

REGULAR BOARD MEETING of February 13, 2002, with Mayor Buck Trott and Commissioners H. N. James, Ron Sanders, Mike Cavender, Amy Patterson, and Hank Ross present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Christopher Shook, Selwyn Chalker, Kim Lewicki, Gladys McDowell, Bill Rethorst, Dennis DeWolf, Mary Berry, Sue Potts, Geraldine Crowe, Dennis Wilson, Mary Jane Wood, Mary Helen Duke, Tom & Linda Clark, Lewis Doggett, Tony & Isabel Chambers, Bob Wright, Alan Marsh, Rosemary Fleming, Richard Melvin, Mary Helen Duke, and others.

I. Call to Order.

The Mayor called the Regular Board 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.

Copies of the minutes of the January 16 Regular Board Meeting had been distributed by mail; the Clerk reported that he had noted and corrected one minor error.

MOVED BY COMM. SANDERS, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS CORRECTED.

Copies of the minutes of the January 30 Public Hearing had also been distributed by mail.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS DISTRIBUTED.

The Board had also met with the Macon County Board of Commissioners at an informal dinner meeting at Highlands-Cashiers Hospital on January 23 at 7:00 p.m.

IV. Reports.

1. The Mayor reported that he had attended a meeting of the Rural Transportation Planning Organization in Cherokee. He also reported that the Western North Carolina Local Government Caucus had scheduled a meeting for February 28 in Asheville; he and Mark West would be representing Macon County on the Caucus. He also thanked Richard Betz, Chris Shook, and Jerry Cook for participating in Leadership Highlands Government Day earlier in the day.

2. Town Attorney Bill Coward reported that the District Court had ruled that the Town's Parking Ordinance was constitutional, but the decision had been appealed to Superior Court. He also reported that the landowners in the Bowery Road litigation had agreed to a consent order pursuant to the discussion at the previous meeting; the cases would be heard at the April 8 session of the Court. He also reported that the David Sweatt appeal from the Zoning Board had been dismissed voluntarily by Mr. Sweatt.

Kim Lewicki asked about a report at the Zoning Board meeting the previous night that Attorney Bob Long had said that Highlands Country Club had offered to drop its appeal of a Zoning Board decision if the wording in the ruling could be changed. The Mayor said he was aware of the offer but felt that it was not a decision of this Board. Mr. Shook said that he understood the Zoning Board could not change the ruling.

3. Each Board member had received the Public Services Administrator's written report for the month. Lamar Nix was present and reviewed the report, adding that the belt press project was now complete. He also said that the new columbarium had been installed at the Highlands Cemetery, and the Cemetery Committee would be meeting next Tuesday to make a recommendation on the fee for a niche. The Bowery Road Water Project was approximately 50% complete, with tank construction scheduled for next week. He also asked to meet with the Utilities Committee.

4. Each Board member had received a copy of the Police Chief's report for the month. Chief Cook was not present, but the report indicated that the new mobile data terminals were in operation.

5. Each Board member had received a copy of the Recreation Director's report for the month. Selwyn Chalker was present and said that the Recreation Committee had met and recommended employing on a trial basis the two part-time employees, Wendy Ramey and Bill Getchell, discussed at the previous meeting.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO EMPLOY WENDY RAMEY AND BILL GETCHELL PART-TIME ON A TRIAL BASIS.

The Recreation Committee had also reviewed estimates from Whalen Tennis Company and Rhodes Brothers Paving to re-surface and repair the old tennis courts at a total cost of \$18,870; the Treasurer reported that there was more than \$40,000 in the Tennis Reserve Fund.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE TENNIS COURT RENOVATION.

6. Each Board member had received a copy of the Zoning Administrator's report for the month. Christopher Shook was present and reviewed the report with the Board. He said that the Special Use Permit had been approved for a building to replace the Bird Barn on Main Street, and reported that the owner would be renewing his request to remove the sidewalk for the demolition as discussed at the December 5 meeting.

Comm. Cavender asked about the status of the question raised recently about how much land at Highlands Country Club was inside or outside of Town, as discussed at the previous meeting; the bill annexing the Club in 1980 had excluded the playing surfaces. Mr. Shook said that Land Records Supervisor Art Provencher had done some work on the maps, and had outlined an area a little over six acres in the vicinity of the area in question where he had issued a permit. Comm. James said he felt the results would be questionable as far as determining, for example, what "roughs" were; he thought a Committee composed of Town and Country Club officials should be appointed. The Town Administrator said that he had discussed the question with Tax Supervisor Richard Lightner, and had formally requested that the Tax Office make this determination. He said that until now the value of the golf course had been deducted from the tax scroll each year, but there had been no need to determine the actual area. Comm.

