

Regular Meeting Minutes of the Town Board of Commissioners Meeting of February 20, 2014 at the Highlands Community Building, 71 Poplar St., Highlands, North Carolina.

Town Board Present: Commissioner John Dotson, Commissioner Amy Patterson, Mayor Pro Tempore Donnie Calloway, Mayor Patrick Taylor and Commissioner Brian Stiehler.

Also Present: Town Manager Robert Frye, Town Clerk Rebecca Shuler, Town Attorney Jay Coward, MIS/GIS Director Matt Shuler, Public Works Director Lamar Nix, Planning and Development Director Josh Ward, Assistant Fire Chief Robbie Forrester and Police Chief Bill Harrell.

Town Board Absent: Commissioner Eric Pierson

1. Meeting Called to Order

Mayor Taylor called the meeting to order at 7:00pm.

2. Public Comment

Mayor Taylor informed the public this would be the general public comment period and that there would also be two additional public comment periods during the public hearings; therefore if the comment was related to either of those topics, to please save them for that time.

Chuck Cooper from WHLC wanted to commend Mayor Taylor and Manager Frye for what he felt was the best communication during the recent winter storm with the general public in a long time.

3. Adjust and Approve Agenda

Manager Frye asked that the January 29th regular meeting minutes be changed to the January 29th special meeting minutes on the agenda. Commissioner Patterson made a motion to approve the agenda with the before mentioned correction, which was seconded by Commissioner Stiehler and the vote was unanimous.

4. Approval of Minutes

Regular Meeting Minutes of January 16, 2014

Commissioner Stiehler made a motion to approve the regular meeting minutes of January 16, 2014, which was seconded by Commissioner Dotson and the vote was unanimous.

Special Meeting Minutes of January 29, 2014

Commissioner Stiehler made a motion to approve the special meeting minutes of January 29, 2014, which was seconded by Mayor Pro Tempore Calloway and the vote was unanimous.

5. Reports

A. Mayor

Mayor Taylor wanted to thank the Town workers for their work during the recent period of inclement weather. When the Town is in trouble the workers step forward and do their duty.

Taylor also wanted to inform everyone that as of today he had been to four days of training as Mayor with the North Carolina League of Municipalities and the UNC School of Government.

B. Commissioners & Committees

There were no commissioner reports.

C. Town Manager

Manager Frye wanted to remind everyone of the annual board retreat next week Thursday, February 27, 2014 from 9am through 3pm at the First Presbyterian Church. Mayor Taylor stated that the retreat is always open to the public.

6. Consent Agenda

Mayor Pro Tempore Calloway moved to approve the consent agenda as presented, which was seconded by Commissioner Dotson and the vote was unanimous.

7. Public Hearing: Amendment to Articles 3 and 4 of the Unified Development Ordinance: Zoning Board of Adjustment

A. Open Public Hearing

Commissioner Patterson made a motion to open the public hearing at 7:04pm, which was seconded by Commissioner Stiehler and the vote was unanimous.

B. Staff Comments/Recommendation

The North Carolina General Assembly voted in 2013 to amend several requirements pertaining to the procedures of the Zoning Board of Adjustment in North Carolina. In order to comply with State Law; the Town of Highlands Unified Development Ordinance must be amended to reflect the changes. The changes that were voted into law under S.L. 2013-126 (House Bill 276) are:

Amendments to Articles 3 & 4 of the Town of Highlands Unified Development Ordinance

(per N.C.G.S. - S.L. 2013-126) (House Bill 276)

Section 3.4.1, Establishment (Zoning Board of Adjustment)

- **In the second paragraph, replace** “Zoning Ordinance” with “**Unified Development Ordinance**”

Section 3.4.7 (C), Voting at Hearings (Zoning Board of Adjustment)

- **Remove Existing Paragraph,**
The concurring vote of four-fifths (4/5) of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Planning and Development Director, to decide in favor of the applicant any matter upon which the Board is required by Ordinance to pass, or to grant any special use permit or to grant any non-administrative variance from the Ordinance provisions. Members shall not be excused from voting unless disqualified from participating in a case in accordance with the adopted rules of procedure. Failure to vote by a member who has heard the case shall be recorded as an affirmative vote.

