterfield, and Lamar Nix.

Craig Justus said that the order had indicated that the projects had been approved except for inadequate proof to satisfy the Board that they met the built-upon requirement due to use of pervious pavement. He submitted plats that had been revised as a result of correspondence with the project engineer, and reported that he had met with Comms. Ross and DeWolf earlier in the week. He then reviewed revised plans for Satulah Village South, which included the removal of driveways for Lots 15 and 16, and Satulah Village West, which he said would be amended to include the elimination of Lots 1 and 2. He said that the applicant was requesting approval for the projects tonight, but would be open to changes in the Ordinance that would permit closer setbacks to the road, which would not constrain the applicant as much in locating dwelling units; the units would have shorter driveways and more open space would be created in the rear. He submitted photos of developments of this type. He then submitted some information on pervious concrete, how it worked and where it was used, including a letter from the North Carolina D. O. T. giving the material conceptual approval status. Bronce Pesterfield elaborated in some detail on the material. Comm. Patterson expressed a concern over lack of infiltration into the ground. Comm. Dewolf expressed a concern over its effectiveness on slopes and over time. Comm. Ross noted that the specifications called for annual vacuuming, power blowing, and pressure washing. Mr. Pesterfield said an O&M manual could be provided, and Mr. Justus said maintenance could be provided for in the covenants.

Mr. Justus then discussed a project for Richard Boger which the Zoning Board had approved without a variance, on which Comm. Ross had done the design work, where pervious pavement had been used in order to meet the 70% built-upon for commercial property. He said that the interpretation of the Zoning Administrator was that it should be given 100% credit. He also said that he had mentioned the Presbyterian Church Child Care Center at the previous meeting, but the record had been unclear with respect to use of pervious pavement. The Town Administrator said that his understanding from Bob Wright, project manager and head of the Upper Cullasaja Watershed Association, was that the pervious pavement had not been used to meet the built-upon, but was instead a pilot project as stated at the previous meeting; Mayor Mullen said he had been on the Board at the time and that that was true. The Town Administrator asked if those were the only projects for which pervious pavement had been used, and Mr. Justus said that was all he had been able to find in a limited search of public records. Mr. Justus then reviewed the DENR Best Management Practices Updated Draft Manual, which did not prohibit the use of pervious pavement and gave 60% credit for its use; he contended that the approval by the Zoning Board for the Boger project meant that the Town gave

100% credit for such pavement. He then submitted copies of a memo written by then-Town Planner Richard Betz, and said that current Town Planner Larry Gantenbein had told Mr. Pesterfield that since 2002 roads had not been counted as built-upon. Mr. Betz explained that the memo referred to an interpretation regarding roads located on pre-existing, substandard lots, and did not apply to this situation. He also denied that it was Town policy that roads were exempted from built-upon; Town subdivisions always called for 40-foot rights-of-way within which roads were located, and built-upon was not a consideration because minimum lot size was met unless clustered. Mr. Justus then discussed a 16% built-upon requirement for Sequoyah Point subdivision, for which the road had not been counted. Mr. Betz said he understood that the 16% built-upon limit was a recommendation of the Planning Board based on lots being located underwater, which was a different situation. Mr. Justus then submitted a spreadsheet showing the amount of built-upon that would result from 0%, 60%, and 100% credit for pervious pavement for the two projects under consideration. Finally, he contended that Section 109(E) of the Zoning Ordinance meant that the applicant should be given 38,900 SF of built-upon credit where the restaurant, parking lot, and driveway were located. He asked for approval of both projects.

Mr. Long asked how Section 109(E) applied to this case since it focused on re-construction. The Town Administrator said that this section applied to "maxed-out" lots, not this development. Mr. Long also asked about the BMP manual's statement that pervious pavement should be used on slopes less than 0.5%, and its applicability was limited to coastal areas. Mr. Pesterfield said this was an experimental, cutting-edge technology that had originated in coastal areas and was just now being used in the mountains. Mr. Long also noted that the BMP referred to the material as "partially impervious."

Comm. DeWolf explained that he and Comm. Ross had meet with the developers in order to see if there was a way to move forward. He had suggested that if the right-of-way was only 18 feet, vehicles could park immediately off the street, built-upon could be decreased, and the net effect would be positive. Comm. James noted that that would require an Ordinance change. Mr. Justus suggested that the Board could approve the projects conditioned on entitlement to a setback variance.

Comm. Patterson then said that in her opinion these projects did not meet the definition of cluster development in our Ordinance. She took the Board through a logical explanation of the Ordinance, which she said clearly said that the watershed regulations supplement the underlying zoning districts; single-family residential development in WS-III-BW should not exceed two units per acre, and no residential lot should be less than one-half acre, two separate statements which defined a distinction between density and lot size. She then reviewed the applicable provisions in the Zoning Ordinance and Subdivision Ordinance in some detail and said that the developers had started with the wrong premise, that they were allowed seven units per acre instead of two per acre; seven per acre was the last test or clustering, not the starting point.

