

PUBLIC HEARINGS and REGULAR BOARD MEETING of July 11, 2007, with Mayor Don Mullen and Commissioners Alan Marsh, Amy Patterson, Hank Ross, H. N. James, and Dennis DeWolf present.

Also present were Richard Betz, Lamar Nix, Bill Harrell, Bill Coward, Sonjia Stewart, Selwyn Chalker, Kim Lewicki, Jim Lewicki, Terry Potts, John Dotson, John Underwood, John Cleaveland, Lloyd Wagner, Bronce Pesterfield, Pat Taylor, Bob Kieltyka, Cynthia Strain, Robert E. Smith, Barry Messer, Geoffrey Slade, Bobby Haynes, and others.

A. PUBLIC HEARINGS.

The Mayor called the Public Hearings to order at 7:00 p.m.

1. William C. Hawkins - Petition for re-zoning.

There were no comments from the public.

2. Amendment of Zoning Ordinance regulating curb cuts.

There were no comments from the public.

B. REGULAR BOARD MEETING.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:01 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail.

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

III. Approval of Minutes.

Copies of the minutes of the June 20 Regular Board Meeting had been distributed by mail. An error was noted.

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

Copies of the minutes of the June 27 Budget Hearing and Special Board Meeting had been distributed by mail. An error was noted.

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

IV. Public Comment Period.

The Mayor stated that this was the public comment period required by law.

Cynthia Strain said that she had learned that a crafts fair that she had planned for the Labor Day weekend could not take place on Pine Street Park unless parking was provided for each vendor; she was going forward with the fair on Highlands Village Square property instead.

Lloyd Wagner spoke against the enforcement of the prohibition against outdoor display of merchandise in the Zoning Ordinance; he felt that what made the shops in Highlands unique was the way

in which merchandise is displayed, and he asked the Board to review the Ordinance.

Bob Kieltyka was present and thanked the Board for its support of the merchants during the Fourth of July week. He also read a statement from the owners of The Old Rangoon objecting to the enforcement of the sign ordinance for portable signs and Indonesian flags at their business on Church Street.

#### V. Reports.

1. The Mayor encouraged each Commissioner to forward comments on the Town Hall Architectural Study to the Town Administrator, who was to send them to the architects, before the next meeting.

He also reported that the Affordable Housing Task Force would be presenting a status report at the August 15 Board meeting.

2. Comm. Ross reported that both the outdoor Shakespeare performance and the Fourth of July fireworks held at the Pine Street park had been well attended.

3. The Town Attorney was present but deferred his report to closed session items.

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 said he had a personnel matter to discuss in the Closed Session already scheduled.

5. Each Board member had received a copy of the Police Chief's report for the month; Chief 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. He said that part-time employee Sue Hall would be retiring August 1 and asked the Board to employ Virginia "Ginny" Bryson in the position.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO EMPLOY VIRGINIA BRYSON PART-TIME AT THE CIVIC CENTER.

7. Each Board member had received a copy of the Interim Zoning Administrator's written report for the month, accompanied by minutes of the Appearance Commission minutes of June 4 and the Planning Board minutes of June 25.

He also reported that he had spoken with John Dorney, the head of the Program & Policy Development Unit of the N. C. Division of Water Quality, concerning perennial stream identification. Mr. Dorney recommended that the Town have his Division verify the streams discussed at the previous meeting as perennial, and had said that officials from his office could come to Highlands the last week in September to do so. At the same time, he could meet with students at the UNC Institute from the Environment if they were interested in identifying more streams in the watershed. He recommended that the August 1 Public Hearing be cancelled pending DWQ verification of the streams.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO CANCEL THE PUBLIC HEARING.

He also reported that D.O.T. Division Engineer Wesley Grindstaff had told him the contract to pave Chestnut Street and install the sidewalk would be bid next month and the project should be completed by October. Mr. Grindstaff had also said he would ask for contingency funds to pave Hickory Hill Road to the existing right-of-way as discussed earlier.

The Town Administrator also reported that Bob McEver, a resident of Little Bearpen Mountain, had requested permission to paint the abandoned concrete tank near his home a dark green color, and had provided a color chip; there was no objection.

He also reported that Code Enforcement Official Josh Ward had begun enforcing sign regulations and outdoor display of merchandise. However, a phrase in the latter ordinance - "except for merchandise which is of such a nature that it ordinarily remains out of doors" - had caused some misunderstanding. He said he had always taken it that the exclusion applied only to fertilizer, firewood, produce, and the like, and not to merchandise such a large pots or statuary that merely remained out of doors after hours. The consensus of the Board was that this was the case, but that this matter should be discussed at the next meeting in more detail.