Replace With New Paragraph,

The concurring vote of four-fifths (4/5th) of the Board shall be necessary to grant a non-administrative variance from the Ordinance provisions. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Section 4.2.4, Notices & Public Hearings (Procedure Table)

- **Add an “X” within the boxes for “Mailed” & “Posted” for Special Use Permit, Variances, Appeal.**

Section 4.18.2 (B), Zoning Board of Adjustment Variances

Remove Existing:

B. Before the Zoning Board of Adjustment may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

- 1.** There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:
 - a.** If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property;
 - b.** The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.
 - c.** The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property;
 - d.** The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief;
 - e.** The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice; and
- 2.** The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit. That is, the applicant is not seeking to establish, to expand, or to extend in area a non-conforming use. Moreover, the existence of a non-conforming use in the same or in any other zoning district shall not constitute a reason for granting the requested variance.
- 3.** In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would alter the essential character of the neighborhood, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or general welfare.
- 4.**

Replace With:

B. When unnecessary hardships would result from carrying out the strict letter of the Ordinance, the Zoning Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such a location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

Section 4.19.1 (B)(1), Appeal of Administrative Decision to Zoning Board of Adjustment

- **Change** “ten (10) days” to “**thirty (30) days**”

The Planning and Dev. Staff, the Land Use Committee, and the Planning Board recommend the Town Board amend the Unified Development Ordinance with the recommended amendments.

C. Public Comment

There was no public comment.

D. Close Public Hearing

Commissioner Stiehler made a motion to close the public hearing at 7:06pm, which was seconded by Mayor Pro Tempore Calloway and the vote was unanimous.

E. Board Action

Commissioner Patterson moved to amend the UDO with the recommended changes to Articles 3 and 4 as regulated by the General Assembly according to S.L. 2013-126 (House Bill 276). The motion was seconded by Mayor Pro Tempore Calloway and the vote was unanimous.

8. Public Hearing: Rezoning of Town Owned Properties to Governmental/Institutional

A. Open Public Hearing

Mayor Pro Tempore Calloway made a motion to open the public hearing at 7:07pm, which was seconded by Commissioner Stiehler and the vote was unanimous.

B. Staff Comments/Recommendation

The Town of Highlands owns multiple properties within the city limits that are used for utilities such as water & wastewater treatment, water distribution, communications & recreation. Over the years, several of the properties have not been rezoned to reflect the uses of the properties. The properties being considered for rezoning to G/I (Governmental/Institutional) are:

1. Town of Highlands Water Treatment Plant

7530876490 (440 Hickory Hill Road – Water Plant – 3.87 acres – Current Zoning R-2)

7530875150 (Hickory Hill Road – Tank Site – 0.5 acre – Current Zoning R-2)

7530874431 (Sequoyah Ridge Road – Vacant – 1.00 acre – Current Zoning R-2)

7530872068 (Sequoyah Ridge Road – Vacant – 1.15 acre – Current Zoning R-2)

2. Highlands Cemetery

7540350070 (Memorial Park Drive – 7.53 acres – Current Zoning R-2)

3. Little Bearpen Mountain

7540443272 (South Drive / Lot 37 Greenwood Forest – Water Tank – 0.58 acre – Current Zoning R-1)

7540442192 (South Drive / Tract 2 Liz Development Corporation – Water Tank – 0.3 acre – Current Zoning R-1)

7540442215 (South Drive / Lot 37A Greenwood Forest – Water Tank – 0.5 acre – Current Zoning R-1)

4. Big Bearpen Mountain

7540832521 (Big Bearpen Rd – Water Tank & Tower – 0.06 acre – Current Zoning R-1)

7540833422 (Big Bearpen Rd / Part of Lot 6 Summit of Bearpen Mountain – Water Tank – 0.08 acre – Current Zoning R-1)

5. Satulah Mountain

7449467692 (Worley Rd – Tower – 0.06 acre – Current Zoning R-1)

7449466437 (Worley Rd – Water Tank – 0.27 acre – Current Zoning R-1)

7449377657 (Old Walhalla Rd – Water Tank – 0.18 acre – Current Zoning R-1)

6. Ravenel Ridge

7449650488 (Little Creek Rd – Water Tank – 0.23 acre – Current Zoning R-1)

7. Dog Mountain

7530412486 (Dog Mtn Rd / Lot 7A Town & Country – Water Tank – 0.08 acre – Current Zoning R-1)

8. Maple Street

7540326021 (Portion of 30 Acres containing Rec. Park & old Sewer Plant from Maple Street to old Sewer Plant – Current Zoning B-3)

9. Oak Lane

7540320492 (Highlands Greenway Trail Entrance – 0.31 acre – Current Zoning R-2)

10. Highlands Visitor Center & Chamber of Commerce

7540218501 (131 North First Street – 0.34 acre – Current Zoning B-3)

11. Kelsey Hutchinson Park

7540407777 (224 North Fifth Street (Pine Street) – 0.36 acre – Current Zoning B-2)

The Planning and Dev. Staff, the Land Use Committee, and the Planning Board recommend the Town Board amend the Town of Highlands Zoning Map.

