

REGULAR BOARD MEETING of December 6, 2006, with Mayor Don Mullen and Commissioners Alan Marsh, Amy Patterson, Hank Ross, and Dennis DeWolf present; Comm. H. N. James was not present due to illness.

Also present were Richard Betz, Lamar Nix, Selwyn Chalker, Bill Harrell, Sonjia Stewart, Larry Gantenbein, Bill Coward, Kim Lewicki, Eric NeSmith, Linsey Wisdom, Buck Trott, Billy Clarke, Doug Wilson, Bill and Liz Daughtrey, Richard Melvin, Henry Lyngos, Ginger Slaughter, Terry Potts, Iva Lord, Philip Whitaker, John Anderson, Louise Hopkins, Herman Shutz, Edwin Poole, and many 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 Administrator requested that approval of election of the Fire Chief and appointment of Town trustee to the Firemen's Relief Fund be added to the agenda.

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 November 1 Regular Board Meeting had been distributed by mail.

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

Copies of the minutes of the November 8 Special Board Meeting had been distributed by mail.

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

Copies of the minutes of the November 29 Special Board Meeting had been distributed by mail; a minor correction had been made.

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

IV. Public Comment Period.

The Mayor stated that this was the time for public comment as required by law.

Buck Trott was present on behalf of Mirror Lake Improvement Association (MLIA) to express concern over the Riverwalk project and the impact of silt run-off in the Cullasaja River and on the adjoining Daughtrey property. He said many Notices of Violation (NOVs) had been issued, and he had been concerned when he had learned that the Town was considering settling. Plans had been prepared by Pesterfield Engineering and McGill Associates, but there was still land remaining open and erosion control not in place and it remained a disaster whenever it rained. He understood they were on their third contractor and had not worked in two weeks. He felt that in future the Town should have erosion plans prepared by an engineer familiar with topography and weather conditions in Highlands, and require a bond sufficient to stabilize the site. He said it should not have taken a year to put erosion control in place.

John Anderson was present and stated that he had lived on Mirror Lake for 27 years and never seen it so muddy.

Liz Daughtrey was present and said that, as Mr. Trott had pointed out, the project had been mismanaged and three contractors had been hired to date; her power, cable, and telephone had been cut and her road was often blocked and inaccessible to emergency vehicles. She submitted a time line of events to date and photographs of siltation on her property, and asked the Town to make them comply. She showed the Board pictures of the damage that had been done to her property as a result of siltation from the Riverwalk project.

Doug Wilson was present representing Ms. Daughtrey; he said he wished to comment on the proposed settlement agreement later in the meeting.

Louise Hopkins was present and expressed concern over noise and silt.

## V. Reports.

1. The Mayor reported that there had been a change in the composition of the County Board of Commissioners and he thought it would be a good time for an informal dinner meeting sometime after the first of the year; it had been a contentious year and he hoped from here on there would be a better relationship. The Board agreed for him to schedule a joint meeting.

He also reported that he had appointed a task force to look into affordable housing, headed up by MaryAnn Sloan and several other concerned citizens working during the next three to six months.

He also reported that there had been an excellent presentation at Rotary on Tuesday on recycling from Jim Hickman, Local Government Assistance Team Leader with DENR's Division of Pollution Prevention and Environmental Assistance.

He also said that he kept getting questions about the Hospital, and he briefly reviewed the many positive strides that had been made; he thought they were making good progress.

2. The Town Administrator reported that the sub-lease for the small residence on Laurel Street on the Performing Arts Center property would expire in January; when vacated, the Town could proceed with asbestos testing and a demolition permit.

He reported that the Recreation Committee had agreed to meet in the small conference room of Town Hall at 5:15 p.m. December 11.

Comm. DeWolf had submitted an updated proposal from Wolf River Construction for improvements to the Community Building, as discussed at previous meetings. The estimated cost was \$73,136 and would reduce energy consumption, make the necessary repairs to the outside, and put the building in good shape for the next three to five years. The Treasurer reported that only \$50,000 had been budgeted, but \$25,000 was potentially available in contingency in Administration.