He also said that the portable signs and banners referred to earlier, displayed by The Old Rangoon, were clearly violations of the Sign Ordinance.

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.

#### VI. Old Business.

1. The Board again considered the Richard Oliver South Slope Subdivision, subject of a public hearing on June 6; the matter had been deferred until each Commissioner had had the opportunity to look at the property. Comm. Marsh said that he had visited the property twice and he understood the Planning Board had recommended denying the variances.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, TO DENY ALL THREE VARIANCES.

After some discussion Comm. Marsh agreed, and Comm. Patterson seconded, to withdraw his motion so that the Board could consider the variance applications one at a time.

Comm. Patterson discussed the road width variance, which requested a width of 12 feet rather than 18 feet. She remembered that the Board had granted such a variance on recommendation of an engineer in the past, and the same engineer had returned to the Board and urged it not to grant such variances in the future.

She also expressed concern over the vertical profile, which would result in a blind spot at the end of the road. She did not think there were any special circumstances; the property was not different from any other property in the area.

Bronce Pesterfield was present and said that the variance would not prohibit the building of the road - an alternate 18-foot road had been designed - it would just limit disturbance. He said the request was based on D.O.T. standards for hilly terrain, as was the request for an 18% grade and a 90-degree radius.

Comm. DeWolf said that he did not think that the three-quarter-acre density guaranteed maximizing the number of lots on the property; there was a difference between what was allowed and what was reasonable use. He also expressed concern over the impervious areas being created by the development and the combination of proportions and steepness; he felt that the ecological impact would be serious. He though a more imaginative solution would be to reduce the number of lots, which would still permit reasonable use.

Comm. Patterson said that the D.O.T. standard was for "hilly"

terrain; this was more of a precipice. Mr. Pesterfield replied that tighter radiuses would permit the developer to stay more with the contours of the land by providing switchbacks. Comm. Patterson did not feel that the Board needed to change things just because an engineer could not work it out on a slide-rule. Comm. Ross agreed; he felt that a variance should make a subdivision better by protecting the environment, rather than being required in order to make it work.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO DENY THE ROAD WIDTH VARIANCE.

The Board then considered the application for a road grade variance. Comm. Patterson again pointed out that the D.O.T. standard was for hilly terrain, not mountainous terrain, and that the grade variance was for most of the road, not just a short section. She did not think there was any special circumstance; the slope was the same as other land in the area, and not peculiar to this parcel.

Comm. James said the Board had been routinely granting grade variances and he expressed concern over treating this applicant differently.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND CARRIED TO DENY THE ROAD GRADE VARIANCE. Comms. Patterson, Marsh, DeWolf, and Ross voted "aye," and Comm. James voted "nay."

The Board then considered the application for a road radius variance. Comm. Patterson again pointed out that there was nothing peculiar about this property justifying the variance.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND CARRIED TO DENY THE ROAD RADIUS VARIANCE. Comms. Marsh, Patterson, and Ross voted "aye," and Comms. Dewolf and James voted "nay."

Comm. Patterson also wondered about the issue of subdividing property at the end of a long, private road. Comm. James agreed that this could make a bad situation worse. Comm. Ross felt that an impact fee would help provide funds for improving the road. Town Attorney Bill Coward said that generally one could not change the rights of dominant and servient tracts; easements could not be broadened unless the servient owner agreed. He said that the Town could amend its Ordinance, if it chose, to limit subdivisions accessed by such roads. Bobby Hayes and Barry Messer were present and said that they thought the 12-foot road bed leading to the property had a 20-foot right-of-way to North Walhalla Road, then a 16-foot right-of-way to the top of the mountain.

The Board also considered a letter from Town Engineer Lamar Nix, P.E., concerning the lack of 6" water lines and fire hydrants; Mr. Nix had pointed out that a precedent had been set in the past with Brushy Face Subdivision for providing fire protection, but he had felt this was a policy issue for the Board to address. Mr. Pesterfield said he would like a decision on this issue because it would be futile for him to bring another design back without variances if it was going to be denied.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED THAT TO PROVIDE WATER TO THIS SUBDIVISION THE TOWN BE RESPONSIBLE FOR PROVIDING A SIX-INCH WATER LINE ALONG US-28 TO THE ENTRANCE OF THE OLD WALHALLA ROAD, AND THE DEVELOPER BE RESPONSIBLE FOR PROVIDING A SIX-INCH LINE FROM THAT POINT TO THE SUBDIVISION, TO WITHIN 500 FEET OF THE LAST LOT.