C. Public Comments

Ray Vito of Sequoyah Ridge Road owns several lots abutting or very close to the rezoning lots in question. Vito stated that the lots were zoned back in the 40s and he didn't feel this was necessary and would affect his property's value if rezoned. Vito stated he felt the rezone should be held off and that if the Town wanted to use the property in a different way that a specific plan should be given as would be required for anyone else requesting rezoning.

Elaine Dunn, property owner abutting the Cemetery, request what effect this would have on the property owners. Manager Frye state nothing should change for property owners. Ray Vito said he did feel that Frye should say that as the value of the property could go down.

Commissioner Patterson asked Town Attorney Coward if the Town could sell the property. Coward assured Patterson the Town could.

Joan Martin of Sequoyah Ridge Road asked the Town if it had access to the weir via the property in question as the weir backs up to her property making the Town have to request permission from them to access it anyway. Do you access the weir via the property in question? The weir backs up their property.

Mayor Pro tempore Calloway asked Staff if there was another use for this property other than access to the weir. Donnie any other use you see other than access to the weir. Public Works Director Lamar Nix said nothing other than a setup place for the stages of dredging.

Vito stated they had been very helpful in the past by allowing the Town access.

Lila Howland questioned if this wasn't one of the main sources of water for the Town. Mayor Taylor advised that is was.

D. Close Public Hearing

Mayor Pro Tempore Calloway made a motion to close the public hearing at 7:22 pm, which was seconded by Commissioner Stiehler and the vote was unanimous.

E. Board Action

Commissioner Stiehler said when this issue came up he didn't see the dynamics and concerns. He appreciated the letters from citizens and doesn't see the need to rezone these pieces of properties in concern. Mayor Pro Tempore Calloway concurred.

After a brief discussion as to selling properties, Commissioner Patterson made a motion to rezone all the recommended rezones except for the two on Sequoyah Ridge Road. The motion was seconded by Commissioner Stiehler and the vote was unanimous.

9. Financial Matters:

A. Debt Write-off Program

Under NC State Law, the Town of Highlands can only attempt to collect an un-paid utility bill that is less than 3 years old. The Town currently has \$9,269.92 that is uncollectible due to that 3 year collection window. After much research into this matter, other Municipalities have an annual line item in their budget that allows them to follow this procedure. The auditors advised us last year this was the procedure generally taken to allow these write offs annually. Staff would like the Board to approve the request to

write off the uncollectible bills in the amount of \$9,269.92 for 2014 and to advise if an amount can be put into the budget annually for this procedure to eliminate annual budget amendments for this purpose.

Commissioner Dotson stated he wanted staff to put a list of these delinquent customers in the newspaper once or twice a year to see if this would help eliminate writing off such large amounts.

Commissioner Patterson moved to write off the delinquent accounts over the three year limit totaling \$9,269.92 and to approve the budget amendment that accompanied the request. The motion was seconded by Mayor Pro Tempore Calloway and the vote was unanimous.

Mayor Taylor request Staff to put pressure on folks to pay. Commissioner Dotson wanted to make sure it was on record, that after the first year of delinquency an ad listing the delinquent customers be put in the newspaper every six months.

B. Utility Account Refund Policy

The Town of Highlands has a written policy of refunding customer deposits balances remaining on finalized customers' accounts and an unwritten policy refunding other various credits left on finalized customers' accounts. With the recent maintenance and upkeep of the utility accounts and aging balances, there are a large number of accounts with small credit balances that will cost the Town more in some cases to mail than the amount of the refund.

After some research into this matter, other municipalities limit the amount they refund automatically without a request to be refunded. Per Kara Millonzi, at the School of Government, a specified policy stating refunds will not be automatically generated under a certain nominal amount, shall be established. However, if requested by the customer the refund must be generated. Therefore, staff is requesting the Board to give their input and discuss the possibility of setting a limit on credit balances that may be written off unless requested by a customer to be refunded to avoid extra cost in mailing nominal amounts and tracking current addresses on finalized accounts. The Board was presented the following policy draft:

Customer Refund of Credit Balance on Inactive Accounts 2014-01-Pol

After an account has been closed by either customer request or demand of the Town, all funds (including deposits, refunds, and overcharge credits) will be applied against amounts owed the Town on the closed account. This includes any joint accounts the customer may have with the Town. When those accounts have been cleared, a check for the remaining money will be issued to the customer and sent to the last known address on record if the amount is equal to or over \$5.00. Remaining amounts under \$5.00 will be written off to clean up utility accounts and aging balances unless requested to be refunded by the customer. Refund checks will only be issued in the name of the account holder.

