

PUBLIC HEARING and REGULAR BOARD MEETING of December 5, 2007, with Mayor Don Mullen and Comms. Amy Patterson, Alan Marsh, Hank Ross, H. N. James, and Dennis DeWolf present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Bill Harrell, Selwyn Chalker, Josh Ward, Kim Lewicki, Linsey Wisdom, Eric NeSmith, Commissioner-elect Larry Rogers, Genevieve Rogers, Commissioner-elect John Dotson, Hillrie Quin, Brian Levo, Matt Whitehead, Jim Lewicki, Bob Kieltyka, Carter & Nancy Bruns, Tommy & Vickie Chambers, Mike Bryson, Bill Rethorst, Ed Henson, Matt Calvert, Carleton & Dorothy Weatherby, Zeke Sossomon, and others.

A. PUBLIC HEARING.

The Mayor called the public hearing to order at 7:00 p.m. to receive comments on several Zoning and Subdivision Ordinance amendments; the hearing had been duly advertized.

Bill Nellis was present and said that, as a citizen, he thought there was lots of room for outdoor display of merchandise. As a developer of "big boxes" in the past, he said the demographics for Highlands was way off for the possibility of any being located here; he felt the Town needed to stop beating itself to death over this issue, suggested that a few big boxes might help the citizens.

There being no further comments, the Mayor closed the Public Hearing.

B. REGULAR BOARD MEETING.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:03 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Town Administrator said that an item of New Business, a Mutual Aid Agreement with Jackson County, could be deleted on recommendation of the Police Chief. He also said that, pursuant to a letter distributed at the beginning of the meeting, the ABC Board had requested that the Board discuss property for the ABC store during Old Business. Comm. Patterson asked about the Zoning and Subdivision Ordinance amendments, subject of the public hearing preceding the meeting; she wondered if they would be Old Business rather than New Business, since the Board had spent the last six months discussing them. Comm. James felt that the new Board should have the opportunity to review them since they would have to live with them. Comm. Ross felt that the amendments should be postponed until the new Planning Director had the opportunity to review them. The consensus was to consider the amendments under Old Business.

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

III. Approval of Minutes.

Copies of the minutes of the November 14 Regular Board Meeting had been distributed by mail.

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

#### IV. Public Comment Period.

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

Bob Kieltyka thanked the Board for permitting use of Pine Street and Pine Street Park for the recent culinary event, and also for the Town's cooperation in recent Christmas events. He said the Chamber of Commerce had funded the lights for the three Christmas trees in Town this year and was donating them to the Town.

#### V. Reports.

1. The Mayor reported that he had spoken with Sen. John Snow about funding for Hickory Hill Road, Chowan Drive, and Cullasaja Drive; the Senator was confident that the funding would be approved.

2. Comm. Marsh distributed copies of an article concerning Buncombe County's approval of funding for conservation easements in the watershed; he thought the Town should do the same.

3. Town Attorney Bill Coward had researched the question of whether the Town could "take over" for purposes of improvement Brooks Road, which lies outside the Town limits, pursuant to a request by residents at the November 7 meeting. He said that

G. S. §160A-296 indicated the Town did not have this authority; it would have to be annexed in order to be accepted.

4. Each Board member had received copies of the Town Engineer/  
Public Service Administrator's report for October and November; Lamar Nix was present to review the reports. He also said that DENR had conducted its annual Wastewater Treatment system evaluation and approved it; additions would need to be made to the Capital Improvement Plan in the Budget Message next year, however; the Town Administrator said he would be coordinating this additional language. He also said that DENR's Dam Safety inspectors had requested that the Lake Sequoyah Dam be lowered in order to better inspect it. The Town Administrator said that the Emergency Action Plan (EAP) for the dam would also need to be updated; McGill Associates had done several EAPs recently and had provided an informal estimate of \$5,000 to \$10,000. Mr. Nix also said that he had obtained an estimate of \$211,000 for replacing the Satulah Mountain Water Tank, a budgeted item this year, from Stillwell Enterprises.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO AUTHORIZE REPLACEMENT OF THE WATER TANK.

