

PUBLIC HEARING and REGULAR BOARD MEETING of January 7, 2004, with Mayor Buck Trott and Commissioners Amy Patterson, Hank Ross, H. N. James, Dennis DeWolf, and Alan Marsh present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Larry Gantenbein, Jerry Cook, Selwyn Chalker, Ryan Chambers, Kim Lewicki, Jim Lewicki, Tony Chambers, Griffin Bell, Farrell Zehr, Sara Kucharski, Allan Bumgarner, Dwight Bryant, George Schmitt, Joanna Baumrucker, Linda Clark, Ginger Slaughter, Rick Siegel, Ginnie Harris, Lewis Doggett, Tim Green, Bob Wright, Jodie Cook, Carolyn Cook, Bronce Pesterfield, Manuel DeJuan, Polly Dean, Mary Heffington, Teresa Calloway, Lois Keener, Scott Paxton, David Kleist, Jean Morris, Paul Schmitt, Rene DeHall, 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 receive comments from the public on two proposed petitions for re-zoning. The amendment of the Zoning Map had been duly advertized and notice given to adjoining property owners in accordance with law. It had been reported that the Planning Board had recommended denying both petitions. The Mayor asked for comments from the public for each in turn.

1. ESTATE OF A. B. & PEARL POTTS, 0.53-ACRE PARCEL LOCATED ON SPRUCE STREET ADJACENT TO MOUNTAIN FINDINGS, FROM R-2 RESIDENTIAL TO B-3 OR B-4 BUSINESS.

Polly Dean stated that she was a neighboring property owner and would like to keep the property residential. She said that all of the buildings in the area were residential except for Mountain Findings and the beauty parlor on Laurel Street, and she was concerned that if it sold it would create a domino effect and other properties would also be changed to commercial.

Mary Heffington, a resident of Pinebrook, said that she would also like to see the property remain residential.

Teresa Calloway pointed out that not all of the property in the area was residential; Mountain Brook Center was B-3, and so was Mountain Findings, and she felt that nobody would want to build a residence in the area.

Linda Clark, Chair of the Planning Board, was present and explained the rationale for that Board's recommendation to deny the petition. She said that the Board valued the Land Use Plan and the citizen input behind it; while it realized that there were reasons for re-zoning, the Board felt that they should be limited to instances where something has happened in the area, of someone had a use that seemed good for the community. The Planning Board felt that not much had changed in the area since the Land Use Plan. She felt that the Land Use Plan had to be followed unless there was a good reason to change the zoning, otherwise a policy would be set that was not good.

Lois Keener said that the owners did have people that were interested in the property. She pointed out that any commercial development would have to be approved by the Zoning Board, which would provide some protection. She asked the Board to do the right thing.

Lewis Doggett said that Linda had explained the rationale of the Planning Board well; he added that the Board had also recommended that this petition be reconsidered when the Land Use Plan Update begins.

2. JOHNNY HENRY, 0.31-ACRE PARCEL LOCATED AT 76 POPLAR STREET, FROM R-2 RESIDENTIAL TO B-3 BUSINESS.

The Clerk reported that Mr. Henry had told him earlier in the day that he could not be present for the public meeting.

Rick Siegel noted that the Land Use Plan Update was on the agenda for this evening; he thought that the Board should let the process take its course, and not considered this petition at this time.

Ginger Slaughter said that the Planning Board had taken note of what kinds of uses were permitted in B-3, such as motels, shopping centers, auto sales, and other heavy commercial uses; she also pointed out that the property was surrounded on three sides by residential property.

Tony Chambers, a long-time realtor, said that he knew how the Henrys must feel, as they could not possibly sell this property as residential; he felt that the Land Use Plan update did not matter, since the property simply could not be sold unless re-zoned. It was similar to the Chambers Agency property on Fifth Street, totally surrounded by commercial.

There being no further comments from the public on either petition, the Mayor declared the Public Hearing closed at 7:13 p.m.

