

REGULAR BOARD MEETING of March 1, 2006, with Mayor Don Mullen and Commissioners H. N. James, Dennis DeWolf, Alan Marsh, Amy Patterson, and Hank Ross present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Selwyn Chalker, Bill Harrell, Kim Lewicki, Jim Lewicki, Adam Thompson, Griffin Bell, Ginger Slaughter, Mario Gomes, George Mathis, Bronce Pesterfield, Bob Kieltyka, Mai-Beth Ketch, David Hourdequin, Lee Hodges, Edna Foster, Cynthia Strain, and others.

A. Public Hearing.

The Mayor called the public hearing to order at 7:00 p.m. and stated that the purpose was to received comments on the following amendment to Section 2.67 of the Code,
Add the following to Section 2-67:

"(c) Areas regulated by extraterritorial jurisdiction shall have proportional representation on the planning board based on population of the regulated area in accordance with G. S. §160A-362."

The Town Administrator reported that the Board had adopted the amendment on December 7, 2005, but had failed to hold a public hearing, which the Town Attorney had advised is required by law.

There were no comments from the public, and the Mayor closed the public hearing at 7:01 p.m.

B. Regular Board Meeting.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:01 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Town Administrator asked that an item of New Business-- bids on the reconductoring project and two vehicles--be deleted, and that the following items be added: discussion of a sidewalk along Chestnut Street, approval of an audit contract, letter received from Lee Hodges requesting that her subdivision be excluded from the Extraterritorial Jurisdiction, and consultation with the Town Attorney during the Closed Session already scheduled.

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

III. Approval of Minutes.

Copies of the minutes of the February 15 Regular Board Meeting had been distributed by mail.

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

IV. Public Comment Period.

The Mayor stated that this was the time for public comments as required by law.

David Hourdequin said that he had learned that while he had been out of Town the Board had approved several road variances for the Crunkleton Ridge Subdivision, which had reminded him of variance requests he had made as project manager for Satulah Vista Subdivision. He said that in hindsight he regretted requesting those variances because such roads cannot handle the volume of traffic once construction starts; if approved, they needed adequate pull-offs and widening on curves. Comm. DeWolf offered to discuss the variance with him; he felt it had been justified by the particular nature of the subdivision.

There were no further comments from the public.

V. Reports.

1. The Mayor said that there had been a lot of controversy about the Highlands-Cashiers Hospital in recent weeks, and he assured the public that he was involved in the situation and would ensure that steps would be taken to resolve the problems. He also reported that he had toured both the Wastewater Treatment Plant and the Water Treatment Plant earlier in the day, and they were both state-of-the-art facilities.
2. Each Board member had received a copy of the Town Engineer/ Public Service Administrator's report for the month; Lamar Nix was present to review the report. He added that the Town had been the subject of its first sewer collection compliance inspection and it had gone very well. The Town-forces portion of the Ballfield project was complete, and the fencing and sod would be installed by contractors in the next two weeks.
3. Each Board member had received a copy of the Police Chief's written report for the month; Bill Harrell was present to review the report.
4. Each Board member had received a copy of the Recreation Director's written report for the month; Selwyn Chalker was present to review the report. He commended the Town for its work on the Ballfield, but he also reported that Zachary Field was badly in need of restoration work. The need for a coring machine and a top dresser would be discussed at budget time.

Comm. DeWolf said that he understood work would begin on the roof of the Civic Center on March 13.

5. Each Board member had received a copy of the Town Planner/ Zoning Administrator's report for the month; Larry Gantenbein was present to review the report.
6. Each Board member had received a copy of the Treasurer's Report for the month.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ACCEPT THE TREASURER'S REPORT.

7. The Town Administrator reported that he had spoken with Al Bolt and been told that Ms. O'Donnell still intended to close off the driveway into Highlands Plaza. The Town Attorney had confirmed that, because the street had been legally abandoned in 1974, it could not be re-opened by the Town.

He also reported that he would be meeting with Tom Massey from the Clean Water Management Trust Fund the following day to discuss the Town's application for funding for a Stormwater Master Plan.

VI. Old Business.

1. The Board discussed permits issued at previous meetings for use of Town right-of-way for construction activities by Old Edwards Inn on Church Street and Fourth Street, which had expired on this date. The Town Administrator distributed copies of a revised construction schedule for the work on Fourth Street which indicated a completion time of mid-May. George Mathis was present and said that the rock work would be completed and the sidewalk replaced

by the end of March, at which time a pedestrian "tunnel" would be constructed; until then, pedestrians would be routed around the construction area into four to five parking spaces on Fourth Street. Bob Kieltyka commended Old Edwards Inn for its cooperation, but said he hoped pedestrian access could be restored to his business as soon as possible.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO EXTEND THE PERMITS FOR THE AREAS ON CHURCH STREET AND FOURTH STREET PREVIOUSLY DEFINED UNTIL APRIL 5.

