

PUBLIC HEARING and REGULAR BOARD MEETING of July 2, 2003, with Mayor Buck Trott and Commissioners H. N. James, Hank Ross, Mike Cavender, Ron Sanders, and Amy Patterson present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Larry Gantenbein, Selwyn Chalker, Jerry Cook, Kim Lewicki, Katy Stillerman, Debbie Putney, Jack Corley, Bill Staley, Jim Jordan, Allan Schultz, Rick & Helen Siegel, Barbara Werder, Randy Power, Stan Cochran, Bob Wright, Dave Jellison, Ginger Slaughter, Lewis Doggett, Bill Rethorst, Farrel Zehr, Wistar Gary, Alan Marsh, Jodie & Carolyn Cook, Karen Hawk, Thomas Craig, Tony Potts, Chris Alley, Dennis Dewolf, Derek Taylor, Luke Osteen, David Rohrer, Christy Kelly, Tony Chambers, Lloyd Wagner, Betty Reamer, Ann Schneider, Kendall Hobson, and many others.

A. Public Hearing.

The Mayor called the Public Hearing to order at 7:05 p.m. and stated that its purpose was to receive comments from the public on an application by Kendall Hobson for a variance from the road grade and width requirements in the subdivision regulations for the Kendall Hobson Subdivision. Notice of the hearing had been provided pursuant to law. The Mayor asked for comments from the public; there were none. He closed the hearing at 7:06 p.m.

B. Regular Board Meeting.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:06 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail. The Clerk reported that one item of New Business--a request for a 15-minute parking space--had been postponed until the next meeting, that two Committee reports were not ready, and that there were no applications for employment to be reviewed in Closed Session. The Mayor recommended that, due to the large number of people in the room present for Item No. 3 of Old Business--Discuss Room Occupancy Tax--that item be taken up immediately.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS AMENDED.

The Mayor then asked if anyone was present to speak on behalf of the Chamber of Commerce with respect to the issue of a proposal that the Town take over the Room Occupancy Tax; the Board had agreed at the previous meeting to place this item on the agenda.

Allan Schultz was present and said that he would be glad to answer any questions about the Occupancy Tax on behalf of the Chamber of Commerce. He said he had served on the Chamber Board for three years, noted that the Town and Chamber had worked together on many projects in the past, and said he appreciated what the Town had done. At the same time, he felt that communication between the two Boards needed to improve; he had never seen a Town Board member attend a Chamber Board meeting in three years, and only the Town Administrator and Comm. Ross had attended a Chamber retreat last April. He said that at a meeting with the Finance Committee, Comm. Patterson had said that an open work session should be held to discuss disbursement of the Occupancy Tax and the direction of the Chamber, and he felt that idea was a good one. He also felt that the Chamber needed to reinstitute an Occupancy Tax Review Board, which would consist of representation from the County, the Town, the accommodations group, and the Chamber's Executive Committee, and would meet twice a year. He felt that it would be a disservice to the community for the Town to ask for the Occupancy Tax funds without first talking to the

Chamber. Since 1986, the County had contracted with the Chambers in Franklin and Highlands to use the funds to promote travel and tourism because it had not had a Travel & Tourism Authority at that time. He felt that the Town could lose the funds to another entity, such as a County TTA or Smoky Mountain Host; he thought it would be better for the funds to be kept on a local level rather than being handled by someone in Franklin.

Comm. Ross read a prepared statement, saying that he felt the Chamber of Commerce and Visitors Center were important to the economic health of the Town and that he felt it ought to be kept separate from the Town; he thought it should be left up to the business community and the professionals hired to manage it. If the County took over the Tax, he felt that there would be a serious risk that it would not benefit the local community, and there were no guarantees that future Town Boards would use the funds as they should. He felt that the room tax money should stay where it was and this discussion should end tonight.

