

PUBLIC HEARING and REGULAR BOARD MEETING of January 9, 2008, re-scheduled from January 2, 2008, due to inclement weather, with Mayor Don Mullen and Comms. Amy Patterson, Hank Ross, Dennis DeWolf, Larry Rogers, and John Dotson present.

Also present were Richard Betz, Bill Coward, Bill Harrell, Todd Ensley, Selwyn Chalker, Joe Cooley, Josh Ward, Kim Lewicki, Jim Lewicki, Linsey Wisdom, Eric NeSmith, Alan Marsh, Billy Clarke, Don Chandler, Jimmy Tate, Louis Michaud, Judy Michaud, Ted McGavran, Ed Sullivan, Bernie Roberts, Edwin Poole, Mario Gomes, George Mathis, Georgia Sanders, and many others.

A. PUBLIC HEARING.

The Mayor called the public hearing to order at 7:00 p.m. to receive comments on an amendment to the Zoning Ordinance exempting Automatic Teller Machines from the minimum 800-square-foot floor space requirement of the Ordinance. There were no comments and the Mayor adjourned the public hearing.

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 requested addition of the Highlands Fire & Rescue Department Annual Report, Jackson County Mutual Aid Agreement, and report on unclaimed property; he also requested addition of a personnel matter to the closed session already scheduled.

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

III. Approval of Minutes.

Copies of the minutes of the December 5 Public Hearing and Regular Board Meeting had been distributed by mail.

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

Copies of the minutes of the December 19 Regular Board Meeting had been distributed by mail.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. PATTERSON, 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.

Bernie Roberts was present and thanked all those responsible for making the Chestnut Street sidewalk project in front

of her residence go so well.

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, and he expected it to be approved this month. He also reported that the he, Comm. DeWolf, the Town Administrator, and the two new Commissioners would be attending the Essentials of Municipal Government course in Asheville March 5-7. He and several Commissioners would also be attending the January 14 County Commissioner meeting in Franklin; he understood that the Recreation Department funding was ready to be approved. Finally, he reported that the architects were prepared to present conceptual plans on the Town Hall which would incorporate suggestions approved at the November 14 meeting; he suggested scheduling a Special Meeting, and the Board agreed by consensus to call a Special Meeting for Tuesday, February 12, at 7:00 p.m.

2. Comm. Ross proposed that the Public Works Committee meet with the Town Engineer to discuss a steep slope behind the new Chestnut Street sidewalk and other matters; the Committee agreed by consensus to meet on Wednesday, January 16, at 8:30 a.m. He also proposed that the Land Use Planning Committee meet with Joe Cooley, Josh Ward, and Richard Betz, and the Committee agreed by consensus to meet on Wednesday, January 23, at 8:30 a.m. Comm. DeWolf reported that he and Comm. Patterson had agreed for the Recreation Committee to meet at 5:30 p.m. on January 15.

3. Town Attorney Bill Coward reported that the ETJ case had been decided by the Court of Appeals in favor of the Town; Macon County had a limited right of appeal to the N. C. Supreme Court.

4. Each Board member had received copies of the Town Engineer/
Public Service Administrator's report for the month; Lamar Nix was not present due to a scheduled vacation.

5. Each Board member had received a copy of the Police Chief's report for the month; Chief Bill Harrell and Todd Ensley were 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 to review the report.

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. The Mayor introduced the new Planning & Development Director, Joe Cooley.

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

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

9. The Town Administrator distributed copies of a proposed application form for appointees to Boards and Committees which he felt would improve the nomination process.

VI. Old Business.

1. Each Board member had received a report prepared by the Town Administrator providing background information on the Stormwater Master Plan prepared by McGill & Associates and several proposals that the Board had requested on possible projects to pursue this fiscal year; \$100,000 had been included in the FY 07-08 budget for Stormwater. The preparation of a draft Stormwater Ordinance was underway, at a cost of \$10,800, and other possible projects included stormwater utility/impact fee analysis and several specific projects. He recommended that the Board defer action until the Town Engineer could be present, and the Board agreed to place this on the agenda for the January 16

meeting.