Comm. Ross asked about the street trees proposed to be planted along Church Street; he wondered if they would be willing to adhere to the streetscape tree design the Town intended to use throughout the downtown area. Mario Gomes agreed to meet with him and discuss the trees.

2. The Board again discussed a Request for Proposal for a Town Administration Facilities Master Plan, prepared by Comms. DeWolf and Ross, distributed for review by the rest of the Board at the previous meeting. Comm. Ross said that the RFP spelled out specific tasks while attempting to get a grasp of the big picture for the entire block on which the Town Hall is now situated.

Comm. DeWolf had developed a list of consultants with experience in this kind of study, and he proposed sending it out for proposals as soon as possible in order to be able to budget for the study in FY 06-07.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO SEND THE REQUEST FOR PROPOSALS.

3. Comm. Marsh suggested scheduling a work session to discuss the Capital Improvement Program for the coming year.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO SCHEDULE A MEETING FOR 7:00 P.M. ON MARCH 8 TO DISCUSS THE CAPITAL IMPROVEMENT PROGRAM.

VII. New Business.

1. The Board considered a preliminary subdivision plat for Satulah Village South, the former Nick's property on NC-28. The Town Administrator had included in the agenda package a copy of a memorandum prepared by Robert B. Long Jr. and Andrew B. Parker, attorneys retained by the Town, providing an opinion on the clustering provision in the Town's Zoning ordinance, and concluding that this portion of the Ordinance was "valid and consistent with State law and regulation." Also included in the package was a memo from Bernard N. Neal, owner of the property downstream from the subdivision, requesting an opportunity to review the plans and submit comments, and a letter from Louis D. Young Jr., P. E., Columbia Engineering, analyzing the plans for this subdivision as submitted to the Planning Board the previous month, prior to the current revision. The Town Administrator reported that the Planning Board had met on February 27 and voted five-to-four to recommend approval of both this subdivision and the Satulah Park West subdivision, but had also agreed that Mr. Neal should have two weeks to review the revised plans.

Bronce Pesterfield, P. E., distributed plans for the subdivision and indicated that the plans first submitted to the Planning Board the previous month had been revised to incorporate a water feature to be used for stormwater retention and to provide more dedicated green space. He then reviewed the plans in some detail. He said that porous concrete would be used for all paved surfaces, and that stormwater would be captured and routed to the water feature so that post-development would not exceed pre-development runoff for a 25-year storm. Total built-upon was 23%, and there would be 0.84 acres of dedicated green space in the pond area, roadsides, and rear on the 3.34-acre project, or approximately 25%; minimum setbacks of five feet would be met for all proposed residences, the approximate footprint of which were shown on each lot. Mr. Pesterfield also presented a proposed plan for improvement of the intersection of Satulah Road, South Street, and US-28, which he said would be part of the project; he said that the D.O.T. had commented favorably on the plans but the Traffic Engineer had not yet formally reviewed them. The intersection improvements would include a six-foot sidewalk in front of the Rib Shack property connecting South Street and

Spring Street. Plans for the subdivision had also been reviewed by the Town Engineer, who had recommended that the roads should remain private due to the porous concrete and sub-surface drainage structure. Plans had been mailed the previous day to Bernard Neal's engineer, and he felt that overall stormwater should be reduced due to elimination of the parking lot at Nick's and improvement of the storm drainage on the property.