**MOVED BY COMM. DEWOLF, SECONDED BY COMM. ROSS, TO PROCEED WITH THE IMPROVEMENTS.** Comm. Marsh said that he could not vote on this until Comm. James had had his input. The Board agreed to defer a decision, and Comm. Patterson suggested continuing the meeting until December 13 to permit Comm. James to review the proposal and be present; the Board agreed by consensus.

3. The Town Attorney was present but had nothing to report.

4. Each Board member had received a copy of the Town Engineer/ Public Service Administrator's report for the month; Lamar Nix was present to review the report. He also reviewed in some detail a report on the Annual Sewer

Collection System required by the Division of Water Quality, which included a discussion of pressure sewer main policy which he felt the Public Works Committee needed to discuss in some detail with DWQ officials. The Board agreed by consensus for Mr. Nix to set up a meeting with the Public Works Committee and State officials.

5. Each Board member had received a copy of the Police Chief's report for the month; Bill Harrell was present to review the report.

6. Each Board member had received a copy of the Recreation Director's written report for the month; Selwyn Chalker was present to review the report.

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. He pointed out that the petition was for B-3 zoning, but the Planning Board had recommended Conditional Use Zoning for the property.

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

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

9. The Town Administrator reported that the Draft Basinwide Water Quality Management Plan for the Little Tennessee was posted on the internet for comments through January 12. He also reported that the Pole Attachment Ordinance had been forwarded to the Town Attorney for review as requested; that information on the cost of the transfer station at the landfill had been distributed, with a meeting with County Officials to be scheduled in January; and that several thank-you letters had been received for the Town's participation in the school playground project.

He had also submitted a proposed meeting schedule for the upcoming year which he proposed posting; it would not preclude the Board cancelling meetings or setting special meetings.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE SCHEDULE FOR 2007.

## VI. Old Business.

1. The Board considered the petition for re-zoning submitted on October 4 by Elizabeth Lindsey. It had been reported earlier in the meeting that the Planning Board had recommended Conditional Use Zoning for the property. Comm. Ross pointed out that the petition for B-3 zoning had not been approved; Comm. Patterson agreed. Terry Potts said Ms. Lindsey would not want to spend \$15,000 to \$20,000 on the plans required for an application for Conditional Use Zoning if the Board was going to deny it; he asked if they would consider such a petition if submitted. Comm. Patterson said she could not answer that now, but pointed out that the Planning Board had felt it was a good idea.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO DENY THE PETITION FOR B-3 RE-ZONING.

2. It was reported that four nominations had been received for Dixie Barton to fill a vacancy on the Appearance Commission.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPOINT DIXIE BARTON TO THE APPEARANCE COMMISSION TO FILL THE UNEXPIRED TERM OF ALLAN JAMES.

VII. New Business.

1. Two sealed informal bids had been received for a police patrol car pursuant to invitation; the Board agreed by consensus to open the bids and the Mayor did so and publicly read them.

- N. C. Dept. of Crime Control & Public Safety \$17,213.43
- Smoky Mountain Chevrolet \$20,407.68

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE THE LOW BID SUBJECT TO REVIEW OF THE SPECIFICATIONS BY THE POLICE CHIEF.

2. A proposal for renewing the contract for Town landscaping had been received from Tate Landscape Services at the same cost as last year, and a proposal for renewing the contract for mowing the cemetery had been received from J & J Lawn and Landscaping Service at the same cost.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE BOTH CONTRACTS.

3. A petition for re-zoning had been received from Philip Whitaker. He was present and said that his property in the ETJ adjoined the Town limits and Sherwood Forest, and had recently been zoned B-5 and R-4. It has been a single parcel when purchased in 1978, and the small piece on the highway had been developed and zoned B-5, but the larger part had been zoned R-4. He pointed out that Highlands Falls Country Club had placed a landfill and maintenance building to the rear of his property, which was in plain sight; that and the highway noise made it unsuitable for residential development, and he asked the Board to reconsider the R-4 zoning.