Comm. Cavender said that he had drafted several recommendations after the last meeting, and they had been included in the agenda package. The recommendations included establishment of a Town Travel and Tourism Board, which would consist of members appointed by the Town Board, serving staggered terms, and representing the Chamber of Commerce, accommodations business, the non-profits arts community, the director of the Visitors Center, the Parks and Recreation Director, and two at-large members. Such a Board would accept grant applications, carry out its proceedings publicly, and make recommendations to the Town Board. The Tax would fund the Visitors Center, various activities open to the public, and the cultural life in Highlands, with preference to non-profit organizations; the funds would support program expenses, not operating expenses or salaries, and the programs would have significant recreational artistic, educational, or entertainment value. The tax would also fund capital expenses for buildings and structures open to the public on a regular basis. He added that he had been a member of the Chamber since 1986 and had served on the Board and as Vice President. He took exception to a recent Chamber communication that had appeared in The Highlander claiming that the Town did not support economic development and was anti-business; he pointed out that the Town had spend close to \$1 million on Main Street, adopted a parking ordinance so customers could have better access, and was preparing to fund a Wastewater Treatment Plant expansion costing close to \$5 million so that economic development would not be stopped. He also said that, since the 1980's, the Town through its Land Use Plan had worked to keep Highlands low-density, with a favorable second home market and stable economic base rather than high turnover like other resort Towns, and had also consolidated the central business district and eliminated drive-through windows, thus discouraging fast-food restaurants. To say that the Town was anti-business was grossly misleading; the Town instead favored economic development that develops slowly and surely, benefitting the whole community, not just a portion of it.

Comm. Patterson said that Mr. Shultz had addressed some of the points that she had raised at earlier meetings. She felt, however, that the Chamber served a different constituency than the Town Board, and she felt that there was an inherent potential for misuse in a single Board deciding how the Occupancy Tax was distributed. She felt that perhaps a Board other than the Chamber Board needed to oversee how the funds were allocated so that it would answer to the overall community and objectives of Highlands. She also said she had several specific questions concerning the allocations made last year; she noted on the profit and loss statement that she had received that no non-profits had been funded, and she wondered whether that had been a decision of the Chamber or if none had applied for funding.

Allan Schultz said that the issue of non-profits had been addressed last year during several meetings, and pursuant to the recommendations of the N. C. Travel & Tourism Institute; the new procedure had taken a lot of time to develop, and non-profits had been invited to participate. The new policy called for funds to be used for advertizing and promotion of non-profit events on a 50/50

basis. This past year, six requests had been made, and all had been granted.

Comm. Sanders suggested that the Town Board and Chamber Board meet in a special work session to try to get this issue resolved.

Tony Chambers was present and said that he had served as Director of the Chamber of Commerce in 1954 and 1955 at a time when many had left Town because they were unable to make a living after World War II. He said that he was glad the Chamber had not followed the lead of Gatlinburg, and felt that in the last ten years the Chamber had done a great job with the Occupancy Tax money; the Chamber had also been very generous to the Historical Society and had helped the Town promote its historical character.

Christy Kelly was present, and said that she was a voter, had raised children in Highlands and lived here since the early 70's, and had also served as Director of the Chamber from 1994 to 2001. She said she was saddened and embarrassed by the things she saw going on now, which she felt was contrary to the spirit of what she had worked for over the years. She said she was in favor of the proposal that the Town take over the Occupancy Tax; she felt that the funds were best handled by an elected body, and she felt that while the Chamber had once been a broad-based body, it now seemed as if only the innkeepers had a say. She also pointed out that its constituency now included out-of-Town realtors, contractors, and businesses, and pointed out that out of 500 business in Highlands only 200 were Chamber members. She had heard many businesses say that they had no voice, and that it was no longer a cross-section of the community. She said that, although Macon County's policies allowed the Chamber to use 10% to 12% of the Occupancy Tax for administration, according to last year's audit 50% had been used for administration and salaries. She also said that only 10% of the Tax had been put back into the community; in the past, 30% had been put back. She also wondered how the Chamber was operating, since invoices had not yet been sent out for the new fiscal year. In the past, she felt that word of mouth had been more than enough to bring people here; now special interest groups wanted to fill rooms. She said that if the Town Board did not act soon and affirm the plan before them, these funds would be lost to the community.

Barbara Werder was present and said that she adamantly refuted all of the accusations made by Ms. Kelly. She said she would be more than willing to sit down and talk to the Board in a work session.

Lloyd Wagner, owner of the Bird Barn, was present and said that he was a new merchant in Town. He felt that there were many personal issues involved that did not belong in the room. He thought that Chamber advertizing had helped restaurants and retail stores as well as innkeepers, and had also helped create a year-round business community, not just a seasonal one. He felt that the Town Board and Chamber Board should be working together instead of going in opposite directions; without promotion of business, the Town would suffer loss of tax revenues, and the real estate community would not have a base for selling homes. He felt that the Chamber's mission was to bring people here, and although there had been a three-year transition in leadership, it was time to move forward. He felt that the Town Board should take care of Town business and let the Chamber take care of what it was supposed to do.