B. Regular Board Meeting.

I. Call to Order.

The Mayor called the meeting to order at 7:14 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Clerk reported that two items of new business had been withdrawn--Old Edwards Inn request to encroach on right-of-way, and preliminary subdivision plat for Colson Subdivision. He also said that Old Edwards Inn had requested permission to install underground cables across Church Street, as an alternative to the connection to Town poles under Old Business. He also reported that there had been requests for two items of new business: the Fire Department Annual Report, and a request from Old Edwards Inn for a valet parking area on Main Street.

Comm. Patterson asked if the Master Sidewalk Plan could be deferred to a later meeting, but the consensus, after some discussion, was that it should be discussed due to pending zoning applications involving sidewalks.

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

III. Approval of Minutes.

Copies of the minutes of the December 3 Regular Board Meeting, December 4 Adjourned Session, and December 15 Special Meeting had been distributed by mail. Comm. James said that, at the December 15 meeting, he had not voted to approve the press release.

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

IV. Reports.

1. The Mayor reported that he had received a letter of thanks from the Chamber of Commerce for the Christmas tree lighting, and he added his thanks to all involved. He also reported that he had attended a meeting of the Healthy Carolinians at the Health Department earlier in the day, and illegal drugs were becoming an increasing problem; there would be a briefing on the problem at 6:30 p.m. on January 24 at Macon Middle School. He also thanked Comm. Ross and Planning Board Chair Linda Clark for attending the Leadership Highlands program with him earlier in the day.

2. Comm. Ross reported that the Public Works Committee had met

and discussed the Master Sidewalk Plan and proposed improvements; they planned to meet again on January 15 at 1:30 p.m. He also said that he had scheduled a meeting on January 8 at 10:00 a.m. to review the alignment of Bowery Road with District Engineer Brian Burch, and he invited anyone interested to attend.

3. The Town Attorney reported that the Court of Appeals decision in the Bowery Road case had still not been released, but he felt it would be before January 20. Oral arguments on the other Bowery Road appeal were scheduled for February 18 before the State Supreme Court.

4. Each Board member had received a copy of the Public Services Administrator's written report for the month; Lamar Nix was present to answer questions.

5. Each Board member had received a copy of the Police Chief's written report for the month; Chief Cook was present to answer questions. The Mayor reported on new Taser guns that the Sheriff's Department was using; the weapons were non-lethal and were being used increasingly by law enforcement departments around the country. Chief Cook asked for permission to apply for grant funds to purchase three Taser guns for Highlands; the cost would be \$800 each, and the grants would provide 50/50 funding.

MOVED BY COMM. MARSH, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPLY FOR THE GRANT FUNDS.

6. Each Board member had received a copy of the Recreation Director's report for the month; Selwyn Chalker was present to answer questions. He also reported that the Recreation Committee would be meeting on Monday at 6:00 p.m.

7. Each Board member had received a copy of the Town Planner/Zoning Administrator's report for the month; Larry Gantenbein was present to answer questions. He also reported that he had contacted Marketek earlier in the day and learned that a preliminary draft of the population study would be available the first meeting in February, with a formal presentation expected to be made at the February 18 meeting.

Comm. Patterson asked about several truck loads of silt which had washed into Ravenel Lake across Lower Lake Road; she wondered if any remediation could be required. Mr. Gantenbein said that he had thought initially that the Corps of Engineers would have to approve any removal of silt, but said he was now looking into the possibility of requiring the contractor to provide remediation by an alternate method.

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

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

9. The Town Administrator reported that only one bid had been received the previous day for the Hospital Water Line project; it had been re-advertized for January 20, and it was possible that the bid could be awarded at the January 21 meeting. He also reported that the Finding of No Significant Impact (FONSI) had been received in final form on the Wastewater Treatment Plant. He also said that, as reported at the December 3 meeting, he had received information from Northland Cable on its system; he hoped to be able to analyze the data and then issue an abbreviated RFP for mapping the electrical system next month.