Comm. Ross said that her argument made total sense, but he had been going along with staff and the Town Attorneys. Bob Long then explained that he and Mr. Parker had looked at this issue, discussed with the Institute of Government and DENR officials, and had concluded that the Ordinance permitted a density of seven per acre if development was clustered pursuant to the conditions defined. Comm. Patterson disagreed; she said that the Board knew what their intent was when they adopted the Ordinance, and it wasn't intended as a way of getting around the watershed ordinances. Comm. James asked about the Scott Cole project; the Town Administrator said that project had not been approved by this Board, but it had begun the discussions which had resulted in the 2004 clustering amendment. Craig Justus submitted copies of the minutes of the meetings at which Scott Cole's proposals for 12 units on 1.95 acre had been discussed; at that time, clustering was not allowed at the higher density, but the Ordinance had been amended to provide for it. He said the old Ordinance before 2004 said what Comm. Patterson contended; the new Ordinance permitted the higher density.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, TO DISAPPROVE BOTH OF THE PROJECTS SUBMITTED BASED ON FAILURE TO MEET THE DENSITY REQUIREMENTS OR COMPENSATE FOR REDUCTION IN LOT SIZE WITH EQUIVALENT OPEN SPACE. Comm. James felt that the phrase "underlying zoning district" presented a problem. Comm. DeWolf said he did not disagree with Comm. Patterson; he thought clustering had been misused here, and had hoped that the density could be reduced. THE MAYOR CALLED THE QUESTION AND IT CARRIED, with Comms. Patterson, Marsh, and DeWolf voting "aye," and Comms. James and Ross voting "nay."

Comm. James said he had been interested to learn that two Commissioners had met with OEI officials after the Board had been told at the previous meeting that they would litigate this matter; he wondered if this had been done with the blessings of the attorneys. Mr. Long replied that he had discussed it with them prior to the meeting.

2. Each Board member had received copies of a proposed amendment of the Zoning Ordinance, Section 115, Slope Development Standards, recommended by the Planning Board and reviewed by the Town Attorney.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADVERTIZE FOR A PUBLIC HEARING FOR JUNE 7.

3. Each Board member had received copies of a proposed amendment of Section 206.5, changing the "underlying" density for single-family residents in the B-3 district from 6000 SF to 22,000 SF, drafted by the Town Administrator as requested by the Board; it had been reviewed by the Town Attorney.

MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADVERTIZE FOR A PUBLIC HEARING FOR JUNE 7.

Comm. Patterson said that she felt adoption of the amendment would be for clarification purposes only.

4. Each Board member had received a resolution asking the Macon County Board of Commissioners to appoint one member from the Town's extraterritorial jurisdiction to the Zoning Board, as discussed at the previous meeting and re-drafted by the Town Attorney.

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

class=Section2>

**RESOLUTION REQUESTING THE BOARD OF COUNTY COMMISSIONERS
OF MACON COUNTY
TO APPOINT ONE MEMBER
TO THE TOWN OF HIGHLANDS ZONING BOARD OF ADJUSTMENT
AND RESCINDING RESOLUTION OF JANUARY 4, 2006 REQUESTING
APPOINTMENT OF TWO MEMBERS**

WHEREAS, Article 600, Section 601(B) of THE ZONING ORDINANCE OF THE TOWN OF HIGHLANDS ESTABLISHING A ZONING BOARD OF ADJUSTMENT FOR THE TOWN OF HIGHLANDS AND PROVIDING FOR THE GOVERNANCE THEREOF, as amended on January 4, 2006, requires that the extraterritorial jurisdiction area have proportional representation on the Zoning Board of Adjustment based on the population of the regulated area in accordance with G. S. 160A-362; and

WHEREAS, the ordinance specifies that the Macon County Board of Commissioners shall make these appointments; and

WHEREAS, in a resolution adopted on January 4, 2006, the Board of Commissioners requested the Macon County Board to appoint two representatives to the Zoning Board; and

WHEREAS, a re-calculations of populations of the relevant areas, based upon the County's 911 data and U. S. Census Bureau data, shows that proportional representation would require that only one member from the extraterritorial jurisdiction area be appointed to the Zoning Board; and

WHEREAS, the member so appointed by the Macon County Board shall serve from the date of appointment until the regular expiration of the initial term on June 30, 2006;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Town of Highlands respectfully requests the Board of Commissioners of Macon County, pursuant to G. S. 160A-362, to appoint one regular member to the Zoning Board of Adjustment for the Town of Highlands for a term from the date of appointment, with the initial term to begin upon appointment and to expire on June 30, 2006.

5. MOVED BY COMM. DEWOLF, 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 LEGAL MATTERS CONCERNING A PROPOSED SUBDIVISION ORDINANCE AMENDMENT, AND PURSUANT TO G. S. §143-318.11(A)(6) TO REVIEW AN APPLICATION FOR EMPLOYMENT FOR METER READER. The Mayor declared a five-minute recess and all present left the room except the Clerk, the Town Attorney, and the Public Services Administrator

A. The Public Services Administrator reported that Richard Bradshaw had resigned, and the Board reviewed several applications for the position of meter reader, including that of Scott Houston.

B. Town Attorney Bill Coward reviewed the legal implications of a proposed amendment of the Subdivision Ordinance to provide for different variance standards.

C. The Board discussed Larry Gantenbein.

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

6. MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO OFFER THE POSITION OF METER READER TO SCOTT HOUSTON AT A BEGINNING SALARY OF 8-1 (\$20,771).

VIII. THE BOARD AGREED BY CONSENSUS 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