Comm. Patterson wondered if porous concrete would work in this environment. Comm. DeWolf said that he applauded the developer moving in the right direction from the first plan and reducing the density by two residences. Comm. Patterson said that she still had a problem with considering this project a clustered development; she was not sure it met the intent of the Ordinance in keeping density while moving homes closer together in order to open up other areas. Mario Gomes was present and said that the project resembled the development in Mill Creek Village. The Town Administrator pointed out that that development had occurred on property zoned R-3 Residential and on lots platted before the clustering provision had been adopted. Comm. Patterson said she felt that density and lot size were two separate things; she also questioned the reliance in the memo from Long and Parker on a verbal conversation with a DENR official. She thought the Ordinance had some ambiguities and a loophole. Comm. James said he felt the problem was the wording "underlying Zoning District" in referring to the number of lots; he thought the Board may have made a mistake in adopting this provision. Comm. DeWolf said he thought the developer was moving closer to the idea of clustering, but he felt that the large footprints and high density forcing so many units would devastate the site. Comm. James pointed out that the plan was similar to that considered by Scott Cole. Mr. Pesterfield said that he had been the engineer on that project and had discussed clustering as an alternative to multi-family development; that plan had proposed 12 units on two acres, and had started the discussion that had led to the clustering provision. Comm. Marsh said that he had been on the Planning Board at the time and remembered clustering being discussed, but he thought that 50% dedicated, natural, undisturbed green space was supposed to be provided, and he did not see that in this plan. Mr. Pesterfield pointed out that the total built-upon was 76%. Comm. Marsh said that the Town's attorney, Bob Long, had stated at last month's Planning Board meeting that anybody with common sense could see that this proposal was not clustering. Mr. Pesterfield replied that that was why they had gone back to the drawing board and revised the plan. Comm. James said that he felt that the Board had been caught asleep with the clustering provision and it was time to move on. Comm. Ross said he was not sure if the proposal was legal or not; he was not comfortable voting on this unless he was convinced that it was. Mr. Pesterfield said that the alternative would be commercial development on the property with a 70% built-upon; he was sure that the spirit of the Ordinance should not be to force someone into using the property for commercial development. Comm. James said that he had not heard anything to convince him that the Ordinance was not legal; he felt the Town should move on, and correct the Ordinance if it wanted to. Comm. Ross said he would have to agree, and he pointed out that extraordinary stormwater measures had made the plan better.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. PATTERSON, AND CARRIED TO REQUEST THAT OLD EDWARDS INN REVISE THE PLAN, REDUCING THE DENSITY SO THAT IT CAN BETTER REPRESENT THE CLUSTERING CONCEPT.

The motion carried, with Comms. DeWolf, Patterson, and Marsh voting "aye," and Comms. James and Ross voting "nay."

2. The Board considered a preliminary subdivision plat for Satulah Village West, the former Old Creek Lodge property on NC-106. Mr. Pesterfield reviewed the plans in some detail, noting that it had been revised by dropping three residential units, from 35 to 32. Again, all paving materials would be porous concrete, and stormwater would be collected; the Town Engineer had reviewed the plans, and he assumed that his recommendation relating to private roads would stand on this subdivision as it had on the previous. Total dedicated open space was about three acres out of the 7.3 acres, or about 40%, consisting of a 0.77-acre central open area, 0.76 acres in roadside areas, and 1.5 acres along the stream; OEI would own all of the open spaces. He said that the OEI was also willing to dedicate an easement for a future greenway trail along the stream.

Comm. Ross asked who would maintain the open areas. Mr. Pesterfield said that the areas would be maintained by OEI. The Town Administrator said that the Ordinance required that open areas be either dedicated to the public or it should be specified on the final plat who would own and maintain the areas. Comm. DeWolf said that he did not think that much of a buffer was being left along NC-106; it looked like no more than 15 feet, and it would have a negative impression on the public. He pointed out that the Board had just approved a project having a 40-foot buffer along the

highway. Comm. Ross suggested that measures be taken to preserve the existing large trees on the property while infilling with other plants. He said that he would have to vote to approve the plat in the absence of any way to reduce the density. Comm. Marsh said that he did not believe the plan was legal.

MOVED BY COMM. ROSS, SECONDED BY COMM. JAMES, TO APPROVE THE SUBDIVISION PLAT. The motion failed to carry, with Comms. Ross and James voting "aye," and Comms. Marsh, Patterson, and DeWolf voting "nay."

3. Edna Foster was present from the Jackson Macon Conservation Alliance, and she presented a resolution opposing the proposed Interstate 3 (I-3), a road connecting Knoxville and Savannah through the mountains of North Carolina and North Georgia. Cynthia Strain also spoke in opposition to the proposal. A like resolution had been adopted by Macon County and several other regional counties. Comm. James said that he did not object to a feasibility study.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND CARRIED TO ADOPT THE FOLLOWING RESOLUTION. Comms. Marsh, Patterson, DeWolf, and Ross voted "aye" and Comm. James voted "nay."

RESOLUTION OF THE TOWN OF HIGHLANDS

WHEREAS, Congress has appropriated \$1.3 Million for a study to determine the need and feasibility of constructing an interstate highway (hereinafter referred to as I-3) from Savannah, Ga. to Knoxville, Tenn.; and

WHEREAS, I-3, if constructed would possibly traverse through or near Macon County, North Carolina, where the Town of Highlands is located; and

WHEREAS, neither the State of North Carolina nor any County in Western North Carolina was consulted before hand on legislation introduced in the US Congress by the Georgia Congressional delegation regarding the placement of an interstate highway through the Southern Appalachian mountains; and

WHEREAS, the beauty of our region is the main asset that draws tourism, which feeds the economy of the Town of Highlands. Therefore, the construction of a federal interstate highway through the existing rugged terrain of Western North Carolina would have a devastating environmental, economic, cultural, and aesthetic impact on these mountains, including the Nantahala National Forest and Great Smoky Mountains National Park; and

WHEREAS, this interstate highway has little support from Highlands residents and their elected representatives at the local, state, and federal levels, who prefer such monies be allocated for the repair of existing highway infrastructure, including unsafe bridges; and

WHEREAS, in support and solidarity with our neighboring counties and towns in NE Georgia and western North Carolina (including the Macon County Board of Commissioners), who have expressed their clear opposition to this interstate highway;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Town of Highlands is respectfully opposed to a federally-funded interstate corridor called I-3 (or any other name for such a corridor).