V. Old Business.

1. The Board discussed in some detail the amendments to the Master Sidewalk Plan, referred some time ago to the Planning Board and received at the previous meeting. Comm. Marsh said that he had been

on the Planning Board at the time and felt that it was a good plan; if sidewalks were not placed on the plan, then the Town would have to fund them in the future. He also said that sidewalks had been recommended for subdivisions in residential areas where feasible.

Comm. Ross said that the Public Works Committee, which he reported earlier in the meeting had reviewed the proposal, recommended approval, with the addition of brick sidewalks on Pine Street.

MOVED BY COMM. MARSH, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO SET A PUBLIC HEARING FOR FEBRUARY 4 TO ADOPT THE AMENDMENTS TO THE MASTER SIDEWALK PLAN.

Comm. DeWolf asked if the Planning Board had considered, in its recommendation on subdivision sidewalks, the impact on the character of rural roads in these residential areas. Comm. James said that the Town Engineer had provided some specifications for such sidewalks, but felt that the recommendation needed some more work and should be separated from the rest of the proposal. The Town Administrator questioned the map submitted, which appeared to be incomplete and did not identify areas where brick was proposed; it was agreed that it should be updated before the public hearing. It was also agreed that Ordinance language should be drafted to incorporate the residential sidewalk recommendations into the Zoning Ordinance; Larry Gantenbein agreed to work on that language. In the meantime, residential sidewalks identified on the Plan itself would not be regulated until that language could be drafted, although amendments in the commercial areas would become effective upon adoption following the February 4 hearing.

2. Bronze Pesterfield was present on behalf of Old Edwards Inn to request permission to cut Church Street in order to install communication, electrical, and gas lines; the original proposal submitted at the December 3 meeting had been to attach communication lines to Town poles, but it had been agreed that this would be a better approach. The ditch would be 10 feet in width, and the work could be accomplished in less than a day; there was only a 2" line and a phone line in the road at present, and the former was scheduled to be replaced with a 6" line for a fire sprinkler system.

Town Engineer Lamar Nix felt the proposal would be better than using poles, and he approved it contingent on a hold harmless provision in the event the Town damaged any of the equipment. It was agreed that the Town Administrator would work with the Town Attorney on a revocable license agreement for the encroachment and that it would include such a hold harmless provision.

MOVED BY COMM. ROSS, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPROVE THE PROPOSAL, SUBJECT TO A REVOCABLE LICENSE AGREEMENT WITH A HOLD HARMLESS PROVISION.

VI. New Business.

1. The Board considered the petition for re-zoning for the Potts Estate, subject of a Public Hearing earlier in the meeting.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, TO APPROVE THE RE-ZONING, FROM R-2 RESIDENTIAL TO B-4 BUSINESS.

Comm. Marsh said he felt the Board should take the recommendation of the Planning Board, and that the petition should not be considered until the Land Use Plan Update addressed it. Comm. James felt that such a delay could be unreasonable; he also pointed out that the Planning Board had recommended rezoning the Mountain Findings property without waiting for the Land Use Plan. Comm. DeWolf felt that had been a different situation, because the Board was trying to accommodate a non-profit. He agreed that it would be good for the Land Use Planning Committee to take a long-range look at the entire area, however. Comm. Patterson agreed with Comm. James; she did not want to see the Board use referring petitions to the Land Use Planning Committee as a reason for delay. She also felt that the B-4 district had been created exactly for this type of situation;

it would provide less impact than multi-family development, and not much more than a home occupation in R-2. It was low-key and unobtrusive, the perfect example of what B-4 had been intended to be. Comm. Ross agreed; he also pointed out that a residence could be permitted in B-4 as well as commercial uses. He also felt that it was a hardship due to the surrounding uses, and felt this was a prime candidate for B-4. At the same time, the Land Use Planning Committee could look at the entire area. Comm. Patterson also pointed out that this would be a destination, rather than a strip-highway business, which she saw as positive in some locations. Comm. DeWolf agreed; he felt it would be unfair to leave it as single-family property.

THE MAYOR CALLED THE QUESTION, AND THE MOTION PASSED. Comms. Patterson, James, Ross, and DeWolf voted "aye;" Comm. Marsh voted "nay."