2. The Town Administrator reminded the Board that permission for valet parking spaces for Old Edwards Inn had been extended last April until December; the two spaces on Main Street had originally been compensated for with 40-parking spaces in the Rib Shack parking lot, but in April it has come to the Town's attention that only 30 spaces were available in the parking lot due to a construction trailer. Comm. Dotson noted that there were only 25 rooms in Old Edwards Inn and he felt that the Board should think about a ratio based on the number of rooms. Mario Gomes and George Mathis were present and said that valet parking was also provided for Madison's Restaurant and the OEI Spa; they claimed that 5,800 cars were valet-parked per year, an average of 18 to 20 per day. Comm. DeWolf thought it was still an advantage because it removed cars from Main Street, but felt that perhaps a number should be attached to the parking. Comm. Ross suggested that the Town conduct its own study of use of the valet parking.

MOVED BY COMM. ROSS, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO EXTEND THE VALET PARKING ANOTHER YEAR AT THE RATIO OF ONE VALET SPACE TO 20 PARKING SPACES.

VII. New Business.

1. The Board considered the proposed amendment to the Zoning Ordinance exempting Automatic Teller Machines from the minimum 800-square-foot floor space requirement of the Ordinance, subject of a public hearing immediately preceding the meeting; the Planning Board had recommended approval. Comm. Dotson expressed some concern about additional ATMs or other types of machines; he thought the amendment opened the door to these possibilities.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. ROSS, AND CARRIED TO ADOPT THE FOLLOWING AMENDMENT TO THE ZONING ORDINANCE. Comms. DeWolf, Ross, Patterson, and Rogers voted "aye," and Comm. Dotson voted "nay."

Add the following to Sections 204.3(D), 205.3(D), 206.3(D), and 207.3(D):

"Automatic Teller Machines, whether attached to building walls or free-standing, shall not be subject to the minimum of 800 square foot of floor space required by this Section."

2. Informal bids had been received on two police vehicles, which the Board had agreed to re-bid at the November 14 meeting to re-bid:

2008 Chevrolet Impala

GSA - Raleigh \$18,318.37
Smoky Mountain Chevrolet 20,240.00
Allison's Chevrolet 22,041.67

2008 GM Hummer H3

GSA \$30,906.00
Lou Sobh 38,542.85

The Town Administrator said the Police Chief had reviewed the bids and recommended awarding them to the low bidder.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, AND UNANIMOUSLY CARRIED TO AWARD THE BIDS TO THE LOW BIDDER.

3. Copies of a proposed Pole Attachment Ordinance, replacing the existing Ordinance, had been prepared by the Town Attorney and Ed Sullivan of McGavran Engineering, and had been included in the agenda package. Also included were memos from Town Engineer Lamar Nix, in consultation with the Electrical Department Superintendent, and from Engineering Technician Matt Shuler, commenting on the Ordinance; the Town Administrator recommended deferring any action until these comments had been addressed. The Board agreed by consensus for the Town Engineer to meet with Bill Coward and Ed Sullivan concerning these comments.

Ted McGavran was also present and distributed copies of eight photographs from the audit they were conducting, which he said had thus far included about 300 poles; on average, there were two connections per pole, and about 150 violations. Mr. McGavran said he felt the process should be accelerated by dropping all measuring and just recording violations, since many of the problems were egregious and dangerous and could result in fatalities. He also said that the work would proceed more quickly if ATVs could be used. The Town Administrator said that this request had already been addressed by Staff, and Police Chief Bill Harrell confirmed that use of ATVs was not permitted on streets in Town. The Town Attorney thought it made sense to correct dangerous violations as they were recorded. The Town Administrator asked if McGavran would come back and complete the entire audit as obligated under his contract at a later time and he said they would. The Town Attorney suggested that an amendment of the contract be prepared and brought to the Board for approval at the next meeting.

