

SPECIAL MEETING OF THE TOWN BOARD OF COMMISSIONERS  
OF AUGUST 5, 2009

Town Board Present: Mayor Don Mullen, Vice Mayor Amy Patterson, Commissioner Larry Rogers, Commissioner Hank Ross and Commissioner John Dotson. Commissioner Dennis DeWolf was ill and was not in attendance.

Staff Present: Town Manager Jim Fatland, Zoning Administrator Joe Cooley, Town Engineer/  
Public Services Administrator Lamar Nix and Planning and Development Code Enforcement  
Official Josh Ward.

1. Call to Order

Mayor Mullen called the Special Meeting to order at 7:00 P.M.

2. Draft Flood Damage Prevention Ordinance.

Mayor Mullen addressed the Town Board and advised that the Flood Damage Prevention Ordinance before the members has been reviewed and approved by the Planning Board. The Ordinance is now before the Town Board for review and comments. Mayor Mullen further advised that a public hearing is presently scheduled for August 12, 2009.

Zoning Administrator Joe Cooley addressed the Town Board and presented a map that was prepared by GIS/Field Technician Matt Shuler, which shows the affected areas and the 911 structures in those areas.

Joe Cooley advised that there are presently 75 structures in the affected areas: 3 in the floodway, which includes the ETJ (Extra Territorial Jurisdiction) and 72 in the floodplain. There are also vacant lots. The 3 structures in the floodway are located on Spruce Street (2 structures) and Laurel Street (1 structure). Mr. Cooley further advised that this map is now on the Town of Highlands' website.

Joe Cooley advised the Town Board that he did an extensive review, line by line, comparing the Ordinance draft presently before the Town Board and that of Macon County. Although there are differences, the one particularly discussed were as follows:

Definitions

High Impact Land Use:

Macon County – adds definition

Highlands – follows model code; many uses not allowed in Highlands (i.e. airports)

Regulatory Flood Protection Elevation:

Macon County – adds 2 feet of freeboard

Highlands – adopts base floor elevation (the Planning Board recommended this)

Article 3

Section A:

Macon County – excludes ETJ

Highlands – includes ETJ

Section H (1 and 2):

Macon County – set a maximum daily fine of \$5,000.00

Highlands – uses 2007 and 2008 models codes figures of \$50.00 (it has been recommended by the Town Board to raise this figure to \$5,000.00)

Macon County – has language citing statutes

Highlands – model code removes language as unnecessary

Macon County – added text (not actually a violation)

Highlands – text deleted (redundant language)

Section E(1):

Macon County – establishes Board of Commissioners as appeal board

Highlands – establishes the Zoning board of Adjustment as appeal board

Section D(1):

Macon County – no encroachment, including fill and construction, within 50' of top of bank or 5 times the width of stream, whichever is greater

Highlands – follows model code: no encroachment within 20' of top of bank or 5 times width of stream, whichever is greater, unless certification with supporting technical data if reg. Engineer is provided showing encroachments will not increase flood levels

Zoning Administrator Joe Cooley further suggested adding the following language to Section 5 (D) Standards for Floodplains Without Establishment Base Flood Elevations:

The below added language would be shown as Section 5(D)(1) and all other paragraphs would drop to the next number.

- (1) The following encroachments shall be exempt from the provisions of this section:

- (a) Public transportation projects such as public roads and bridges, sidewalks, paths and trails;
- (b) Public utilities such as potable water and wastewater mains, electric power, telephone, cable television and other transmission lines, natural gas main lines, and other similar public utilities;
- (c) Parks and greenways;
- (d) Stream restoration/enhancement projects, provide that such activities satisfy the requirements of Article 5, Section F(2).

Commissioner Hank Ross raised his concern regarding any standard that would impede the floodway and as an example mentioned pipes above creeks. Town Engineer/ Public Services Administrator Lamar Nix advised that in a situation like, it would have to be maintained and would be an internal issue within the Town of Highlands itself.

Zoning Administrator advised that he is asking FEMA if they will accept the additions to the Ordinance and he is currently awaiting a response.

Commissioner John Dotson questioned the Board and Joe Cooley why the Town of Highlands is even considering a flood ordinance and Joe Cooley explained that it is necessary and should not one be passed, there would be no federal assistance for disasters after the one year grace period.

