

PUBLIC HEARING and REGULAR BOARD MEETING of April 7, 1999, with Mayor Buck Trott and Commissioners Mike McCall, H. N. James, Ron Sanders, Amy Patterson, and Zeke Sossomon present.

Also present were Richard Betz, Lamar Nix, Eddie Madden, Selwyn Chalker, Kim LeWicki, Bill Coward, Jerry Cook, Kent and Alice Nelson, Mildred Johnson, Moyna Monroe, Gina Cantrell, Rosemary Fleming, Brenda Pierson, and others.

- A. Public Hearing - Petitions for annexation from (1) Henry Mendler and Suzanne Lawton and (2) Martin A. and Deanna Lee Allen.

Mayor Trott called the Public Hearing to order at 7:00 p.m. The purpose of the hearing was to give persons owning property in the area to be annexed who alleged an error in the petition an opportunity to be heard, as well as residents of the municipality who question the necessity for annexation, in accordance with North Carolina G. S. § 160A-31. An Annexation Ordinance for both properties had been prepared for adoption, with an effective date of June 30, and the Town Administrator explained that it could be adopted at any time within six months of the public hearing.

Comm. McCall asked why the two properties had requested annexation. The Town Administrator reminded the Board that Martin Allen had petitioned for annexation in order to obtain water service from the Town, as discussed at the December 16, 1998 meeting. He also reported that the restrictive covenants prepared by Mr. Martin's attorneys limiting development to three residences, discussed at the March 3 meeting, had been amended to state that they would be binding for 50 years and would be renewable, per Comm. Sossomon's request. Gina Cantrell was present and affirmed that the amendment had been made.

Henry Mendler and Suzanne Lawton had petitioned for annexation in order to obtain sewer service. Several Commissioners asked about a new structure being erected very close to US-64 opposite the guest house, which was to have been renovated; no mention had been made of this new structure at the November 18, 1998 meeting, however, and it appeared that it might be closer than the Town's setback would permit once the property was annexed. The Mayor reported that he understood a dye test had been performed and that the pipe to the drainfield for the main house, which was located on the other side of the Cullasaja River, was not leaking; if the test had failed, the Board had agreed that that house should also be connected to the sewer. The Town Administrator agreed to request confirmation of the dye test and inquire into the structure under construction, and the Board agreed to consider adoption of the Ordinance at the next meeting.

There being no comments from those present, the Mayor closed the Public Hearing at 7:10 p.m.

- B. Regular Board Meeting.

- I. Call to Order.

Mayor Trott called the meeting to order at 7:10 p.m.

- II. Approval of Agenda.

The Clerk requested that the following two items be added to the agenda:

- Request from Pinecrest Property Owners Association for permission to erect a structure within a right-of-way, pursuant to Section 702.3(B) of the Zoning Ordinance, under New Business.

- Request from the Police Chief to make a report on a criminal investigation in the Closed Session already scheduled, pursuant to G.S. § 143-318.11(a)(7).

Comm. Patterson asked about two items under Closed Session on the agenda: "discussion of legal matters involving Town v. Edwards et. al." and "possible condemnation action." The Clerk explained that several property owners had asked that the paving of Bowery Road be placed on the agenda of the next meeting, but that the closed session item tonight had been scheduled to discuss the condemnation process with the Town Attorney. It was suggested by one Commissioner that the issue could be addressed later in the meeting when the motion to go into closed session was called.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS AMENDED.

III. Approval of Minutes.

The minutes of the March 17 Regular Board Meeting and the March 23 Special Board Meeting had been distributed by mail.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

IV. Reports.

1. The Mayor reported that he had attended a large seminar at Clemson University the previous week on watershed protection and management, which had included many elected officials.

2. The Clerk reported that the Finance Committee had met on March 31 and discussed the proposed Fire District Tax; the item was on the agenda under New Business. The Finance Committee also agreed to arrange to meet together at a time and date to be announced and begin working on the budget.