Mayor Pro Tempore Calloway made a motion to approve the presented Customer Refund of Credit Balance on Inactive Accounts policy, which was seconded by Commissioner Stiehler and the vote was unanimous.

C. Sewer Connection Agreement Delinquencies

The Town of Highlands has eleven sewer connection agreement customers that are delinquent. Five of these customers have been turned over to debt setoff and the Town is awaiting collection of payment. However, according to the Town Attorney the Town has another option of disconnecting these customers' grinder pumps until payment is rendered. Two of these customers have sold the properties which may be an additional obstacle. Staff would like direction from the Board as to how to proceed.

Commissioner Stiehler stated that he thought the new lines were a great idea, however, these people weren't given a choice.

Mayor Taylor said that customers were getting a great deal at the Town's \$2,500.00 connection cost, as he had recently installed sewer at his house and it was well above that amount.

Public Works Director Nix stated that during a municipal sewer project, it is the responsibility of the town to hook each home, but to only connect customer's that have signed agreements.

Manager Frye suggests with future projects requiring full payment or immediate setup on a payment plan.

Commissioner Dotson asked Attorney Coward if the Town could take out liens on property. Attorney Coward informed Dotson that generally if you didn't pay for a service you cut it off.

Mayor Taylor asked Staff to send a letter to each customer letting them know if they didn't pay or setup payment a payment plan they were going to be disconnected after 30 days.

Commissioner Patterson made a motion for Staff to send letters to the delinquent customers requesting payment in full or the setup of payment plans within 30 days of the letter or disconnections would occur. The motion was seconded by Commissioner Dotson and the vote was unanimous.

D. Fire Department: County Fire Tax Agreement

The Board was presented with the agreement between the Town and the County for Fire Tax. Both the County and the Town's attorneys have reviewed the document. Commissioner Patterson made a motion to approve the agreement, which was seconded by Mayor Pro Tempore Calloway and the vote was unanimous.

E. Budget Amendments: Fire Department and Parks & Recreation Department

Several years ago funds were earmarked to pay for the repainting of the vintage fire truck which has recently been restored. A Fund Balance Appropriation from Fire Department Tax Reserves in the amount of \$12,000.00 has been requested to cover this cost.

An additional \$2,380.00 in funds that have been received for donations for Rec Center Gym Equipment needs to be recognized, no new fund appropriation is required.

Commissioner Patterson made a motion to approve the budget amendments as presented, which was seconded by Commissioner Stiehler and the vote was unanimous.

10. Miscellaneous Matters

A. NCDOT Project Agreement

This agreement is in reference to the long awaited truck turn around on US 64 (Franklin Road). As originally proposed, there were to be two turn around for trucks, one at the bottom of the mountain and one here in Highlands. The project has undergone quite a few changes and at this point and only the turnaround at the bottom of the mountain is to be constructed.

The agreement between NCDOT and Highlands is to allow any necessary signage and reworking of the utilities within Highlands' city limits.

Public Works Director Nix said the agreement is very similar to the Mirror Lake Bridge Agreement.

Commissioner Dotson moved to approve the agreement, which was seconded by Commissioner Stiehler and the vote was unanimous.

B. Jr. Firefighter Program

Assistant Chief Robbie Forrester was on hand to present the Jr. Firefighter Program the Highlands Fire and Rescue Department wants to launch. The program will be for Male and Females ages 14 to 21. These Jr. members will not be in any emergency situation. One benefit is that they can attend any State Fire School free of charge. This program is regulated by the State and has set guidelines.

Commissioner Stiehler said he felt it was a great program, Mayor Pro Tempore Calloway concurred, and Commissioner Patterson said she thought it would help get new firemen.

Mayor Pro Tempore Calloway made a motion to approve the start of the Jr. Firefighter Program, which was seconded by Commissioner Stiehler and the vote was unanimous.

C. Appointment of ABC Board Chair

According to the State ABC Commission, the appointing Board, which is the Town Board, needs to appoint a chairperson for the local ABC Board.

Commissioner Stiehler made a motion to appoint Brenda Pierson as the chairman of the local ABC Board, which was seconded by Commissioner Dotson and the vote was unanimous.

12. Adjournment

Commissioner Dotson moved to adjourn the meeting, which was seconded by Commissioner Stiehler and upon unanimous vote, the Town Board adjourned at 8:20pm.

Patrick Taylor
Mayor

Rebecca R. Shuler, CMC, NCCMC
Town Clerk