As to the vacant lots in the floodplain, Commissioner Larry Rogers asked Joe Cooley if he thought there would be any structures built on them and Joe responded that if any structure were to be erected, it would have to be according to the new code. Another question raised would be if a structure were to be damaged in a flood and was to be rebuilt, what conditions would be implemented. Joe Cooley cited Article 5(A)(9) of the proposed Ordinance which reads as follows:

Nothing in this ordinance shall prevent the repair, reconstruction, or Replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

Commissioner Hank Ross questioned Joe Cooley regarding Article 4, Section C entitled Duties and Responsibilities of the Floodplain Administrator and inquired as to paragraphs 6, 7 and 8 as to obtaining actual elevation information and whose

responsibility would it be to obtain that. Mr. Cooley advised that it would be the responsibility of the applicant who must deliver documentation signed and seal by an engineer.

Commission Hank Ross further inquired about Article 4, Section E(9) entitled Conditions for Variances and was informed that the burden of proof would fall onto the applicant.

Commissioner John Dotson stated that he was not comfortable with the language in Article 1, Section (B) entitled Findings of Fact. Specifically in paragraph 1 which states in part:

The flood prone areas within the jurisdiction of the Town of Highlands are subject to periodic inundation which results in loss of life...

Commissioner John Dotson requested that the word “may” be inserted so that it would read as follows:

The flood prone areas within the jurisdiction of the Town of Highlands are subject to periodic inundation which **may** result in loss of life...

Commissioner John Dotson also questioned what if the sea level were to change and was informed that sea level is the basis of all elevation references. Also discussed were the provision of Article 5, Section A General Standards and specifically paragraphs 6 and 9 regarding construction, permits on vacant lots in the flood zone and encroachments. Code Enforcement Official Josh Ward advised the Town Board that Macon County does in fact issue septic permits in flood zones.

Vice Mayor Amy Patterson questioned why the Planning Board chose to keep the freeboard at the minimum while Macon County added 2 feet. It was explained at if a buyer wanted to build in the affected area, it could be built higher, at their discretion, in order to obtain better insurance rates. Mayor Mullen, speaking from experience, stated that he would like to see the pending Ordinance with the added 2 feet.

Discussion was also had amongst the Board members regarding Section D entitled Standards for Floodplains Without Established Base Flood Elevations and a consensus was had that the language should be changed from 20 feet to 30 feet.

As discussion of the ordinance came to a conclusion, the Town Board voted as follows:

Vice Mayor Amy Patterson moved to add 2 feet of freeboard to the Regulatory Flood Protection Elevation, was seconded by Commissioner Hank Ross by Commissioner . The Town Board voted 3-2 requiring Mayor Don Mullen to cast the tie-breaking vote. Commissioners Larry Rogers and John Dotson voted no.

Vice Mayor Amy Patterson moved to add the following exception to be added in to Section 5(D)(1):

(1) The following encroachments shall be exempt from the provisions of this section:

- (a) Public transportation projects such as public roads and bridges, sidewalks, paths and trails;
- (b) Public utilities such as potable water and wastewater mains, electric power, telephone, cable television and other transmission lines, natural gas main lines, and other similar public utilities;
- (c) Parks and greenways;
- (d) Stream restoration/enhancement projects, provide that such activities satisfy the requirements of Article 5, Section F.(2).

This item was seconded by Commission Hank Ross and was unanimously approved by the Town Board.

With regards to Section H of the Ordinance, Vice Mayor Amy Patterson moved to change the maximum daily fine of \$50.00 to \$5,000.00, was seconded by Commissioner Hank Ross and the change was approved by the Town Board by a 3 to 1 vote. Commissioner John Dotson voted no.

With regards to Section D(1) of the Ordinance, Commissioner Hank Ross moved to change that no encroachment from 20 feet to 30 feet, seconded by Vice Mayor Amy Patterson, and the change was approved by the Town Board by a 3 to 1 vote with Commissioner Larry Rogers voting against.

3. Adjourn

Vice Mayor Amy Patterson moved to adjourn, was seconded by Commissioner Hank Ross and the Town Board meeting adjourned at 7:58 p.m.

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James R. Fatland  
Town Manager

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Jane J. Capman  
Recording Secretary

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Don Mullen Mayor