Larry Gantenbein was asked about the Planning Board recommendation, and he said that they had recommended B-4 zoning because it adjoined residential property on either side and across the highway; however, they may not have been aware of the landfill and maintenance building. After some discussion the Board agreed that the petition could be considered with the other properties in the ETJ scheduled for public hearing on January 17.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO SET A PUBLIC HEARING FOR JANUARY 17 FOR THE PETITION.

4. Iva Lord had submitted a petition for annexation for a 1.19 acre parcel of property adjoining the Gibson-Eubanks property along NC-106, which the Town had annexed effective July 1, 2005. The Clerk reported that the petition was in order. She said she had constructed a small house on an out-parcel to Mountain Laurel but had experienced problems with her well ever since and wanted Town water; the Gibson-Eubanks property owners had agreed to provide an easement and permit her to tie into the water line they were installing.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO SET A PUBLIC HEARING FOR THE ANNEXATION REQUEST FOR JANUARY 3.

5. The Board agreed by consensus to defer consideration of the proposed ETJ Zoning Map, subject of the January 17 hearing, until January 3.

6. MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVE THE ELECTION OF JAMES MANLEY FOR FIRE CHIEF FOR THE UPCOMING YEAR, AND TO RE-APPOINT OLAN VINSON FOR ANOTHER TWO-YEAR TERM AS ONE OF THE TOWN'S TRUSTEES ON THE FIREMEN'S RELIEF FUND.

7. Town Attorney Bill Coward said that he wanted to meet with the Board in Closed Session to discuss the next two items on the agenda, a proposed settlement agreement with Riverwalk LLC, and assessment of civil penalties for siltation violations for both Riverwalk LLC.

MOVED BY COMM. ROSS, 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 THE AFORESAID LEGAL MATTERS. The Board adjourned to the adjoining conference room with the Clerk, the Town Attorney, the Town Engineer, and the Zoning Administrator.

The Board consulted with the Town Attorney on a proposed settlement agreement with Riverwalk LLC, and assessment of civil penalties for siltation violations for both Riverwalk LLC. They then returned to the meeting room.

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

The Mayor stated that the Board was ready to review the matter of assessing Riverwalk LLC civil penalties for siltation violations, and he asked Zoning Administrator Larry Gantenbein to review NOVs issued on October 24, October 26, and November 8; Mr. Gantenbein did so in great detail:

- October 24. The NOV addressed a single violation which had occurred on October 10 involving a silt pond and silt fences below a rock wall. Contractors had been asked to empty the fences, but neighboring property owner Liz Daughtrey had claimed that they had opened the fences and improperly released the silt. He had taken three photographs on October 10, October 11, and October 16 documenting that the fences had indeed been opened and silt had been released. He had requested that the contractors train workers on the proper method of emptying a silt trap, but as of this date he had received no reply and could not tell whether the training had taken place. Riverwalk's contractor and attorney did not state at any time during the meeting that such training had taken place.
- October 26. The NOV addressed four separate violations due to heavy rains on October 15 and 16; straw hay bales (which were not an erosion control device approved by the State) had failed again in several locations. He showed the Board 18 photographs taken on October 16, October 17, and October 19 showing silt leaking through and around the dams and into the river. He had requested in the NOV that open ground be covered with Flexterra as recommended by McGill Associates, but as of this date it had still not been installed
- November 8. The NOV addressed a single violation on November 7, and was accompanied by three photographs on that date documenting continued failure to stabilize the open area with Flexterra and to remove the sediment; as of this date he had received no reply.

Asked by the Mayor about the cost of rectifying the damages, he said that there was no way of quantifying it; however, one could see the volume of erosion that had occurred, and the silt must have gone onto Ms. Daughtrey's property or into the river.

