

REGULAR BOARD MEETING of December 15, 1999, with Mayor Buck Trott and Commissioners Amy Patterson, Zeke Sossomon, H. N. James, Ron Sanders, and Mike Cavender present.

Also present were Richard Betz, Lamar Nix, Bill Coward, Jerry Cook, Maureen Lackey, Kim LeWicki, Eric Pierson, Jack Mayer, Elizabeth Riser, Wolfgang Green, Kevin Fitzpatrick, Mark Rosenthal, and others.

I. Call to Order.

Mayor Trott 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. PATTERSON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS DISTRIBUTED.

III. Approval of Minutes.

The minutes of the December 1 Public Hearing and Regular Board Meeting and the December 8 Special Board Meeting had been distributed by mail.

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

IV. Reports.

1. The Mayor commended the Chamber of Commerce for the December 4th Christmas parade, and commended the Historical Society on the successful event at Wolf Ridge the previous weekend. He also said he wanted to especially thank the Millennium Committee for the outstanding job they had done, including Gladys McDowell's work on the calendar and Dennis DeWolf's assistance with the installation of the clock and bell in the Town Hall cupola. He also congratulated Mike Burrell on his retirement from the Water Department effective the first of the year, and he welcomed Maureen Lackey, who was present at the meeting and would begin work as Town Planner/Zoning Administrator on January 3.

2. The Town Administrator reported that he had terminated the contract for cleaning the public restrooms for non-performance of contract, and had contracted with John Stanfield through the end of the fiscal year at the same cost.

He also reported that he had been discussing enforcement of the Macon County Watershed Protection Ordinance with Division of Water Quality officials. He said that these officials had indicated verbally that the Town's understanding of enforcement of the Ordinance was correct, and that they were planning to meet with the County Planner, County Manager, and County Attorney right after the holidays to discuss the matter. In the meantime, he felt it would be better to hold off on writing to the Attorney General until the results of the meeting are known.

He also reported that he had met with Fire Chief Mike McCall and Architect Paul Schmitt and discussed the bid of \$198,000 for the Phase I addition to the Fire Department, which had been approved at the December 1 meeting subject to review. The Committee had agreed that, since a bid of \$308,805 had been received for the entire project last June, and it appeared that Phase II could very well be equal in cost to Phase I, the bid should be rejected; they felt that additional funding should be requested from the County in the next fiscal year and the entire project should be re-bid at that time.

Draft copies of the 10-Year Water & Sewer Needs Assessment Study prepared by W. K. Dickson and Company, intended to both address the recommendation of the Land Use Planning Committee to annex several areas adjacent to Town and to fulfill the Highlands portion of the County's comprehensive water and sewer study, were distributed to each Board member. It was agreed that discussion of the study should be placed on the agenda of the January 5 meeting.

The Town Administrator also reported that a new telephone system had been installed in the Town Office.

V. Old Business.

1. The Board again discussed the proposed amendments of the Zoning Map, subject of a public hearing on December 1.

Each Board member had received a copy of a letter from Attorney James A. Cabler provided by Attorney Jack Mayer, as well as minutes of Town Board meetings from 1982 when the Liz Development property had been annexed. The Board then discussed the recommendation of the Land Use Planning Committee to re-zone the Luiz Development property from B-3 Commercial to R-1 Residential.

Comm. Cavender said he remembered being on the Board in 1990 when the decision had been made not to re-zone this property to residential as recommended at the time; he understood that Mrs. Lindsey was to have been advised that, although it had not been re-zoned, it would be at a future date. He felt that Mrs. Lindsey had voluntarily asked to be annexed in 1982 in order to obtain water and sewer and develop her property, and had not given up anything. He did not think the Town was under any obligation to keep a portion of it commercial, and had wanted residential zoning. Comm. Patterson pointed out that the Annexation Ordinance referred only to R-33 Residential zoning.

Jack Mayer disagreed; he said Mrs. Lindsey wanted to retain 6.75 acres as commercial property. Asked by Comm. Cavender if she had ever done anything to promote the property, Mr. Mayer replied that she had not, but he pointed out that the subdivision plat that had been recorded labelled the property "future commercial." Comm. James did not feel that that label on the plat meant there had been an agreement; he pointed out that there was no such thing as contract zoning in North Carolina. Town Attorney Bill Coward agreed; he said that a Guilford County case confirmed that, even if there had been a contract, it would have been an illegal agreement. He said that the law does not permit a zoning contract because it would tie the hands of future Boards; someone with money and influence could effectively freeze the zoning map forever.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND CARRIED TO CHANGE THE ZONING DESIGNATION OF THE 6.75-ACRE TRACT OF COMMERCIAL PROPERTY OWNED BY LIZ DEVELOPMENT CORPORATION ON US-64E FROM B-3 COMMERCIAL TO R-1 RESIDENTIAL. The motion carried, with Comms. Patterson, James, Sanders, and Cavender voting "aye." Comm. Sossomon abstained because he said he felt he had a conflict of interest.