3. W. K. Dickson Co. consulting engineer Victor Lofquist was present and reported that he had been requested by the County Water & Sewer Task Force to provide an estimate on the Highlands portion of the County's Comprehensive Water & Sewer Study, as discussed at previous meetings. In a letter to Dennie R. Martin of Martin McGill Associates dated April 1, he estimated the cost of his portion of the study at \$8,000; it would involve compiling and updating information on the Town's water and sewer needs for the next ten years. Since the County study and the water and sewer portion of the proposed annexation study for the Town would overlap, he estimated he could do the latter at a cost not to exceed \$4,000; the Board agreed to hold off on the full annexation study involving the Division of Community Assistance until the water and sewer portion of the study had been completed.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO PROCEED WITH THE WATER AND SEWER PORTION OF THE PROPOSED ANNEXATION STUDY FOR THE TOWN, UNLESS THE COUNTY DOES NOT PROCEED WITH ITS COMPREHENSIVE WATER AND SEWER STUDY.

4. Each Board member had received a copy of the Town Engineer/Public Services Administrator's written report for the month. Lamar Nix also reported on a chlorine vapor leak in the chlorine room at the Wastewater Treatment Plant the previous week, which had been contained and repaired. He said that the factory representative had inspected the apparatus and indicated that the system was acceptable, and that emergency response to the leak had gone well. He also reported that, by the end of the week, the sanitary sewer portion of the Main Street project would be 100% complete, the storm drain work would begin, and the curb & gutter and sidewalk work would be 65% complete. He said he had expressed a concern to the contractor

over meeting the May 20 deadline, and had been assured that they were still on schedule. He also reported that the tree planters were in the process of being prepared, and asked if the Board would like to decide on the species of tree. Eddie Madden reported that the Planning Board had been working on a recommendation for some time and he thought they had agreed on a species; he agreed to contact Planning Board Chair James Tate. The Town Administrator said that he had received several requests from individuals wishing to purchase trees as memorials, to be identified perhaps with small brass plaques.

Comm. James felt that there would have to be an agreement making clear that the Town could replace or remove such trees in the future if necessary. Moyna Monroe was present and said that she had received several such requests, and that it was understood that the Town could replace or remove the trees at its discretion. By consensus, the Board agreed to defer action on the species of trees and the memorials until the next meeting.

5. Each Board member had received a copy of the Police Department's written report for the month. Police Chief Jerry Cook reported that he had attended a week-long Community Policing School in Savannah.

6. Each Board member had received a copy of the Recreation Director's written report for the month. Selwyn Chalker reported that Little League was going well, and that the picnic shelters were under construction. He recommended deleting the provision on the "Waiver of Claims of Release from Liability" form distributed at the previous meeting referring to refunds. The summer camp program was being organized, and the roster of part-time help and lifeguards would be presented for approval at the next meeting; the pool was scheduled to open on May 24.

7. Each Board member had received a copy of the Town Planner/ Zoning Administrator's written report for the month. Eddie Madden was present and reported that he had been putting his files in order for his successor as much as possible. The Mayor again thanked him for the work he had done for the Town. The Town Administrator also thanked him, said he had been a real asset to the Town, and added that he had enjoyed working with him over the past two years. Comm. Sanders also extended his thanks.

8. Each Board member had received a copy of the Treasurer's Report for the month. The report was accepted by consensus.

9. Each Board member had received a copy of the Town Administrator's written report for the month. Included with the report was information provided by the League of Municipalities on legislation which would make major changes to local law enforcement officer's benefits. He also reported that the Town had received the first invoice from Wiley Ellis for the Zoning Board appeal in the Episcopal Church matter; Mr. Ellis had also forwarded an estimate of \$8,805 for his professional services in the matter. Forrest Westall's regional Water Quality Office had notified the Town of a meeting scheduled for 10:00 a.m. on April 20 in the Macon County Library meeting room to discuss monitoring in the Little Tennessee Watershed; he and the Mayor would be attending, and any interested Commissioners were invited to carpool. He also reported that the land exchange process with the U. S. Forest Service was underway for the parcel adjoining the Wastewater Treatment Plant, and he provided a map showing the relative locations of the parcels being exchanged. Finally, the new Utility Billing software had been installed and was operating well, effective with this month's bills; the change would bring office software into "Y2K" compliance.

V. Old Business.

1. The Board again reviewed the "Assumed Risks," "Waiver of Claims of Release from Liability," and "Medical Authorization for Treatment" forms prepared by the Town Attorney and Recreation Director.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY

CARRIED TO APPROVE THE FORMS, SUBJECT TO DELETION OF THE PROVISION RELATING TO REFUNDS ON THE WAIVER FORM.