2. The Board considered the petition for re-zoning for the Henry property, subject of a Public Hearing earlier in the meeting. Comm. DeWolf asked if Mildred Wilson had commented on the petition. The Town Administrator replied that, although she had said she could not attend the meeting, Ms. Wilson had called him and voiced no objection. Comm. Marsh said he felt this was entirely different from the other petition; it was a small, isolated parcel which nobody would purchase as a residence.

MOVED BY COMM. MARSH, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO APPROVE THE RE-ZONING, FROM R-2 RESIDENTIAL TO B-3 BUSINESS.

3. Nominations had been received from each Board member and tabulated by the Clerk for two vacancies on the Planning Board and the Appearance Commission.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO APPOINT DOUG CAMPBELL TO FILL AN UNEXPIRED TERM ON THE PLANNING BOARD, EXPIRING ON JUNE 1, 2005; TO APPOINT CLEM PATTON TO FILL AN UNEXPIRED TERM ON THE PLANNING BOARD, EXPIRING JUNE 1, 2004; TO APPOINT PETER JEFFERSON TO FILL AN UNEXPIRED TERM ON THE APPEARANCE COMMISSION, EXPIRING JUNE 1, 2006; AND TO APPOINT LUKE OSTEN TO FILL AN UNEXPIRED TERM ON THE APPEARANCE COMMISSION, EXPIRING JUNE 1, 2005.

The Board agreed by consensus not to fill the vacancy created by Clem Patton leaving the Zoning Board for the Planning Board, a term scheduled to expire July 1, 2005, until other appointments are made in June.

4. The Board had been asked to appoint a representative to an Occupancy Tax Review Board proposed by the Chamber of Commerce. Comm. James felt that this Board should meet when the Chamber was deciding to spend money, and then quarterly thereafter, instead of after the yearly audit had been completed as proposed; Comm. Patterson agreed. Comm. Marsh commented that most of the members would be from the Chamber of Commerce anyway; he was not sure if it would be meaningful. The Mayor suggested appointing two Board members to meet with the Chamber Board and discuss this proposal; he added that County Commissioner Bryson, who had also been asked to serve on the Review Board, was also interested in discussing it. Comm. Ross pointed out that the Chamber of Commerce was inviting the Board to participate in the process; he was not sure what business it was of this Board how the Chamber of Commerce sets up the Review Board. The Mayor felt it was the Board's business to the extent that the Occupancy Tax was public money; Comm. Patterson added that the Chamber Board was not elected by the public. Comm. Ross pointed out that it was money that came from visitors. Rick Siegel, while not speaking for the Chamber Board, commented that the Occupancy Tax was similar to the gas tax, which was earmarked for highway improvements, in that it was earmarked money to be used for travel and tourism; he hoped the Board would keep that in mind.

The Mayor appointed Comm. Ross and Comm. DeWolf to meet with the Chamber of Commerce as he had proposed; the Board agreed by consensus.

5. The Board again considered renewal of a lease for Highlands Playhouse. Each Board member had received copies of a spreadsheet prepared by the Clerk comparing the basic requirements of all of the Town's leases, letters and other information from Highlands Playhouse Board, and information from the Instant Theatre Company.

Zeke Sossomon was present representing the Playhouse Board. He said that its position was that it does not prohibit anybody from using the Playhouse; rules, regulations, and terms are in place under which others may use it, but use has never been refused anyone, including the Boy Scouts, Methodist Church, High School and Summit Charter School plays, and dance troupes. The Playhouse Board had been operating in the building for a long time, and failure to renew the lease would end it as an institution. As a lawyer, he thought that splitting the lease, as had been proposed in some of the information distributed, did not make much sense as it would be difficult to assign responsibilities. He also said that the Playhouse Board had made a tremendous investment over the year, and had several expensive capital improvements planned, such as replacing the steps and parking area; the Board felt it needed a 10-year lease to recoup some of that investment.

Scott Paxton, President of the Instant Theatre Company, said that his company wished to lease the Playhouse between September and April when it was not being used so that it would be available for plays during the winter months and could be used year-round. He asked the Board to carefully review the information that he had distributed explaining how this could occur.

