

REGULAR MEETING OF THE TOWN BOARD OF COMMISSIONERS OF JUNE 16, 2010

Town Board Present: Mayor David Wilkes, Vice Mayor Amy Patterson, Commissioner Dennis DeWolf, Commissioner Larry Rogers, Commissioner John Dotson and Commissioner Gary Drake.

Also Present: Town Manager Jim Fatland, Planning & Development Director Joe Cooley, Recreation Director Selwyn Chalker, Town Engineer Lamar Nix, Police Chief Bill Harrell, Recording Secretary Jane Capman and Town Attorney William Coward.

1. Call to order

Mayor David Wilkes called the meeting to order at 7:00 p.m.

2. Public Comments

Comments were made as to the final cost of the proposed dog park and if taxpayers would have to pay more. Town Manager Jim Fatland advised that funds had been budgeted and if more money were to be needed, the request would have to go before the Board for approval.

3. Approve Amended Agenda

Town Manager Jim Fatland advised the Board and the public that the Resolution Authorizing Macon County to Enforce Animal Control Ordinance in Town Limits had been added to the Agenda.

Regarding the Continued Public Hearing: John Shearl Zoning Request, Craig Justus, Esq. of the Law Firm of Van Winkle, Buck, Wall, Starnes & Davis, P.A. forwarded a request for continuance at 5:30 pm which Mayor Wilkes read to the Board. Vice Mayor Amy Patterson stated that the letter was requesting a continuance regarding the Zoning Board, which had already ruled. Richard Melvin stated that he spoke with Mr. Justus who was requesting a continuance with the Board of Commissioners.

Commissioner Gary Drake moved to approve the Amended Agenda, was seconded by Commissioner Larry Rogers and was unanimous.

4. Approve Minutes of June 2, 2010

The following correction is made to the June 2, 2010 Minutes:

Page 1 entitled Public Comments is amended to read as follows:

Alan Marsh discussed the county safe slope ordinance and the issues facing realtors.

Vice Mayor Amy Patterson moved to approve the Minutes of June 2, 2010 as amended, was seconded by Commissioner John Dotson and was unanimous.

5. Reports

A. Mayor

There was no Mayor report.

B. Commissioners

Vice Mayor Amy Patterson inquired of the Town Attorney as to the revamping of the personnel manual and was advised that it was being worked on.

There were no Commissioner reports.

C. Committees

The Business Committee gave its report regarding parking.

The Scholarship Committee gave its report. Commissioner Dennis DeWolf read several letters from students thanking the Town for their scholarships. Commissioner DeWolf also discussed the golf tournament.

D. Town Manager

Town Manager Jim Fatland gave his report and advised that notice had been received regarding the Small Town Main Street Program and that Highlands is now one of five and a site visit will be made soon.

6. Consent Agenda

- A. Public Services Department
- B. Police Department
- C. Parks & Recreation Department
- D. Planning & Zoning Department
- E. Treasurer's Report for Month Ended May 31, 2010
- F. Monthly Calendar
- G. Grant Status Report

Commissioner Gary Drake moved to approve the Consent Agenda, was seconded by Commissioner Larry Rogers and was unanimous.

7. Continued Public Hearing: John Shearl Zoning Request

This matter was continued from the May 5, 2010 Board of Commissioners meeting.

This is Rezoning Application #RZ0310 by Applicant John Shearl for property located at 1663 S. 4th Street, Highlands (Parcel No. 14-27522) in which the lot is split zoned (B-3 and R-1).

Site Use History

The subject parcel contains 0.95 acres. The front portion of the site has long been used for commercial purposes, including a cabinet shop, general contracting office, and currently a landscaping business. The current landscape business has been using the building and parking area in the front half of the lot for office space, parking, and material storage. The back portion of the site (approximately 0.48 acres) is currently utilized as a material yard and parking area for trucks and equipment. The materials stored in the back are used for installation projects and are also for sale to the public.

A complaint was received by the Planning and Development Department from an adjoining neighbor that the residential portion of the lot was being used for commercial purposes. Upon inspection and review of zoning maps, plats, past Board of Commissioner meeting minutes, and files a determination was made by the Planning and Development Director that:

1. the lot is split zoned, the front half of the lot being zoned B-3 and the rear half being zoned R-1;
2. the residential portion of the property had not been in commercial use at the time of the split zoning and therefore was not grandfathered as an existing non-conforming use;
3. the residentially zoned property was being used for commercial purposes in violation of the zoning code; and
4. the storage building within the residentially zoned section was located within the road right-of-way in violation of the zoning code.

The subject property owner appealed that decision (#APP-0109) to the Zoning Board of Adjustment (ZBA) and the administrative decision was upheld unanimously by the ZBA. The property owner has appealed the ZBA decision to Macon County Superior Court, hence, any enforcement action has been stayed pending the resolution of that lawsuit.

Pertinent information regarding the current zoning status:

- **Uses allowed in R-1 zoning by right:** single family dwellings, parks & playgrounds, and golf and tennis clubs.
- **Uses allowed in B-3 zoning by right:** single dwellings, parks & playgrounds, retail and wholesale businesses and retail service businesses, professional offices, outdoor storage yards containing materials for sale (with conditions including visual screening from the road).
- The lot is divided into two zoning districts, B-3 and R-1. The minimum lot size in R-1 is 33,000 sq. ft. The minimum lot size for single family residential in B-3 is 22,000 sq. ft. The R-1 area currently being requested to be zoned B-3 is approximately 0.48 acre (20,910 sf ±).
- The subject property is not within a watershed overlay district.
- The highway corridor along Hwy. 28 (S. 4th Street) was zoned B-3 (commercial) to a depth of 230 feet from the centerline of Hwy. 28, by the Board of Commission on 10/19/83, as identified on the 1983 official zoning map and the 1988 official zoning map.
- The 230 foot zoning line adopted in 1983 split zoned the subject property into two zoning districts making approximately the back 1/5 of the lot residential and approximately the front 4/5 commercial zoning.
- In 1993, in an effort to limit strip commercial development along Hwy. 28, the Planning Board made recommendations to reduce the amount of commercial zoned property along the corridor. The Board of Commissioners adopted said town initiated rezoning in 1990. The 230 foot zoning line was eliminated and the current zoning districts adopted.