2. Each Board member had received a revised and re-organized copy of a proposed amendment of the Zoning Ordinance adopting an Appendix C, "Approved colors and exterior materials for commercial buildings."

Eddie Madden explained that the recommendations concerning colors and materials had been separated from the many other suggestions made by a group of architects who had worked on the process, some of which would require extensive re-drafting of the Ordinance and further discussion. He presented a color chart he had prepared indicating a wide range of "earth-tone" colors; language in the Ordinance would provide that "Approved colors and materials need not match specific colors and materials in the chart, but the given shades or types shall fall within the parameters defined by the chart as determined by the Zoning Administrator." He suggested that the Board consider adopting the color and exterior materials standards now, since many businesses would be returning and renovating their businesses.

Comm. James agreed that a work session should be scheduled on the additional suggestions, which related to fences, walls, awnings, etc. The consensus of the Board was that a public hearing should be set for the colors and exterior materials.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO SET A PUBLIC HEARING FOR 7:00 P.M. ON MAY 19 TO RECEIVE COMMENTS ON AN AMENDMENT OF THE ZONING ORDINANCE ADOPTING APPENDIX C.

3. Each Board member had received copies of a draft letter to County Manager Sam Greenwood and a proposed budget prepared by the Fire Department and reviewed by the Finance Committee in its meeting on March 31. Comm. James explained that the County was changing its funding for Fire Departments from a service fee to a fire district tax for the entire township, which would be based on a proposed budget submitted to the County by each Department and ultimately approved by the County Commissioners. The Finance Committee had agreed that such a tax should be levied equally upon residents inside and outside of Town, and that the Town should then adjust its own tax rate accordingly. The budget indicated a total of \$377,800 in expenditures for the Department for FY 99-00, including a \$200,000 expenditure for an addition to the building; revenues would consist of \$150,000 from Fire Department cash reserves and \$227,800 from the tax.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO SEND THE PROPOSED BUDGET AND COVER LETTER TO THE COUNTY MANAGER.

4. Before completing Old Business, Mayor Trott said that Kent and Alice Nelson were present; they had informed him before the meeting that they had driven to Highlands from Mississippi under the misimpression that the paving of Bowery Road would be discussed this evening, and he had told them they could speak briefly to the Board.

Alice Nelson then read a statement to the Board in opposition to the paving; she said that it would make the road more dangerous, and suggested that the purpose of the proposal was to accommodate developers rather than long-time property owners. She said that change was not always progress, and she urged the Board not to run old landowners out of Town.

VI. New Business.

1. Victor Lofquist reported that the following sealed bids had been opened at 2:00 p.m. on April 1 in the Conference Room, pursuant to advertisement, for Phase I Bowery Road Waterline Improvements:

B C & D Associates Inc.....	\$224,950.00
Buckeye Construction Co. Inc.....	184,555.00

Stillwell Enterprises Inc.....	252,770.00
Terry Brothers Construction Co. Inc.....	203,993.50
* Phillips & Jordan Inc.....	167,097.50

The low bidder had been Phillips & Jordan, and in a letter dated April 7, Mr. Lofquist explained that Wolfpen Associates Inc. in Waynesville would actually be performing the work under sub-contract; he was familiar with both companies, and recommended awarding the bid. Mr. Lofquist added that even if 100% rock was encountered, the additional cost would only slightly exceed \$200,000, which was still well within the engineer's cost estimate of \$217,170. In conjunction with the water line, he suggested that the Board consider replacing the pavement on that segment of the road, which was in very poor condition; the contractor had provided a price for the paving, but Mr. Lofquist recommended that the Board request additional estimates from local paving contractors at a later date if it chose to pave the road. The contract called for completion of the project within 90 days, and the contractor was prepared to begin immediately.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO AWARD THE CONTRACT TO THE LOW BIDDER, PHILLIPS & JORDAN INC.

The Board deferred a decision on paving the road until a later date. The "Notice to Award" in the contract documents was executed by the Mayor at the conclusion of the meeting.

2. Mayor Trott reported that he understood County funding for a fine arts auditorium at Highlands School had been removed from the FY 2002 school budget and moved to FY 2013, as reported in a recent newspaper article. He felt that the Town should request that this budget item be replaced in the FY 2002 budget.