David Kleist, the new Artistic Director for the Playhouse, said that the use of the building extended beyond the season; he would be building sets in the building long before May, and he was already planning on extending the season into October. He said that he had been involved with other theatres over the years that had attempted to have two companies, and it had never worked.

Jean Morris was present and pointed out that the Instant Theatre was now using the Performing Arts Center along with the Highlands Community Theatre, and it was working well.

Scott Paxton asked if the Playhouse Board would continue to make technical support available. Zeke Sossomon said that it would, pursuant to the terms and rules published; the rental amount was \$175 per day, although Joanna Baumrucker said the fee had been waived in the past for school productions. Allan Bumgarner was present and said that three or four years ago he had calculated the operating cost to be \$200 per day.

Comm. Patterson pointed out that the figures provided by the Playhouse Board were misleading; the actual amount that the Town had contributed toward capital improvements since 1990 was close to \$60,000, not \$27,000, or about 29% of the expenses. She said she had no problem with the Playhouse Board, but felt that the building was an asset of the Town that could be better utilized. Comm. DeWolf agreed; he felt that a lot of positive comments had come out of this discussion, but he agreed with Mr. Sossomon that it would be difficult to mediate disputes with two tenants in the building. He felt that the Playhouse Board as an institution needed to continue, and thought that it was attempting to lengthen its season and be more of a benefit to the community.

MOVED BY COMM. DEWOLF, SECONDED BY COMM. JAMES, TO RENEW THE LEASE FOR A TERM OF FIVE YEARS.

Paul Schmitt was then asked about the cost to insulate the building; he said the ceiling was insulated, but not the floor, and the walls only where new construction had taken place.

Town Attorney Bill Coward said that he had reviewed the lease, which had been written in 1978, and he thought it could be modified to

reflect the current situation. For example, despite the provision under "Quiet Enjoyment" providing for use of the building, another section provided that the Lessor must approve each event. He felt that the language needed to be clarified. Comm. DeWolf agreed, and amended his motion to request that the Town Attorney update the language in the lease, but that the intent of the Board remain the same. THE MAYOR CALLED THE QUESTION AND THE MOTION CARRIED UNANIMOUSLY.

Rene DeHall was present and asked what the intent of the Board was with respect to the lease. She was told that the intent was to renew the lease for five years under the current terms.

The Town Attorney agreed to prepare the update and clarification of language in the lease for review by the Board.

6. The Town Administrator reported that he and the Town Planner had met earlier in the day with Division of Community Assistance Planner Geoffrey Willett and discussed the update of the Land Use Plan; Mr. Willett's schedule provided for some time beginning in February to begin work on the project. Mr. Willett had also agreed that it would be a good idea for the Town Board and the Planning Board to meet together in a joint work session, and had also agreed to give a brief presentation on what a Land Use Plan is and how an update normally works. Mr. Gantenbein had reported earlier that the Marketek population study would be ready by February, and it could be distributed at the same meeting. The Board agreed to hold such a joint meeting during the second regular meeting in the month, February 18, and to defer as much other business as possible on the agenda.

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

MOVED BY COMM. JAMES, SECONDED BY COMM. MARSH, AND UNANIMOUSLY CARRIED TO ACCEPT THE REPORT.

Comm. Patterson asked about the discussion the Fire Department had been having regarding employing a full-time person; part-time secretary Bob Houston had said he would be retiring at the end of the year. It was agreed that this would be discussed at budget time.

8. Manuel DeJuan was present representing Old Edwards Inn. He said the Inn was planning on providing valet parking for their guests, which would free up many parking spaces on Main Street, and he said they would like to ask for permission to reserve two spaces on Main Street for loading and unloading; there was currently a 15-minute space on Fourth Street and a single unloading space on Main Street. Comm. James suggested that the Public Works Committee review the request, and the Board agreed by consensus.

VII. MOVED BY COMM. DEWOLF, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:10 p.m.

Richard Betz, Town Clerk