Betty Reamer was present, and said that she agreed with Comm. Sanders; she also requested that representation be present at the work session from the Visitors Center volunteers.

Jim Lewicki, owner of Highlands Vacation Rentals, was present. He said that he paid Occupancy Tax money for several rental properties in Jackson County; that went down to Macon County with the other money collected and back up the hill. But now he had to deal with Trillium and other giant real estate people who were not located in Macon County and were in competition with him; the money they took went to Sylva. He said that the Chamber of Commerce served a constituency that seemed to him like a parallel government; the

Town Board was accountable to the voters, but that constituency was not accountable. He felt the Chamber should be more open, and that the citizens of Highlands were not being served.

Thomas Craig said that he had been a Board member, but he felt that Christy Kelly's comments and Jim LeWicki's comments were most enlightening; he felt the two Boards should schedule a joint meeting.

Bill Rethorst was present and said that, as a citizen, he was concerned that tax money was not being monitored by public officials; he felt that it needed to be monitored by a public Board that was accountable.

MOVED BY COMM. SANDERS, SECONDED BY COMM. PATTERSON, AND CARRIED THAT THE BOARD SCHEDULE A WORK SESSION WITH THE CHAMBER OF COMMERCE BOARD; Comms. Sanders, Patterson, Cavender, and James voted "aye;" Comm. Ross voted "nay." It was agreed that the Mayor and the Chamber President would schedule a time for a meeting and then notify their respective Boards and the Press.

Ann Schneider was present and commented on volunteers that had been dismissed by the Chamber of Commerce; if they were to be treated as employees, she felt they should have the same rights as employees, and should be notified what they had done wrong.

### III. Approval of Minutes.

Copies of the minutes of the June 18 Regular Board Meeting and the June 25 Budget Hearing and Special Board Meeting had been distributed by mail.

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

### IV. Reports.

1. The Mayor reported that he would be out of Town for the next regular Board meeting on July 16, and Mayor Pro Tem Patterson agreed to preside over the meeting.

He also presented the following proclamation:

Proclamation of  
WHLC WEEK in Highlands  
July 7 - July 13, 2003

**WHEREAS**, WHLC has served the Highlands Community for several years; and

**WHEREAS**, WHLC has given broadcast time to many civic and charitable causes; and

**WHEREAS**, WHLC has provided an invaluable weather and road conditions service to the Highlands Community; and

**WHEREAS**, WHLC has on innumerable occasions broadcast emergency information to the Community; and

**WHEREAS**, WHLC and Chuck Cooper have been the voice of the community for special events such as the Christmas Tree lighting and the Fourth of July fireworks.

**NOW, THEREFORE, I, Allen L. "Buck" Trott**, Mayor of Highlands, do hereby express my appreciation to WHLC for ten years of service, and do hereby proclaim **the Week of July 7 - July 13, 2003** as WHLC WEEK in the Town of Highlands.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE THE PROCLAMATION.

Comm. James asked if it was policy to approve proclamations of this type for private businesses. The Mayor said he felt it was justified considering all that WHLC did for the Town.

Mayor Trott also reported that he had learned that \$50,000 in funding for the Nature Center had been approved as part of the State Budget adopted the previous day.

2. Each Board member had received a copy of the Public Services Administrator's written report for the month. Lamar Nix reported that the Water Treatment Plant had been operating well despite recent high turbidity in Big Creek, which he had reported to the County soil erosion officials and which he believed was coming from several small construction projects upstream. The Wastewater Treatment Plant was also operating well, with flows considerably higher than the previous year; he believed that the increase in flows could be due to the addition of the S. B. Associates sewer system, as well as overall increased residency.

3. Each Board member had received a copy of the Police Chief's written report for the month; Jerry Cook was present to answer questions.

4. 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.

5. Each Board member had received a copy of the Recreation Director's report for the month. Selwyn Chalker was present and reported that the Fourth of July fireworks display was on schedule, depending on the weather. He also asked those present to participate in a survey that he had distributed concerning use of the Recreation Park.