2. The Board discussed in some detail an amendment of the Zoning Ordinance permitting home occupations, subject of a June 6 public hearing. The Town Administrator said that the Planning Board had begun work on the amendment in the ETJ areas, but had recommended that the amendment be applied in all residential zoning districts, both inside and outside of Town. At the

previous meeting, he had been asked to re-draft the amendment to apply only in the ETJ, and in order to do so he had termed these uses "home-based businesses" to distinguish them from home occupations still permitted in many districts inside Town.

Planning Board member Pat Taylor said that part of the rationale had been to address policy on home occupations now occurring in R-1 which the Town was really not regulating, He also said the Board had been interested in retaining the village character tradition of many home businesses. Leonard Baer was present and asked why the Town would consider segregating between such uses in the ETJ and in Town. Comm. James felt that the Board should move ahead and adopt the amendment as re-written.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING AMENDMENT OF THE ZONING ORDINANCE. Comm. Patterson said that she had still not made up her mind and thus abstained, which she realized would count as an "aye" vote.

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1. Delete current provisions permitting home occupations in Section 214.3(A)(4).

2. Add the following provision, Sections 213.3(A)(4), 214.3(A)(4), and 215.3(A)(4):

"Home-based businesses, as defined by this Ordinance."

3. Add the following definition to Section 1002.

"Home-based businesses - as distinct from "home occupations" defined elsewhere in this Ordinance - are certain occupations that may be pursued or carried on by the owner or lessee of a residence, or in a customary accessory outbuilding, under the following conditions:

"(A) The residence must be the primary residence of the owner or lessee.

"(B) The home-based business may only be pursued or carried on by the owner or immediate family members who reside on the property, as well as one (1) person who is not a family member or resident. The one other person as provided for herein shall mean an employee, a partner, or any other participant in the business.

"(C) Adequate off-street parking must be provided for the home-based business.

"(D) The home-based business may not create excessive noise, dust, smoke, vibration, smell, glare, electrical interference, traffic congestion, fire, chemical hazard, or any other type of nuisance.

"(E) A customary accessory outbuilding used for the home-based business may be located in the side or rear yard only.

"(F) Home-based businesses may be identified only with one sign not exceeding four (4) square feet in surface area per sign face nor illuminated in any way; such signs may be free-standing, wall, or hanging in type.

"(G) Home-based businesses may include, by way of example and not by way of limitation, the following: artist studios; studios of home crafters such as weavers, wood-turners, potters, cabinet or furniture makers, antique restorers, and upholsterers; writers; musician and music teachers; dancers and dance instructors; classes or studios for special instruction

or counseling, provided no more than five (5) students per day or one (1) class per day are permitted; dressmakers or tailors; beauticians, provided that only one chair is permitted; computer programmers or business consultants; home caterers, provided the kitchen is approved by the Macon County Health Department; repair shops for small appliances; professional offices of accountants, architects, artists, attorneys, brokers, licensed counselors, dentists, engineers, insurance agents, physicians, real estate agents, surveyors, or salespersons where no retail or wholesale goods are exchanged; and family day care homes keeping less than six unrelated children.

"(H) Home-based businesses may not include the following: veterinary services, including the boarding of animals; commercial uses such as retail, wholesale, or retail service businesses permitted in commercial zoning districts, or special uses permitted in commercial zoning districts; automotive repair garages; and heavy equipment depots.

"(I) This Ordinance does not negate or preclude any covenants enforced in subdivisions."

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3. Two bids had been received for the Fire Department rescue vehicle on second advertisement, as follows:

! Ferrara Fire Apparatus Inc.....\$301,428  
! Emergency Vehicles Inc.....281,700

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ACCEPT THE LOW BID CONTINGENT ON REVIEW BY THE FIRE CHIEF.

#### VII. New Business.

1. The Board considered the petition for re-zoning by William C. Hawkins for a 2.032-acre tract on NC-106 in the ETJ, from R-4 to B-5, subject of a public hearing preceding the meeting. The Planning Board had recommended denying the petition. Comm. Patterson remembered that Mr. Hawkins had objected to the zoning designation at ETJ public hearings, and had said that he had purchased the property as commercial property; she thought that it had been left out when the highway was zoned. She wondered what was so bad about commercial property. Comm. James remembered that the Board had recently denied a petition for re-zoning in the ETJ on the same highway; he thought that this would set a bad precedent.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, TO RE-ZONE THE PROPERTY FROM R-4 TO B-5. The motion failed to carry, with Comms. Patterson and Ross voting "aye," and Comms. James, Marsh, and Dewolf voting "nay." The Mayor declared the petition denied.