The Board then considered the other three parcels of property which the Land Use Planning Committee had recommended re-zoning from B-3 Business to B-4 Business, also subject of the public hearing on December 1: the JMON property on North Fourth Street, the Thomas H. Raye property on North Fourth Street, and the LaCagnina property on Franklin Road.

MOVED BY COMM. SOSSOMON, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO CHANGE THE ZONING DESIGNATION OF THE THREE FOREGOING PARCELS OF PROPERTY FROM B-3 BUSINESS TO B-4 BUSINESS.

2. The Board then discussed the proposed amendment of the Zoning Ordinance regulating private commercial traffic signs. Comm. Patterson asked how long non-conforming signs were permitted to

remain; the Town Administrator replied that the Ordinance provided for a three-year amortization period. Comm. James pointed out that various Zoning Administrators had interpreted this provision differently; he felt the sign which had been the subject of this amendment, erected by Mountain High Motel on Main Street, should be removed sooner than three years.

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

Replace Section 404.2(B) with the following:

"(B) Private commercial traffic signs, as follows:

(1) Signs indicating the location of entrances or exits. Such signs may not exceed two (2) square feet in surface area, may be erected no closer than three (3) feet to the wear surface of the thoroughfare, may not exceed a height of 42" or impair sight distance, and shall be located immediately adjacent to the entrances or exits. Such signs may include the name and logo of the business, not to exceed one-third of the total surface area, and shall be limited to one sign per entrance or exit.

(2) Signs indicating general traffic information. Such signs shall not be in the right-of-way of any public or private road and may not exceed two (2) square feet in surface area. Such signs shall include handicap, parking, loading zone, traffic flow, and similar signs."

3. The Board then discussed at considerable length a provision prohibiting temporary banners except at the Recreation Park. Comm. Cavender felt that the non-profit organizations benefitted by such banners did a lot of good for the Town, and wondered if hanging them placed that big a burden on the Town. Comm. James felt that part of the problem involved an unclear definition that had expanded over the years to include many organizations. Mayor Trott said that he opposed the banners entirely; he felt they looked "tacky". Comm. Patterson felt that the signs looked like small-town America. Comm. Sanders was concerned over the amount of time the Town crews were required to spend hanging the signs. Comm. Sossomon suggested developing a policy concerning the signs. After additional discussion, the Town Administrator offered to work with the Public Services Administrator in developing a new Town policy on hanging banners in the future, to be approved by the Board, which would include a definition of the types of organizations that might be included, appropriate fees, scheduling, and related issues; the Board agreed for him to proceed.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO TABLE THE PROPOSED AMENDMENT PENDING DEVELOPMENT AND APPROVAL OF THE NEW POLICY.

4. The Board then discussed an extensive series of amendments regulating wireless communications, subject of the December 1 public hearing. Each Board member had received a memo from the Town Administrator dated December 7 detailing revisions to the Ordinance further clarifying the provisions on landscaping, illumination, and fencing discussed earlier and recommended by the Planning Board. Each Board member had also received a copy of a letter written by the Town Attorney to Rich Ducker at the Institute of Government, asking for a reply to the concerns he had expressed at the December 1 public hearing over the difficulty the Zoning Board would have in issuing Special Use Permits under the Ordinance; no reply had been received to date. The Board agreed to defer consideration of this amendment until January 5.

The Town Administrator also reported that he had not yet received a final report from Susan Rabold of Metrosite Management on the existing and requested leases for antenna sites.

5. Each Board member had received at the December 1 meeting a copy of a proposed escrow agreement for the condemnation of Bowery Road, prepared by the Town Attorney, and had also received with the agenda package for this meeting a proposed amendment of the resolution adopted by the Board on September 15. Bill Coward explained that he had drafted the escrow agreement pursuant to the literal terms of the September 15 resolution, whereby if costs exceeded \$400,000, the property owners along the road would put up the additional amount. He had met with the parties involved and they had been unwilling to accept the agreement; they felt that if the amount exceeded \$400,000, the cap set by the Board at the November 17 meeting, the Town should pay it. They also were not concerned about anonymity, thereby making unnecessary the establishment of a non-profit corporation. He said if the Board approved the resolution he would prepare a new escrow agreement for approval at the January 5 meeting.

Comm. Patterson questioned what was staked out on the 0.7-mile segment of Bowery Road referred to in the resolution; she wanted to ensure that the resolution did not imply that the final road would be tied to what had been staked by the D. O. T., which she felt was too straight and would increase the speed of traffic. Comm. James said he understood the right-of-way had been staked out 45 feet in width from the centerline. Town Engineer Lamar Nix clarified that the road had been staked out so that the road could be constructed with the least destruction to property on both sides, and not necessarily according to the centerline. Bill Coward said that the agreement contained a provision that the Town could survey the property to determine exactly what would be acquired through condemnation.