6. The Town Administrator reported that the Town Office had experienced a serious computer problem and was in the process of restoring lost accounting and other data from hard copies. The Treasurer's Report was therefore not available, and utility bills would be late this month as well. He reminded the Board that funds had been budgeted for new accounting software this year, and he said that Staff would be reviewing proposals as soon as possible when the fiscal year had been closed out and the data had been restored; restoration was proceeding in cooperation with the Town's auditors and accounting software vendor. He said that the office staff--Hilda Brown, Gail Reese, Dawn James, and Lisa Wilson--had been working very diligently on the problem. Comm. Cavender felt that the Staff was due a lot of praise, and the Mayor agreed.

7. The Town Administrator also reported that the filing period for Town elections would begin on July 7th; he had been informed by the Board of Elections, however, that candidates would have to sign up at the County Courthouse in Franklin.

He also reported that the Town had learned that the \$400,000 Rural Center grant had been approved for the Hospital Water Line Project.

Comm. Sanders asked about funding for the rest of the project, and he explained that a \$200,000 ARC grant had been sent to Washington for final approval, the application for the \$450,000 STAG grant already allocated by Congress was being completed for the EPA by McGill, the Hospital had agreed to a \$200,000 donation, and the final \$101,000 was expected to be provided by Macon County in FY 04-05 although a commitment from them had not yet been received. The time frame was for McGill to begin preparing plans as soon as possible.

Lamar Nix agreed, and said that the window for completion of the project was very narrow; he felt that a contract should be awarded by November 1.

#### V. Old Business.

1. Each Board member had received at the previous meeting a copy

of a letter and report from Dave Harris, the consultant with Custom Communications who had drafted the Town's Pole Attachment Ordinance, Cable TV Ordinance, and Cable TV franchises five years ago. The report addressed the issues concerning Highlands Cable Group and Northland Cable discussed at the June 4 meeting. The Mayor asked if make-ready plans had been prepared as recommended by Mr. Harris.

Nin Bond was present and said that he had started to do that, but had ridden the lines with Town Engineer Lamar Nix and noticed that there were many pre-existing violations; he had not proceeded until that question had been answered. Comm. James said that make-ready plans should already have been prepared. Mr. Bond said that he had already constructed 35 miles of cable outside of Town, and reiterated that the issue of pre-existing violations needed to be addressed; he asked if the Town was going to enforce its Pole Attachment Ordinance, or not? He said that he had the options of by-passing the poles that were in violation, going underground, or attaching if there were no violations. The Town Administrator said that it was his understanding that make-ready plans should have been submitted before Mr. Bond could proceed, and that they should consist of a map or plan of the entire system and the necessary permits required, together with the other requirements of the Franchise Ordinance. Mr. Bond said that he had such prepared maps of the entire system; the Town Administrator and Town Engineer both said they had not yet been submitted. Comm. James felt that the overall make-ready plan should indicate what was involved and what it would cost to change out the poles; he felt it was going to cost somebody a whole lot of money, and the Board needed to know how much. Comm. Cavender agreed that the Board needed to have some kind of plan to review; poles could not be approved on a day-to-day basis. The plan should indicate each segment of line, who was out of compliance, whether a new pole was needed, or whether underground was going to be used. He also felt that there should be some documentation of Mr. Bond's financial responsibility for the cost of any new poles required or posting of any bond required.

Bill Staley, Regional Manager for Northland Cable, said that if his company was out of compliance it was up to the Town to notify him, and he would correct the violation. He also noted that when Northland had purchased the system from Mr. Bond years ago, he had certified that it was in compliance. He also said that he understood that Mr. Bond had stated in a previous meeting that Northland had purposefully raised its lines in order to squeeze him off the poles; that statement was absolutely false.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO EXTEND THE CONSTRUCTION SCHEDULE FOR HIGHLANDS CABLE GROUP TWELVE MONTHS, CONTINGENT ON SUBMITTAL TO THE BOARD OF DETAILED MAKE-READY PLANS INDICATING THE NEW POLES REQUIRED AND THE TOTAL COST, AS WELL AS DOCUMENTATION OF THE FINANCIAL RESPONSIBILITY OF HIGHLANDS CABLE TO PAY THE COST.

## VI. New Business.

1. The Town Planner confirmed that both a variance application and a preliminary subdivision plat had been submitted for the Kendall Hobson Subdivision, subject of a public hearing preceding this meeting; there had been no testimony in opposition to the application at the hearing. The Town Administrator reviewed the four conditions for a variance and the answers provided, which had been distributed to the Board with the agenda package. The conditions were as follows:

"(A) That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his land;

(B) That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;

(C) That the circumstances giving rise to the need for the variance are peculiar to the parcel, and are not generally

characteristic of other parcels in the jurisdiction of this Ordinance; and

(D) That the granting of the variance will not be detrimental to the public health, safety, and welfare, or injurious to other property in the territory in which said property is situated."