William Clarke was present representing Riverwalk. He said that he had met with Town officials on October 26 and had attended the November 8 meeting, and had understood that they were talking about all of the NOVs at that time; they were not ignoring the situation, and in fact he had a check with him tonight. Since November 8 a new contractor had been hired who they believed would better do the things that needed to be done. He said he had no evidence about the nature and extent of harm caused, but he had walked Ms. Daughtrey's property before the meeting and obviously there was sediment in the stream which Riverwalk needed to clean. Mirror Lake was a different situation, however, and he did not think it was this Board's job to compensate property owners around the lake. He also said that nobody had intentionally cut any sediment fences to release silt.

Riverwalk construction superintendent Henry Lyngos said that contractors had been changed because they were not satisfied with the status quo; he said they did want to respond to the NOVs and put a plan in place approved by the State. He thought they had made progress, but said they had been prohibited by the State from doing anything in the main stream since last week. Permanent controls would be designed by McGill and submitted to the State for approval, and interim measures would be taken in the meantime. He then outlined the progress of the permanent ponds being constructed and discussed the deficiencies of the original Pesterfield Engineering design. The additional cost to date was more than \$800,000, in addition to the bad reputation.

Buck Trott asked how many lots were being eliminated in order to create detention ponds. Mayor Mullen asked what the cost to rectify the damage was. Billy Clarke replied that he did not have an estimate; he could get an estimate for the cost of repair for Ms. Daughtrey's stream, but he did not think he could do that for Mirror Lake. The Mayor asked him if Riverwalk would agree to remediate the river, and Mr. Clarke said they would not. Buck Trott said that MLIA had retained an expert to measure the amount of silt in the river, and that amount would eventually be determined and action would be taken. Billy Clarke pointed out that not all of that silt came from Riverwalk. The Mayor asked him if he would agree that experts needed to look at this, and Mr. Clarke said he was not prepared to discuss it tonight.

Louise Hopkins, who owned property across the river, said that she had seen an island of silt forming and a lot of it had come from Riverwalk; she said property values in the area would plummet.

Herman Schutz said he had been living on the lake for 16 years. He did not blame Riverwalk alone; he thought it was everybody's fault that the river was in the condition it was, and much of it had come from golf course development upstream.

The Mayor asked Mr. Clarke if he had anything further to present and he said he did not. He then asked Doug Wilson if he had anything to say. Mr. Wilson said that the Ordinance provided for a fine per day, not per violation; he had done a calculation of the maximum fines and it added up to \$675,000 potentially, while they were proposing to pay only \$5000 in the settlement agreement. He said his clients were not interested in money, however; they were interested in compliance. Riverwalk had ignored Mr. Gantenbein, the Daughtrey's property was covered in silt, their utility lines had been cut, and he did not think a settlement agreement was in order because it said it resolved all matters. He thought they needed to be told they were going to comply with a specific timetable, not the bar-graph submitted with the agreement; Flexterra had not been installed as requested in July, and he thought they were thumbing their noses at the Town. He said it was a travesty, and he asked the Town to hold the agreement in abeyance. He thought they should be asked to provide a site stabilization bond, immediate soil erosion control, and a specific schedule for compliance.

The Mayor asked Mr. Wilson if he had anything further to present and he said no. Mr. Clarke said his clients would be glad to work with Mr. Gantenbein, and said that nobody had been thumbing their noses at the Town.

Buck Trott said that on May 20, two principles of Riverwalk had spoken to the MLIA and assured them that this development would be the best ever built and something they would be proud of; instead, they were ashamed of it. He was worried that the Board would not be living up to its responsibility to enforce the law.

Edwin Poole said that from his point of view it looked like Riverwalk was snubbing its nose at the Town.

Billy Clarke said that the proposed settlement agreement had only dealt with the initial seven violations in contention at a maximum fine of \$500 each, or \$3500; he had thought that the October 24 and October 26 NOVs had been included, and when he had received word of the November 8 NOV he had included them.

Comm. Patterson asked Mr. Clarke if not signing the settlement agreement would mean that Riverwalk would not do what was right. Mr. Clarke said they were still going to start working on sedimentation control tomorrow.

