

REGULAR BOARD MEETING of September 19, 2007, with Mayor Pro Tem Amy Patterson and Commissioners Alan Marsh, Hank Ross, H. N. James, and Dennis DeWolf present. Mayor Don Mullen was out of Town.

Also present were Richard Betz, Bill Coward, Josh Ward, Selwyn Chalker, Kim Lewicki, Jim Lewicki, Linsey Wisdom, Eric NeSmith, Jeff Weller, and Gary Nicholson.

I. Call to Order.

The Mayor Pro Tem called the meeting to order at 7:00 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail.

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

III. Special Order.

The Mayor Pro Tem announced that the Board needed to go into closed session to consult with the Town Attorney, who had to leave the meeting early, on several legal matters.

MOVED BY COMM. MARSH, 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 adjourned to the adjacent conference room with the Town Administrator and Town Attorney.

The Board consulted with the Town Attorney concerning a lawsuit which had been filed by Richard D. Oliver and Jo Karen Busch, the Office of Administrative Hearings decision on Riverwalk, an offer of settlement in the Bowery Road condemnation cases, and proposed contracts with Verizon and Northland Cable.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION. The Board returned to the meeting room.

Mayor Pro Tem Patterson said that the Board had agreed by consensus to the following Press Release; copies were provided to the Press who were present.

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PRESS RELEASE
FROM TOWN OF HIGHLANDS
SEPTEMBER 19, 2007

On September 13, 2007, Administrative Law Judge Beecher R. Gray entered summary judgment against the Town of Highlands, finding that as a matter of law the evidence before the Town Board at the hearing on December 6, 2006 was insufficient to support the Board's levying of civil penalties of \$400,000 against Riverwalk. In his remarks to the audience, the judge stated that Riverwalk should have been fined some amount, but that the Board heard, at the December hearing, insufficient evidence as to the degree and extent of harm and the cost of rectifying the situation to justify a \$400,000 fine. The Town vigorously opposed the judge's actions, arguing that the evidence of siltation in

the Cullasaja River caused by RiverwalkÆs project was clear, even if not measured before and after the rain storms with scientific precision, and that the cost to clean up the silt would be substantial, even though the Town did not hear evidence of the exact amount that such clean up would cost.

Judge Gray also denied the TownÆs motion to dismiss RiverwalkÆs petition on the grounds that the Office of Administrative Hearings did not have subject matter jurisdiction to hear the case. The town attorney argued that the Administrative Procedure Act applied only to "agencies" in the State and the definition of "agencies" in the Act specifically excludes towns. Judge Gray agreed, but said that the Sedimentation Pollution Control Act carved out an exception to this general rule by providing for appeals in such cases to go through the Office of Administrative Hearings.

It appears that the rulings by Judge Gray came as a surprise to all, as the parties were engaged in settlement discussions involving substantial payments by Riverwalk immediately prior to the rulings. Whether obtained in settlement or after hearing, all amounts collected from Riverwalk were, under North CarolinaÆs Constitution, destined to be collected by the State and ultimately distributed to the Macon County School Board.

The Town Board has not decided whether to appeal Judge Gray's decision. The Board feels that the levying of the civil penalties last December was necessary to send a clear message to Riverwalk and others that the Board takes all violations of its erosion ordinance very seriously and that it is committed to protecting the environment. The Board emphasized that the maximum penalty for violations of the erosion ordinance remains \$5000 per day. Anyone with questions about the requirements of the ordinance should contact the Town office before commencing any land-disturbing activity.

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IV. Approval of Minutes.

Copies of the minutes of the September 5 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.

V. Reports.

1. Comm. Marsh reported that the Public Works Committee had met earlier in the day with D.O.T. District Engineer Wesley Grindstaff and Senator John Snow concerning the paving of several roads now maintained by the State. Mr. Grindstaff had agreed to provide an estimate on paving with BST to existing width Hickory Hill Road, Chowan Drive, and Cullasaja Drive; the roads would then become Town-maintained. Senator Snow had offered to apply for discretionary funds, in cooperation with Rep. Roger West, for the paving when the cost was known. Comm. James said that Sen. Snow had seemed optimistic about obtaining the funding.

2. The Town Administrator reported on two interns working through the Institute for the Environment at the Highlands Biological Station; one would be mapping perennial streams and meeting with DWQ officials, the other would be working with ordinances and GIS technology on the Greenways Program. He also said he had discussed with Mayor Mullen re-scheduling the November 21 meeting to November 14 because Thanksgiving was November 22; the Board agreed by consensus to re-schedule the meeting. He reported that Brian McClellan had asked him to poll the Board to see if they could meet with the County Commissioners in an informal dinner meeting on October 4 to discuss Recreation Funding and the Solid Waste Transfer Station; Board members had no conflicts with the date. He also recommended that the Board appoint an ad hoc committee to select benches for the new planters on Main Street; Comms. Dewolf and Ross agreed to serve on this Committee.

VI. Old Business.

1. The Board discussed at length its recreation facilities, including those facilities listed on the previous Memorandum of Understanding for County funding. The consensus of the Board was that the Community Building (formerly Conference Center) and the Performing Arts Center should not be included because the Town currently had lease agreements for these facilities. It was also agreed that Pine Street Park should not be included. Jeff Weller was present and expressed concerns over equitable treatment; he said Recreation in Highlands provided a lot more services than down in the County. Recreation Director Selwyn Chalker pointed out that the 80-page plan included only 21 lines for Highlands. Comm. DeWolf also said that he felt the Town's representative on the County Recreation Commission should be a resident of the Town of Highlands; Comm. Ross agreed, and said he felt representation should be proportional.

Comm. James pointed out that the other topic of discussion in the proposed joint meeting was the Solid Waste Transfer Station. He felt that this was an extension of the County's solid waste services and should be funded by the County, and the Board agreed by consensus.

VII. New Business.

1. Josh Ward briefed the Board on the upcoming Floodplain Ordinance which the Town would be mandated to adopt. He said that maps had been finalized by the North Carolina Floodplain Mapping program, and he reviewed them with the Board; areas around the lakes and rivers, and a large area in the vicinity of Laurel and Chestnut Streets, were all included in the 100-year- flood areas. He said a public meeting was scheduled for October 2 on the map, there would be an appeal time of 90 days, and then the Town would be required to adopt an Ordinance within six months. He recommended adopting a similar ordinance to that which Macon County had been working on for some time, with input from the Upper Cullasaja Watershed Association, implemented through a Floodplain Overlay District on the zoning map similar to the watershed regulations. The Ordinance would also allow residents to obtain flood insurance, and would open the door to FEMA funding for the Town in the event of future flooding.

2. MOVED BY COMM. MARSH, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G.S. §143-318.11(A)(6) TO REVIEW APPLICATIONS FOR EMPLOYMENT, AND TO DISCUSS A PERSONNEL MATTER. All those present left the meeting room except the Town Administrator and Gary Nicholson.

A. The Board reviewed applications for the Planning Director position with consultant Gary Nicholson.

B. The Board reviewed a personnel and legal matter concerning former Police Officer Jimmy McCall.

The Board agreed by consensus to go into open session.

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 Pro Tem to be adjourned at 9:10 p.m.

Richard Betz, Town Clerk