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. He reported that Highlands Country Club was re-sodding portions of Zachary Field again at its own cost, and he thought they deserved thanks. He also said that the Town may need a new surface for the multi-purpose court in the Civic Center. He would also be obtaining updated prices on fitness equipment.

7. Each Board member had received a copy of the Town Planner/ Zoning Administrator's written report for the month, prepared by Code Enforcement Officer Josh Ward, accompanied by the minutes of the November 26 Planning Board meeting.

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

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ACCEPT

## THE TREASURER'S REPORT.

9. The Town Administrator reported that the League of Municipalities and the School of Government were again sponsoring a School for Newly Elected Officials in Asheville March 5-7. He asked that the new Board members, as well as current Board members who wanted a refresher course, contact him if they plan to attend so he could register and make reservations.

## VI. Old Business.

1. Each Board member had received copies of a letter distributed at the beginning of the meeting from the ABC Board, requesting permission from the Town to explore the use of property adjacent to the Old Jail for a possible ABC Store.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO GRANT SUCH PERMISSION.

2. The Board discussed several amendments, subject of the public hearing earlier in the meeting, including subdivision road standards for grade, width for one-way loop roads, and width for smaller subdivisions; "big box" buildings in B-1, B-2, and B-3; outdoor display of merchandise; and setbacks on Town Hall property, as recommended by the Planning Board. Comm. Marsh said the Board had looked at them for some time and he felt that they should be adopted except for the amendment permitting outdoor display of merchandise, which he opposed. Comm. Ross said he, too, had wanted some restrictions on such merchandise. Comm. Marsh moved to permit outdoor display only for groceries and plant stores, but there was no second to the motion. Comm. DeWolf thought there was much good in the material, but as suggested by Comm. Ross earlier the amendments should be deferred until the new Planning Director could review them.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND CARRIED TO POSTPONE A DECISION ON THE AMENDMENTS UNTIL THE NEW PLANNING DIRECTOR HAD REVIEWED THEM. Comms. Ross, DeWolf, James, and Patterson voted "aye," and Comm. Marsh voted "nay."

## VII. New Business.

1. The Mayor thanked Comm. Alan Marsh and Comm. H. N. James for their long service to the Town of Highlands. He then asked Commissioners-elect Dotson and Rogers to take their places at the conference table. The Clerk then administered the oath of office to Comms. DeWolf, Dotson, and Rogers.

2. The Mayor recommended that Comm. Patterson be re-appointed Mayor Pro Tem.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPOINT COMM. PATTERSON MAYOR PRO TEM.

3. The Mayor recommended that Comms. Patterson and Dotson be appointed to the Finance Committee.

The Mayor recommended that Comms. Ross and Rogers be appointed to the Public Works Committee.

The Mayor recommended that Comms. Patterson and DeWolf be re-appointed to the Recreation Committee.

The Mayor recommended that the Police Committee be disbanded and that he continue to meet with the Police Chief.

The Mayor recommended forming a new Land Use Committee, and appointing Comms. Ross and Dotson.

The Mayor also recommended establishing a schedule for Commissioners to attend monthly meetings of the County

Board of Commissioners over the next six months, as follows:

January: Mayor Mullen and Comm. DeWolf  
February: Comms. Patterson and Dotson  
March: Comms. Ross and Rogers  
April: Mayor Mullen and Comm. Dotson  
May: Comms. Patterson and Rogers  
June: Comms. DeWolf and Ross

4. Appointments to the Appearance Commission and ABC Board were deferred to the next meeting; nomination forms had been distributed, and the Town Administrator asked that they be returned to him for tabulation

5. It was reported that the Fire Department had recommended James Manley as Fire Chief and Bob Houston as the Town representative on the Firemen's Relief Fund.

**MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROGERS, AND UNANIMOUSLY CARRIED TO APPROVE THE APPOINTMENTS.**

6. J & J Lawn Service and Tate Landscaping Services had submitted proposals for renewing their contracts on, respectively, mowing the cemetery and maintaining Town landscaping; each contained a slight increase due to fuel costs. Comm. Rogers asked if these contracts could be advertized, and the Board agreed by consensus to do so.