Larry Gantenbein said that the Planning Board had concluded that the request for a variance was a reasonable one because, as the answers provided had indicated, all of the conditions had been met; the road was a private one and would match the existing grade and road widths lower down the mountain. He also said that the Planning Board had asked about a proposed roadway which was possibly encroaching on Highlands Land Trust property, but had not had the documents to assess the issue until this evening. He said that a certified plat had been submitted, and the presumption was that it would accurately show all of the easements in place. However, he said that it may be appropriate to receive legal confirmation by reviewing the deeds, and to base approval of the variance on such confirmation. Kendall Hobson was present and said that his attorney had drawn up the sale to the Highlands Land Trust, and it would be easy to ascertain that information from the deed. Town Attorney Bill Coward was present and agreed to review the deed. Comm. Ross asked about access across the property, and Mr. Hobson replied that it was a private road; access would be provided for the Land Trust and its guests and other private property owners in the subdivision. Lewis Doggett said that the Planning Board had expressed concern about this issue because many hikers used the road to access the summit of Satulah Mountain; he had understood that there would be access. Comm. Cavender said that there was access from the other side of the mountain; he also said that the Highlands Land Trust wanted Satulah Summit to be there for the public to enjoy, and it would welcome them. Parking was an issue, but hikers could park at Nick's Restaurant and hike up the mountain. He also pointed out that approving the subdivision did not change the legal status of the right-of-way across the property. The Town Attorney said that the deed should describe the purposes for the easement and whether or not it was open to the public.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO APPROVE THE VARIANCE AND THE PRELIMINARY SUBDIVISION PLAT AS RECOMMENDED BY THE PLANNING BOARD, CONTINGENT ON REVIEW OF THE DEED BY THE TOWN ATTORNEY.

3. Jim Jordan was present and said that he was an attorney representing Main Street Inn Inc. and its owners, Farrel and Jan Zehr. He had submitted a petition for re-zoning, from B-2 Business to B-1, and he requested that the Board refer it to the Planning Board for a recommendation. He said that the Inn was presently operating as a small motel and restaurant serving meals primarily to guests; in longer terms, it had been a fixture in Highlands for many years and a focus for community hospitality. He said that the owners were trying to reconstruct that spirit, making it a quality place for out-of-Towners and locals alike. He pointed out that the B-1 district permitted restaurants and other uses without providing off-street parking, but that the district ended at Third Street; for all practical purposes, however, it was part of the downtown district, and he felt it would also not be "spot zoning" since it abutted B-1. His opinion was that the Inn's non-conforming use as a restaurant had been "grand-fathered" as a full service restaurant and hotel. Although he acknowledged that there was disagreement on this point, he said his clients wanted to find a way to resolve differences. The re-zoning would permit them to serve the general public as well as guests in the hotel. On behalf of his client, he apologized for any misunderstanding; he also waived his right to a hearing while the application was in process, and if the petition for re-zoning was denied, he said he would not hold it against the Town. Comm. Ross asked how long it had been since the restaurant had operated as a full service, public restaurant. Farrel Zehr replied that it had not been since 1995, although since then several catered functions had been held. The Mayor pointed out that, in the B-1 district, hotels and motels were not allowed, and the number of rooms would be "grand-fathered" at the current number. Mr. Jordan

said that was correct, and he also said that there were no plans for change of the physical property. Comm. Cavender asked the Zoning Administrator if the owners could build on the open space if the property was re-zoned, since there would be no setbacks. He replied that the 1:1 ratio and the 70% built-upon provisions would likely prohibit any addition.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO REFER TO REQUEST TO THE PLANNING BOARD.

3. MOVED BY COMM. PATTERSON, SECONDED BY COMM. SANDERS, 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 WITH MAIN STREET INN INC. All present left the room except the Town Attorney, Zoning Administrator, and Clerk.

The Town Attorney reported that a notice of violation had been issued to Main Street Inn Inc., and that they had waived the right to a hearing within 30 days; the Ordinance provided that the violation could continue pending the hearing of the appeal.

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

VII. MOVED BY COMM. CAVENDER TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 9:30 p.m.

---

Richard Betz, Town Clerk