2. The Board considered an amendment of the Zoning Ordinance regarding curb cuts, subject of a public hearing preceding the meeting.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING AMENDMENT OF THE ZONING ORDINANCE:

Add the following to Appendix A, Paragraph (9):

"Whenever a new driveway is installed where there is an existing curb cut, and the driveway does not use the existing curb cut, a new concrete curb cut and apron shall be installed

and the old curb cut shall be abandoned and replaced with an appropriate curb and gutter and, if appropriate, a landscape strip and sidewalk."

3. The Board considered a final subdivision plat for Gates of Highlands Subdivision; the Town Engineer had provided a letter dated June 18 approving improvements, and the Planning Board had recommended approval.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE THE FINAL SUBDIVISION PLAT FOR GATES OF HIGHLANDS SUBDIVISION.

4. The Board considered a final subdivision plat for Hobson Subdivision; the Town Engineer had provided a letter dated June 18 approving improvements, and the Planning Board had recommended approval.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE THE FINAL SUBDIVISION PLAT FOR HOBSON SUBDIVISION.

5. The Town Administrator asked that the Board advertize for sale to the highest bidder the following surplus vehicles and equipment.

- (1) 1997 Ford F-350 Dump truck
- (2) 1995 Ford F-350 diesel truck
- (3) 1996 Ford F-750 Dump truck
- (4) Ramsey Winch
- (5) 5000-watt propane generator.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO AUTHORIZE SELLING THE VEHICLES AND EQUIPMENT.

6. Comm. James had requested that the Board discuss the closing of Pine Street. He said that Samuel Kelsey had had a vision in 1885 to provide streets for the Town, and he did not think it should even be a topic of discussion, especially after the Town had spent nearly \$200,000 to defend its streets. Comm. Ross felt that the Town should look at this issue based on evidence rather than emotion; he pointed out that a lot of folks in the community had worked hard on the project and a vote on this matter now would take the wind out of their sails and limit the process. He said that in addition to Town and County funds, \$400,000 had been raised by citizens who wanted to make the project work. A Position Paper prepared by Pine Street Park Committee had been provided in the agenda package which identified items for further study, such as stormwater, traffic, and parking. He pointed out that the Town was losing space in the downtown area and would want this space in the future for businesses, visitors, and employees. Comm. DeWolf said that he had not made up his mind about the issue but he would not want to truncate the process at this point. Comm. Patterson asked when a decision would be made, and what additional information would be needed. She said many people had spoken to her and indicated that they did not want an event-driven park, but rather an oasis to go and sit. Mayor Mullen thought that it was an evolving situation and that it would be divisive to make a decision now. There was considerable additional discussion. Robert E. Smith said that the Pine Street Park Committee still needed information on stormwater and other issues and was willing to survey more people. John Cleaveland said that area businesses most affected had never been asked for their input; he said his tenant would have to move because she would be unable to find a place to park, and putting parking in some location like Spruce Street would not help. He thought that closing the street for temporary events was fine but that closing it permanently would not be good for the Town or for him. Comm. Marsh pointed out that the street was heavily used for parking by the Catholic Church on Sunday mornings. Town Attorney Bill Coward pointed out that a public hearing would be required before

permanently closing a Town street.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND CARRIED THAT THE TOWN GIVE NO CONSIDERATION TO THE PERMANENT CLOSING OF PINE STREET. Comms. James, Marsh, and Patterson voting "aye" and Comms. DeWolf and Ross voting "nay."

7. MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G.S. '143-318.11(A)(6) TO DISCUSS A PERSONNEL MATTER, AND PURSUANT TO G.S.'143-318.11(A)(3) TO CONSULT WITH THE TOWN ATTORNEY. Those present left the room except the Town Attorney, the Public Services Administrator, the Recreation Director, and the Town Administrator.

- A. The Public Services Administrator reported that J. J. O. Conner had resigned from the Sanitation Department and requested permission to advertize for the position.
- B. The Board discussed the Planning Director position.
- C. The Board consulted with the Town Attorney on a legal matter.

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

8. MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO ADVERTIZE FOR AN EMPLOYEE IN THE SANITATION DEPARTMENT.

VIII. The Board agreed by consensus to adjourn.

There being no further business to come before the Board, the meeting was declared by the Mayor to be adjourned at 9:30 p.m.

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Richard Betz, Town Clerk