7. Carter and Nancy Bruns, owners of Wild Thyme Gourmet, were present. Nancy Bruns told the Board that they had been unaware when they purchased the restaurant that there were any parking ordinances, and did not realize until recently that they were limited to only 30 seats. She asked the Board to consider dual usage of parking lots for businesses with mutually exclusive business hours; this would result in less asphalt and stormwater, and may also benefit the Town as a whole. She also said that the Town had added public parking in the vicinity of the restaurant, and she wondered if it was only for Main Street businesses where there were no parking restrictions; she felt that as the Town grows, ordinances may become outdated. She said that she had understood from the previous Zoning Administrator that she was permitted to have 54 seats, but had found that was not the case; if limited to 30 seats, she would have to close in the Spring.

Comm. Patterson thought the Board should think about dual use, as it made sense; Comm. DeWolf agreed. Comm. Ross agreed, and also felt the Board should consider street parking adjacent to businesses. A motion was made and seconded to send the dual use concept to the Planning Board for their timely discussion. Comm. Ross felt that the new Planning Director might have some ideas about this issue. Comm. Dotson felt the issue was broader and that the Board should review all public parking. Bill Rethorst, Chairman of the Zoning Board, was present and said that his Board had struggled with this issue, and he did not think that dual use alone would solve the problem.

**MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ASK THE PLANNING BOARD TO REVIEW THE CONCEPT OF DUAL USE PARKING AS WELL AS ADJACENT PUBLIC PARKING.**

8. It had been reported that the Planning Board had also reviewed a proposed amendment of the Zoning Ordinance exempting ATM kiosks from the 800-SF minimum floor space requirement.

**MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO SET A PUBLIC HEARING FOR JANUARY 2 AT 7:00 P.M. TO RECEIVE COMMENTS FROM THE PUBLIC ON THE AMENDMENT.**

9. Tommy Chambers was present with a final subdivision plat for a 6.91-acre tract of land on Big Bearpen Road. The plat had been reviewed by the Town Engineer, and the Planning Board had approved the preliminary plat in different form at its November 26 meeting, contingent on clarification that either all lots had road frontage or a Lot No. 4 adjoining the Kelsey Trail was to be donated to the Highlands Land Trust as Mr. Chambers had indicated. The

final plat before the Board had eliminated Lot No. 4 and combined it with the 4.31-acre Lot No. 1, and Lot No. 2 and Lot No. 3 were both 1.3 acre in area; minimum lot size was thus met, and driveways and water connections were from Big Bearpen Road. A sewer line was being installed where shown on the plat, a recommendation of the Town Engineer.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO APPROVED THE FINAL PLAT, CONTINGENT ON REVIEW BY THE PLANNING BOARD.

10. Each Board member had received copies of correspondence from Josh Ward and Richard Betz to Matt Calvert, Dorothy and Carleton Weatherby, and Zeke Sossomon, and Attorney Craig Justus to Attorney Ed Henson, concerning a 0.25-acre vacant lot and a 0.75-acre lot containing a house on Moorewood Road in Highlands Country Club. Ed Henson was present representing the Weatherbys, who had a contract to sell the property to Matt Calvert. He said that his clients had purchased the property in 1996. Their realtor had been told by former Zoning Administrator Larry Gantenbein that the two lots could be "flipped," so that the 0.25-acre lot was north of the house rather than south of the house. When Josh Ward and Richard Betz had been asked to review it, they had concluded that it did not fall within the exemption of Section 501(A) of the Subdivision Ordinance, which reiterated G. S. 160A-376, because the resultant lots did not meet the standards of the Town; the subdivision had thus been deemed null and void. However, Mr. Henson said his clients had relied on Mr. Gantenbein's assertion that it did fall under that exemption, and the plat had been recorded. Section 204, which exempted existing subdivisions from the regulations, did not apply because, although in existence for some time, Highlands Country Club did not record plats in the 50s. He said that the Town could be party to a lawsuit due to Mr. Gantenbein's approval of the plat and his clients' reliance on it.

Matt Calvert was present and said that he was anxious to acquire property and had entered into a contract to purchase it. He believed the plan complied because no additional non-conformity was created. He thought the Town Board could resolve the issue by ratifying Mr. Gantenbein's decision, granting a variance, approving it as a subdivision, or identifying the 0.25-acre lot as "non-conforming."