The Mayor said he felt the Board should go into closed session again. The Town Attorney said that the Board could consider the legal ramifications of what had been said but could make no decision in closed session.

**MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(3) TO CONSULT WITH THE TOWN ATTORNEY.** The Board again adjourned to the adjoining conference room with the Clerk, the Town Attorney, and the Zoning Administrator.

The Board consulted with the Town Attorney on the proposed settlement agreement with Riverwalk LLC, and assessment of civil penalties for siltation violations for both Riverwalk LLC. They then returned to the meeting room.

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

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO REJECT THE PROPOSED SETTLEMENT AGREEMENT AT THIS TIME.

Comm. Patterson stated that the Board had heard all of the evidence, and had found that substantial harm had been done and it would take a very substantial amount of money to remedy the damage. She thought that a fine should be assessed for the two distinct violations on October 24 and October 26 - the November 8 NOV was essentially a continuation of those NOVs - based on the number of days of continuing violation at \$5000 per day, \$5000 X 40 X 2. The Zoning Administrator confirmed that the number of days of violation for the October 24 NOV was 40 days based on signed receipt on October 26, and the number of days for the October 26 NOV (which had been hand-delivered) was also 40 days. The November 8 NOV had been continuing for 26 days since signed receipt.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ASSESS RIVERWALK LLC. A CIVIL PENALTY OF \$200,000 FOR THE TWO OCTOBER NOVs, FOR A TOTAL OF \$400,000.

Comm. Patterson said that the original intent of the settlement agreement had been to allow Riverwalk to work on weekends in order to get the work done.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO AMEND THE NOISE ORDINANCE TO PERMIT CONSTRUCTION ACTIVITIES FOR SOIL EROSION CONTROL AND RELATED INFRASTRUCTURE WORK ON SATURDAYS AND SUNDAYS, AND FROM 6:30 A.M. UNTIL 5:30 P.M., THROUGH MARCH 31.

Kim Lewicki asked if the Town would still pursue the original \$3500 in fines. Mr. Coward said that was up to Mr. Clarke.

The Mayor said that the Board would be pursuing the procedure for getting a stabilization bond for the Riverwalk site; he thought that the Town would be willing to negotiate that point.

8. It was reported by the Zoning Administrator that, although he had been notified of this meeting, Joel Crook was not present to respond to a proposed assessment of civil penalties for siltation violations on his property on Foreman road. The Board agreed by consensus to defer this matter until the January 3 meeting.

9. MOVED BY COMM. DEWOLF, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(6) TO DISCUSS PERSONNEL MATTERS IN THE POLICE DEPARTMENT. All present left the room except the Clerk and the Police Chief.

A. The Police Chief reported that C. D. Jenkins had informed him he would be retiring as a full-time patrol officer effective January 31, but wanted to remain available part-time as a Police Auxiliary Officer.

B. The Police Chief reported that Christopher Maskelony had received radar certification and recommended that a step increase be approved. The Town Administrator agreed that an automatic step increase for radar or intoxilyzer certification was consistent with past policy.

C. The Police Chief recommended that Erika Olvera receive a merit step increase due to exemplary job performance. The Town Administrator said that although Ms. Olvera was an excellent employee, he disagreed with a merit increase not dependent on certification at a time of year other than budget time because it was not consistent with policy and would set a precedent for other employees. The Board then discussed a merit bonus, and after some discussion agreed to discuss a possible merit bonus policy, vacation rollover, and other recommendations of the MAPS Group salary study in February.

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

10. MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ADVERTIZE FOR A FULL-TIME PATROL OFFICER.

VIII.Comm. Patterson reminded the Board that it had indicated earlier in the meeting it had agreed to continue this meeting in order to discuss proceeding with the improvements at the Community Building.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADJOURN THE MEETING UNTIL 8:00 A.M. THE FOLLOWING WEDNESDAY, DECEMBER 13.

There being no further business to come before the Board, the meeting was declared by the Mayor to be adjourned until 8:00 a.m. December 13.

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Richard Betz, Town Clerk