Comm. Cavender said he realized the \$400,000 amount had been based on an estimate by the Town Attorney, but he felt that there was still a potential for big awards which might open the Town up to an unknown liability costing the Town taxpayers a lot of money. He also opposed a lawsuit encouraged by people who wanted to cap the amount at \$400,000; he felt if they wanted the road improved, the amount should be open-ended. Mr. Coward replied that, normally, towns decided condemnation was in the best interest of the people and paid the entire amount; it was unusual to have parties willing to pay such a large share of the cost.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND CARRIED TO ADOPT THE FOLLOWING RESOLUTION; Comms. James, Sanders, and Sossomon voted "aye;" Comms. Patterson and Cavender voted "nay":

WHEREAS, the Board of Commissioners adopted a Resolution on September 15, 1999, providing for the condemnation of the first 0.7-mile segment of Bowery Road upon certain conditions, including that "the entire cost of litigation and payment of just compensation shall be paid by property owners along said road;" and

WHEREAS, on November 17, 1999, at its regular meeting, the Board of Commissioners voted "to create an escrow fund for the purpose of paying some or all of the costs of preparation, planning, condemnation, and payment for the acquisition of an expanded right-of-way for Bowery Road in the amount of \$400,000, the precise terms of the agreement to be worked out by the Town Attorney;" and

WHEREAS, the Town Attorney has met with certain "property owners along said road" and cannot obtain a commitment from said persons to pay more than \$400,000 for the costs and expenses associated with said condemnation, and it is in the Town's best interests to determine now who will pay for the costs and expenses of \$400,000 that might possibly be incurred in relation to said condemnation; and

WHEREAS, the intent of the Resolution passed on September 15 was that any such excess costs and expenses would be the responsibility of the Town.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Town of Highlands in regular session assembled, that paragraph 4 of the Resolution passed on September 15 is deleted and the following is substituted in lieu thereof:

4. In either case--whether the Department of Transportation or the Town of Highlands initiates condemnation proceedings--property owners along said road shall deposit into an escrow fund for the purpose of paying some or all of the costs of preparation, planning, condemnation, and payment for the acquisition of an expanded right-of-way for Bowery Road the amount of \$400,000. Provided, however, that all necessary sums for said costs and payments in excess of said amount shall be paid by the Town.

VI. New Business.

1. Town Engineer Lamar Nix reported that the water system improvements for Bob Morris's Satulah Vista Subdivision, discussed at the December 1 meeting, were 99% complete; he expected them to be completed by the end of the week. The Board agreed that the \$17,370 held in escrow by the Town Attorney should not be released until final approval by the Town Engineer.

The Town Attorney had prepared a new guaranty and escrow agreement for the improvement of Worley Road, also discussed at the December 1 meeting, a copy of which had been distributed to each Board member. The estimate for improvements of the road, however, which was to be based on contract prices, had not yet been provided by the subdivider. It was also agreed that the final sentence of paragraph 6 should end after the words, "as provided for herein." The Board agreed to place the agreement on the agenda of the January 5 meeting for final approval.

2. As requested at the previous meeting, the Mayor had asked the following people to serve on a Parking Committee: Comm. Mike Cavender, Terry Potts, Pat Benton, Ralph Deville, Bill Bubenick, and David Young. He also recommended that Police Chief Jerry Cook, Town Engineer Lamar Nix, and Town Planner Maureen Lackey serve as ex-officio advisers on the Committee. He suggested that the Committee be charged with making a recommendation by March 1 on several related parking issues, including timed parking, location of and season for timed parking, impact on businesses, drop-off areas, and enforcement. He also said that a private consulting firm could provide technical assistance if necessary.

Comm. Patterson asked about representation from the people who will be parking on Main Street--i.e., the consumers--rather than just the merchants who had an interest in customer turnover. Mark Rosenthal was present and said that he felt consumers would echo what the merchants would say, that there is no place to park. Kevin Fitzpatrick was present and said that he did not think the Town needed any more parking spaces.

MOVED BY COMM. JAMES, SECONDED BY COMM. SOSSOMON, AND UNANIMOUSLY CARRIED TO ACCEPT THE RECOMMENDATION OF THE MAYOR AND APPOINT THE FOREGOING MEMBERS TO A PARKING COMMITTEE, BUT ALSO TO ADD THREE PARKING CONSUMERS TO THE COMMITTEE TO BE SELECTED BY BUSINESSES.

3. MOVED BY COMM. CAVENDER, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION TO DISCUSS EMPLOYMENT OF A POLICE AUXILIARY OFFICER AND TO DISCUSS A PERSONNEL MATTER IN THE WATER DEPARTMENT, PURSUANT TO G. S. §143-318.11(A)(6). All present left the room except the Town Attorney, the Clerk, the Public Services Administrator, and the

Police Chief.

- A. The Police Chief discussed with the Board an application for Police Auxiliary Officer from Tony Carver; Chief Cook recommended employing Mr. Carver.
- B. The Board authorized the Public Services Administrator to advertize for the position in the Water Department, and also discussed salary for the position with reference to an employee currently working in that Department.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION.

4. MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO EMPLOY TONY CARVER AS POLICE AUXILIARY OFFICER AT THE HOURLY RATE OF GRADE 9, STEP 1 (\$8.45/HOUR)

VII. MOVED BY COMM. CAVENDER, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:00 p.m.

Richard Betz, Town Clerk