The Board agreed to confer with the Town Attorney on this issue in Closed Session later in the meeting.

11. The Town Administrator reported that permission for valet parking for Old Edwards Inn, approved on a temporary basis on April 4, 2007, had expired. The two valet parking spaces on Main Street had originally been compensated for with 40-parking spaces in the Rib Shack parking lot, but in April it had come to the Town's attention that only 30 spaces were available. The Board asked that OEI be present at the next meeting to defend what they are requesting.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO EXTEND PERMISSION FOR VALET PARKING FOR ONE MONTH.

12. Copies of a proposed holiday and meeting scheduled were distributed by the Town Administrator. He said that the only change this year was a request for an additional holiday, Martin Luther King's Birthday on January 21; the holiday was observed by County, State, and Federal employees. Comm. Patterson questioned the need for an additional holiday. Comm. Ross said that he thought it was important; he did not know why the Town was the only government office not to recognize it. He said it had been approved by Ronald Reagan in the 80s, and he thought it was time to observe the holiday in Highlands.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, TO APPROVE THE HOLIDAY SCHEDULE AS PRESENTED. The motion failed, with Comms. Ross and Dewolf voting "aye," and Comms. Rogers, Dotson, and Patterson voting "nay."

MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROGERS, TO APPROVE THE HOLIDAY SCHEDULE WITH THE EXCEPTION OF MARTIN LUTHER KING'S BIRTHDAY. The motion carried, with Comms. Patterson, Rogers, and Dotson voting "aye," and Comms. Ross and DeWolf voting "nay."

13. The Town Administrator had recommended the same Christmas bonuses approved for several years. Comm.

Patterson wondered if the amounts had kept pace with inflation, and he said he would recommend an additional \$50 for each category, as follows:

Less than one year of service.....\$200.00  
Between one year and ten years of service.....\$250.00  
Between ten years and twenty years of service....\$300.00  
More than twenty years of service.....\$350.00  
Part-time employees.....Hams

MOVED BY COMM. DOTSON, SECONDED BY COMM. ROGERS, AND UNANIMOUSLY CARRIED TO APPROVE THE BONUSES. The Town Administrator thanked the Board on behalf of all employees.

14. MOVED BY COMM. DEWOLF, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G.S. §143-318.11(A)(6) TO DISCUSS PERSONNEL MATTERS, AND PURSUANT TO G.S. §143-318.11(A)(3) TO CONSULT WITH THE TOWN ATTORNEY ON LEGAL MATTERS. The Board adjourned to the adjoining meeting room with the Town Administrator, Police Chief, and Town Attorney,

A. Police Chief Bill Harrell said that he had discovered that all of the police officers taking Basic Law Enforcement Training with Erika Olvera were being paid by their respective agencies while attending school. He regretted the oversight in not recommending this earlier and asked the Board to consider paying her retroactive from October and through next March. She had told him that she would return to Highlands when her BLET had been completed. He then left the room

B. The Town Administrator reviewed applications for Billing Clerk. He recommended employing Elaine Dunn in the position at a salary of 11-1.

C. The Board discussed several legal matters with the Town Attorney and Town Administrator, including the Weatherby/Calvert matter discussed in open session.

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

15. MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED THAT ERIKA OLVERA BE PAID RETROACTIVELY FROM OCTOBER AND THROUGH MARCH WHILE ATTENDING BASIC LAW ENFORCEMENT TRAINING.

16. MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO EMPLOY ELAINE DUNN AS BILLING CLERK AT A SALARY OF 11-1 (\$25,553).

17. The Mayor stated that the Board affirmed the letters distributed earlier in the meeting from Josh Ward and Richard Betz concerning the Weatherby/Calvert matter, that this was an illegal subdivision.

Ed Henson re-iterated his previous arguments; he felt that an administrative decision had been made that the subdivision complied, and the property owners had relied on that decision.

Carleton Weatherby said that he did not do anything wrong, but instead thought they were doing something that was permitted. He said the decision was creating a financial hardship, tying them up in a lawsuit and forcing them to sell the house and move.

VIII. MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROGERS, AND UNANIMOUSLY CARRIED 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