Cavender asked the Town Attorney what effect the fairways being outside of Town would have on the Town's Impoundment Ordinance. Mr. Coward said he could not make that determination. The Town Administrator said that when the Impoundment Ordinance had been adopted, it had been assumed that Club Lake was within the Town's jurisdiction, and the Country Club had been notified that the Ordinance would apply to their lake.

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

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

8. Each Board member had received a copy of the Town Administrator's written report for the month. He also reported that, at the next regular meeting on February 20, W. K. Dickson Company consulting engineer Kurt Wright would be discussing the preliminary engineering report on the Wastewater Treatment Plant, subject of the Public Hearing on January 30.

V. Old Business.

1. It had been reported that the Planning Board had reviewed at its January 28 meeting the petition for re-zoning from the Heirs of A. B. and Pearl Potts, as discussed at the January 16 meeting. The Planning Board had discussed re-zoning the entire parcel B-4, as recommended by the Town Board, rather than only the portion requested, but had decided to recommend that only the portion requested be re-zoned. Comm. James felt that the public hearing should be advertized to include re-zoning the entire parcel B-4; he said he felt better about it because the previous request for re-zoning the parcel B-3, which had been denied, had been for the entire property. Comm. Patterson pointed out that this request was for B-4, a lower-impact zoning district. Gladys McDowell was present and said that Mountain Findings would have liked to have purchased the entire property but was not able to afford it.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, TO ADVERTIZE FOR A PUBLIC HEARING ON THE RE-ZONING FOR 7:00 P.M. MARCH 6, FOR THE ENTIRE PARCEL OF PROPERTY.

Comm. Ross asked about the basis for the Planning Board's recommendation. Linda Clark was present from the Planning Board and said that the Board had reviewed the request but had felt that there was no reason the whole property should be re-zoned. She pointed out that the rear of the property adjoined single-family residential property, whereas the front adjoined commercial property; if the entire parcel was re-zoned, the Planning Board had felt that it would be impacting the residential areas even more.

THE MOTION CARRIED, WITH COMMS. JAMES, SANDERS, PATTERSON, AND CAVENDER VOTING "AYE," AND COMM. ROSS VOTING "NAY."

VI. New Business.

1. Tabulation of nominations for appointment of an Alternate Member of the Zoning Board to fill Anne DeVille's unexpired term had been distributed.

MOVED BY COMM. SANDERS, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO APPOINT ZEKE SOSSOMON AS AN ALTERNATE MEMBER OF THE ZONING BOARD TO FILL THE UNEXPIRED TERM.

2. Dennis DeWolf was present, with several members of the Highlands Historical Society, to present a proposal for relocating the old library building to the Prince House property on Fourth Street adjacent to the Recreation Park; he displayed a plan that he had prepared of the proposal. He said that the Society had moved forward with its plans to repair the old Prince House, outlined at the March 1, 2000 Board meeting, but had decided not to place a basement under the building for archives. It had meanwhile been seeking a location for the old library building, which needed to be moved from the Episcopal Church property by April 1. The proposal was to move the building to this property, and the plans indicated seven parking spaces on the Prince property and four on the Recreation Park property, including one handicapped parking space; the latter would serve the playground as well. He felt that, since the facilities would largely be visited by appointed only, the number of parking spaces would be adequate. The request before the Board was for permission to move the building in two separate pieces through Park property via Foreman Road and through the parking lot. Selwyn Chalker said that the project would not disturb much in the Recreation Park, and reported that he had already received verbal approval from the Land and Water Conservation Fund (LWCF), which was required for any changes on Park property. Comm. James felt that the drawing should be forwarded to LWCF and written approval received before installing the parking spaces.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. JAMES, TO APPROVE THE REQUEST. Comm. James said his vote would depend on written agency approval. Comm. Cavender amended his motion to include that condition, and it carried unanimously. The Board agreed that failure to receive written approval in time would affect only the installation of the parking spaces, not the request to move the building. Comm. James felt that an agreement should also be drafted regarding use of the parking spaces. Lewis Doggett was present and thanked the Board, the Historical Society, and Mr. DeWolf on behalf of the Episcopal Church.

3. Each Board member had received a letter dated December 27, 2001, from the Town Attorney to Richard Melvin, offering not to open the streets in contention in the Edwards et. al. case for a number of years if the parties to the lawsuit would agree to recognize them as streets, as requested by the Board at the December 5 meeting; the number of years could be anything from one year to 1000 years. Mr. Coward said that the offer would save the Town "the substantial expense that a new trial will incur for the taxpayers of the Town," but admitted that it would not resolve the question of the validity of the Kelsey Map. Comm. James agreed; he felt that a question would remain, with this and all other streets in Town.