4. Comm. Marsh had requested that the Board consider constructing a sidewalk along Chestnut Street. The Board agreed by consensus for the Public Works Committee to meet at the Performing Arts Center at 6:30 p.m. on March 8 to discuss the sidewalk.

5. Lee Hodges was present; copies of a letter and subdivision covenants for the subdivision in which she resided, Blue Valley Estates, had been distributed with the agenda. She said that she felt her subdivision complied with the same restrictions as Cullasaja Club and Highlands Falls Country Club, and she requested that the Board consider excluding the subdivision from the ETJ established on November 16, 2005; she said that there may be other

communities making similar requests.

6. Copies of a three-year audit proposal had been received from Martin-Starnes & Associates. The amounts for the coming years were \$18,750 for 2006, \$19,300 for 2007, and \$19,800 for 2008. The Town Administrator said the firm was doing an excellent job and he recommended renewing the contract.

MOVED BY COMM. JAMES, SECONDED BY COMM MARSH, AND UNANIMOUSLY CARRIED TO APPROVE THE THREE-YEAR AUDIT PROPOSAL.

7. Comm. James said that he thought the Board should consider amending the Zoning Ordinance with respect to clustered single-family dwellings in the B-3 district at a density of 6000 SF per dwelling unit. The Board discussed this at some length. Planning Board member Griffin Bell said that he felt the clustering provision was not in compliance with State law, and he hoped the amendment would be. Larry Gantenbein said that he agreed with the memo prepared by the Town's attorneys verifying compliance with State law; the Town Administrator said he also agreed. Comm. DeWolf said he felt only incidental apartments should be permitted in B-3; the district was not intended for single-family residential use.

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ASK THE PLANNING BOARD TO REVIEW AMENDING THE ZONING ORDINANCE TO REQUIRE A DENSITY OF TWO PER ACRE FOR DETACHED SINGLE-FAMILY DWELLINGS IN THE B-3 DISTRICT; THE DENSITY OF 6000 SF PER DWELLING UNIT FOR INCIDENTAL APARTMENTS MAY REMAIN THE SAME.

8. **MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318.11(A)(3) TO CONSULT WITH THE TOWN ATTORNEY ON POSSIBLE LITIGATION, AND PURSUANT TO G. S. §143-318.11(A)(6) TO REVIEW AN APPLICATION FOR EMPLOYMENT IN THE POLICE DEPARTMENT.** All present left the room except the Clerk, the Police Chief, and the Town Attorney.

A. The Board reviewed with the Police Chief an application for employment for Patrol Officer from Christopher Maskelony; the Chief and the Town Administrator recommended a starting salary of 11-2 because he was already certified in the intoxilyzer.

He also reported that he had learned that Christopher Allen could obtain his Basic Law Enforcement Training in Franklin at night school rather than going to Asheville on paid leave as approved on January 4.

B. The Board consulted with the Town Attorney on the possible pending litigation with the County discussed at the previous meeting.

The Town Attorney also discussed with the Board ways to improve the record created when the Town granted subdivision variances.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO GO INTO OPEN SESSION. The door was opened to the public, and Kim Lewicki came into the room. She asked about the litigation with the County. The Town Attorney told her that a Committee--consisting of Comms. Ross and Patterson, himself, County Comms. Bryson and Simpson, and the County Attorney--had met earlier in the day in an open meeting to discuss proportional representation on the Planning Board and the Zoning Board, but had failed to reach agreement on how many representatives were required by Statute to be appointed. The Town had determined that the number of representatives to be appointed to a five-member Zoning Board was one, and to a seven-member Planning Board was two. He said he had prepared a letter to the County Attorney detailing the Town's position with respect to this issue and advising against a lawsuit; the Board had reviewed it, and it would be finalized and delivered before the weekend, with copies provided to the media.

9. **MOVED BY COMM. PATTERSON, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO EMPLOY CHRISTOPHER MASKELONY AS PATROL OFFICER AT A BEGINNING SALARY OF 11-2**

(\$24,688).

VIII. MOVED BY COMM. JAMES AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 10:00 p.m.

Richard Betz, Town Clerk