MOVED BY COMM. SANDERS, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO URGE THE COUNTY SCHOOL BOARD TO PLACE THE FINE ARTS AUDITORIUM BACK IN THE FY 2002 BUDGET.

3. MOVED BY COMM. PATTERSON, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO APPOINT RICHARD BETZ INTERIM ZONING ADMINISTRATOR, WATERSHED ADMINISTRATOR, AND CEMETERY SUPERINTENDENT.

4. MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO SET THE WEEKS OF APRIL 26 AND MAY 24 AS THE DATES FOR THE ANNUAL SPRING CLEAN-UP.

5. The Town Administrator reported that he had received a request from the Pinecrest Property Owners Association to erect a new wooden fence in the same location as a deteriorating split rail fence which had been located along Pinecrest Drive for several years. The fence was within the right-of-way, and would need to be approved by the Board pursuant to Section 702.3(B) of the Zoning Ordinance. Comm. James said that he preferred the existing rail fence to the proposed new fence. Comm. Patterson asked that the matter be tabled until the next meeting so that she could have an opportunity to look at the fence.

6. The Board again discussed five items which had been placed on the agenda for closed session, as follows: "To discuss legal matters involving Town v. Edwards et. al., Town v. Dianne Hammett, and possible condemnation action with Town Attorney, pursuant to G.S.§143-318.11(a)(3); to review applications for Town Planner/Zoning Administrator, pursuant to G.S.§143-318.11(a)(6); and to hear a report from the Police Chief on a criminal investigation, pursuant to G.S.§143-318.11(a)(7)."

Comm. Patterson reiterated her comments earlier in the meeting; she asked why the condemnation matter, which the Clerk explained involved Bowery Road, needed to be a closed session item. Town Attorney Bill Coward said that he felt it was proper for the Board to go into closed

session to discuss whether or not a lawsuit should be filed; he felt the Town would want to discuss the cost of litigation, the benefits, and the risks in private. Comm. Patterson asked whether the Board needed to discuss this with the Town Attorney before making a decision on whether or not to condemn. She also added that she had reviewed the location of the right-of-way stakes, and she felt that the proposed road as staked had been straightened so much that it would be turned into a speedway if constructed.

Comm. Sanders also asked why this item was on the agenda. He had understood that the State was the party which would be paving Bowery Road; the Town had only voted to support the State in its efforts, and had not discussed condemnation.

Comm. McCall said that he did not feel the Town should be involved in a condemnation action; he was not in favor of it at all. Comm. James agreed. Comm. Sossomon commented on the expected high cost of any condemnation action.

By consensus, the Board agreed to eliminate the discussion of condemnation from the Closed Session.

Mr. Coward then reported that the Town v. Edwards et. al., which had been on the court calendar for April 12, had been continued until May 24. Comm. James asked why it was taking so long. By consensus, this item was also eliminated from the Closed Session.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION TO DISCUSS LEGAL MATTERS INVOLVING THE TOWN V. DIANNE HAMMETT, PURSUANT TO G.S. §143-318.11(A)(3); TO REVIEW APPLICATIONS FOR TOWN PLANNER/ZONING ADMINISTRATOR, PURSUANT TO G.S. §143-318.11(A)(6); AND TO HEAR A REPORT FROM THE POLICE CHIEF ON A CRIMINAL INVESTIGATION, PURSUANT TO G.S. §143-318.11(a)(7). All present left the meeting room except Town staff.

- A. The Board discussed a criminal investigation with the Police Chief.
- B. The Clerk briefed the Board on the Town v. Dianne Hammett case.
- C. The Board reviewed applications for the Town Planner/Zoning Administrator position from Gary H. Roberts Jr., Maureen Murphy Lackey, Kathleen Snyder, Monica A. Collier, Tracy H. Passmore, H. Mark Whitley, and Charles S. Mashburn.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION. The meeting room was opened but nobody was present to return.

7. The Board agreed by consensus for the Clerk to schedule interviews with Gary H. Roberts Jr., Maureen Murphy Lackey, Kathleen Snyder, and Monica A. Collier, in closed session at a Special Meeting, the time and date for which would be announced.

VII. MOVED BY COMM. SOSSOMON, SECONDED BY COMM. MCCALL, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:23 p.m.

Richard Betz, Town Clerk