Comm. Patterson asked if the next step would be a major survey. Mr. Coward said that the Court of Appeals had indicated that such a survey would have been useful to a jury; although not required, it would be the safest option. She wondered if not pursuing the case would set the Town back any, since the same survey and expense would be required for any future lawsuit; nothing had been established to date. Comm. James disagreed. Mr. Coward said that the cost of preparation for a second lawsuit would be much less if he proceeded with the work now, rather than some future Board beginning "from scratch."

Comm. Cavender asked the Town Administrator if this street was on any plan. Mr. Betz replied that it was on the Thoroughfare Plan adopted by the Town and the D. O. T. several years ago. He then asked about any precedent for abandoning unopened streets, or any existing unopened streets. Mr. Betz replied that the only streets he could think of that had been abandoned were First Street and the lower end of Second Street, and there was also an alley south of Spring Street that had never been opened. Mary Helen Duke was present and said that roads were only placed on the D. O. T. Thoroughfare Plan following a thorough study.

Mayor Trott said he still felt it was important to validate the Kelsey Map. He said an attorney from the League of Municipalities had strongly advised the Town to validate the map with whatever it takes. Comm. James then read the following statement into the record:

A compromise in the Town of Highlands et. al. v. Grover William Edwards et. al. case would leave the matter where it started, with the same questions in dispute. In addition, other "Kelsey" streets which have not been opened to their full length and width may now be subject to dispute.

I have been associated with the Town since 1957 and have worked with many different people representing the Town of Highlands, and none of those individuals ever doubted that the "Kelsey" streets belonged to the public. I can remember only one person who questioned the Town's ownership of these streets.

If the current litigation is not pursued and brought to conclusion, the questions about the Town's ownership of these streets will remain, and all the time and money the Town has been forced to spend in this matter will have been for naught. The same type litigation can be instigated in the future by one who questions the ownership of these streets.

I am convinced that a compromise is not in the best interest of the public, and that this matter should be pursued as ordered by the North Carolina Court of Appeals. I don't believe that this Board has the right to tie the hands of future Boards on an issue of this importance. I believe my oath of office as an elected official of the Town of Highlands supports this position.

Mayor Trott read the following letter dated February 13 from ex-Mayor John Cleaveland addressed to the Mayor and Commissioners:

Unfortunately I cannot attend the meeting this evening due to a prior commitment, but I do want to express my opinion concerning the controversy over the Poplar Street right-of-way. I think it's imperative that the Town defend its right-of-ways to the fullest. They were given to the people of Highlands and I think it would set a bad precedent to give up any right to use the right-of-ways as the Town sees fit. I have talked to several attorneys and surveyors and the Kelsey Map has always been recognized as the official Town map. Through the years, it has always prevailed and is still used today to draw up deeds and to convey property. What has changed? You have already spent a lot of money defending your position and I think you need to go forward and get it resolved once and for all. Thank you for your consideration in this very

important matter.

Comm. Ross asked if the defendants had ever paid taxes on the property. Attorney Richard Melvin was present and said that tax receipts had been entered into the record at the trial. Mr. Coward said that that was not true; there had been no evidence at the trial that the taxes paid were paid for those streets. Mr. Melvin said that he had told Mr. Coward earlier that at least some of the parties had already been contacted and indicated that they would not agree to a settlement unless it included a substantial period of time; he said that the 1000 years mentioned earlier in the meeting might be acceptable.

Comm. Sanders said he was not willing to settle on 24 hours. He felt the streets belonged to the Town and needed to be opened a long time ago. If the Town gave up the case, it would have the same problem in the future.

MOVED BY COMM. SANDERS, SECONDED BY COMM. JAMES, AND CARRIED TO PROCEED WITH THE COURT CASE. Comms. Sanders, James, and Patterson voted "aye," and Comms. Cavender and Ross voted "nay."

4. Preliminary and Final Subdivision Plats for the W. Chase & Cheryl E. Idol Subdivision, consisting of two lots located at the corner of Chowan Drive and US-64W, had been reviewed by the Planning Board on January 28.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE PLATS.

Comms. Cavender and Ross both noted that driveways had already been installed on the lots and there appeared to be a soil erosion problem. Chris Shook agreed to check into the problem.

5. MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO GO INTO CLOSED SESSION PURSUANT TO G. S. §143-318(A)(3) TO DISCUSS SETTLEMENT OF THE TOWN V. NEWTON ET. AL. AND THE TOWN V. COLEMAN LITIGATION WITH THE TOWN ATTORNEY. All present left the room except the Clerk and the Town Attorney.

The Board considered and gave instructions to the Town Attorney concerning settlement of the referenced condemnation lawsuits.

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

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

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 8:45 p.m.

Richard Betz, Town Clerk