4. Nominations had been received for vacancies on the Appearance Commission and the ABC Board.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPOINT BILL NELLIS TO THE APPEARANCE COMMISSION TO FILL AN UNEXPIRED TERM.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. DOTSON, AND UNANIMOUSLY CARRIED TO APPOINT GEORGIA SANDERS TO THE ABC BOARD TO FILL AN UNEXPIRED TERM.

5. Each Board member had received a copy of a proposed Intergovernmental Mutual Aid Agreement between the Jackson County Sheriff and the Highlands Police Chief, prepared by the former; the Town Attorney had reviewed.

MOVED BY COMM. ROSS, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE AGREEMENT.

6. The Town Administrator explained that the Police Chief had asked Macon County Superior Court to order that the property seized in the burglary case last year and still unclaimed be sold by auction to the highest bidder; the order had been issued on December 19 and bids would be brought to the Board for approval.

7. Each Board member had received a copy of the Highlands Fire & Rescue Department Annual Report for the year 2007.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. DOTSON, AND UNANIMOUSLY CARRIED TO APPROVE THE REPORT.

8. The Mayor said that the Board intended to go into closed session to consult with the Town Attorney on litigation including the Riverwalk decision. Billy Clarke was present on behalf of Riverwalk and he objected for the record to the Board going into closed session to review the decision of a lower court; he did not think that the attorney-client privilege arose. He also said he would like to be heard before the final decision was issued. Town Attorney Bill Coward said that in his opinion it was entirely appropriate for the Board to consult with its attorney in closed session.

MOVED BY COMM. ROSS, SECONDED BY COMM. ROGERS, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G.S. §143-318.11(A)(6) TO DISCUSS A PERSONNEL MATTER, AND PURSUANT TO G.S. §143-318.11(A)(3) TO CONSULT WITH THE TOWN ATTORNEY ON THE RIVERWALK, BOWERY ROAD, AND CAROLINA TRANSFORMER PRP GROUP LEGAL MATTERS. The Board adjourned to the adjoining meeting room with the Town Attorney, Town Administrator, and Planning Director.

A. The Board consulted with the Town Attorney on the Riverwalk, Bowery Road, and Carolina Transformer PRP Group legal matters.

B. The Town Administrator discussed a personnel matter with the Board.

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

9. Billy Clarke said that he had filed a brief in support of the Administrative Law Judge's decision and he asked the Board to adopt that decision. He reminded the Board that if it disagreed, it would be remanded back to the same judge; since he would hear no additional evidence his decision would likely remain the same. He said that if the Board had intended to get Riverwalk's attention last December, it certainly had with the \$400,000 fine, and he said they had been in compliance since last Spring.

The Mayor said that the Town of Highlands had had a disaster on its hands two years ago; the Riverwalk project had been handled badly, and numerous notices of violations had not been responded to. He assured the public that this would never happen again, but he said the only way to get Riverwalk's attention was the \$400,000 fine. Comm. Patterson added that she had attended the Administrative Law Judge's hearing and had remembered that he had said Riverwalk was a poor steward of the land and should have been fined, but the Town did not have adequate evidence. The fine had been needed to bring to Riverwalk's attention what was obvious to all parties, that things had not been done correctly. In the meantime, the Town had learned how to deal with this type of situation and would not permit it to happen again. None of the proceeds of a fine could go for remediation, and the Board had therefore decided it served no purpose to spend taxpayers money on further legal fees pursuing the matter.

The Mayor then stated that the Board had agreed to accept the decision of the Administrative Law Judge; the case was over.

VIII. MOVED BY COMM. PATTERSON, SECONDED BY COMM. DEWOLF, 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 9:45 p.m.

Richard Betz, Town Clerk