- The subject property was split with approximately the front one-half zoned B-3 and the rear one-half zoned R-1.
- The subject property is part of the Indian Hills subdivision (preliminary plat approved 10/25/93), identified as such in a survey by Stephen Foster for Mrs. Frances Reed of the Frances Reed Development dated 10/11/93.
 - The subject property is one lot, but the front half is clearly identified as being zoned B-3, while the back half is identified as being zoned R-1. A line is drawn demarcating the division on the survey.
- The Applicant closed upon the subject property on 11/10/93.

Property Analysis:

Topography

- The property is relatively flat adjacent to U.S. 28, however, further back on the property is a steep bluff running NW to SE across the property, sloping down to Brushy Face Road to the south. The area below the bluff edge is wooded. It appears that some of the area within the residentially zoned part of the lot has been filled and the level area extended along Catawba Trail.
- A small stream runs north to south across the front ½ of the lot (B-3 zoned).

Current Uses

- A landscaping business is currently located on the lot.
- A concrete block building is located on the front part of the property (B-3) and is used as a business office for the landscape business.
- The area fronting U.S. 28 is utilized for parking and storage (B-3).
- Approximately the back ½ of the lot (R-1) is being used as a commercial storage area including materials for sale to the public and equipment, and parking to commercial trucks.
- Land below the bluff line is wooded and in a natural state.

Right-of-Way and Setbacks

- The property has roadways on three sides.
- The subject property is adjacent to U.S. 28 (S. 4th St.) to the east; Catawba Trail (public road) to the north; and Brushy Face Road to the south.
- The existing structure in the B-3 portion of the lot is within the Catawba Trail right-of-way and is a legal non-conforming structure.
- The storage structure in the R-1 portion of the lot is within the Catawba Trail right-of-way and is an illegal structure.
- Part of the R-1 portion of the lot is being used for commercial purposes in violation of the zoning code.
- The property across U.S. 28 to the east from the subject property is zoned B-3 commercial; the property adjacent to and directly north of the subject property is zoned R-1 residential. There is B-3 zoned property along U.S. 28 that is tangent to the subject property at U.S. 28, however,

the residentially zoned property forms a triangle between the subject property and the other commercial property on U.S. 28.

- When Indian Hills subdivision was platted, the Catawba Trail was located on the northern most portion of the 40 foot right-of-way resulting in approximately 34 feet of the right-of-way falling on the subject property. Additionally, there is a 25 foot building setback required from the ROW under the zoning ordinance.
- There is a 40 foot setback from the centerline of Brushy Face Road (private road with no defined ROW).
- Due to the setback requirements from the adjacent roads a very narrow area of the residentially zoned section of the lot is developable; running from approximately 15 feet wide to approximately 50 feet wide. However, the entire area is on the steep slope section of the property, rendering this section of the lot undevelopable without significant fill and retaining walls.
- Development of a residential or commercial structure would be very difficult on the section of the lot currently zoned R-1.

Summary

The area being requested to be rezoned from R-1 to B-3 is an extremely difficult site for any type of structural development due to the topography and setback requirements. Currently a portion along Catawba Trail, across from a residence and within the current right-of-way, is being used for commercial storage and parking of commercial vehicles in violation of the zoning ordinance.

The requested rezoning of the R-1 portion of the lot to B-3 would allow the use of the flat portion of the R-1 area for which it is currently utilized in violation of the R-1 zoning district.

If rezoned to B-3 a fence or landscape buffer would be required to screen the commercial storage area from view of the adjacent roadway (Catawba Trail). However, in that approximately 34 feet of the subject property long Catawba Trail is within the dedicated right-of-way, the Applicant would also have to obtain a variance from the Board of Commissioners to place any structure within the right of way.

If the Board of Commissioners rezones the property to B-3 it should be done with the understanding that the Applicant will be required to obtain the needed ROW variance from the Board of Commissioners and the Applicant will be required to place a fence/screen around the outdoor storage area in the Catawba Trail ROW.

Discussion was had amongst the Board members and the public regarding the continuation of the hearing at the request of the Van Winkle law firm and it was ultimately decided that it should proceed.

Property owner Tracy Hedden stated that she opposed the continuance and wanted this issue resolved at tonight's meeting. Gerald Hedden stated that the matter before the Board was just a request to re-zone and that this Board is not a Court of law.

Richard Melvin entered his request for a continuance and advised the Board that a case has already been filed in Macon County Superior Court regarding Mr. Shearl's appeal of the Zoning Board of Adjustment's decision.

John Shearl appeared before the Board and advised that he had no objection if

this matter were to be continued but that he was ready to speak. Mr. Shearl stated that he feels that he is being mistreated, that there is a lot of miscommunication and is “sick and tired” of the rulings being handed down. Mr. Shearl further discussed the zoning line and that the Town had not proved that the zoning line should in fact be where it presently is and also discussed the previous meeting in which Brushy Face homeowners appeared. Mr. Shearl stated that he was only looking to rezone 0.42 acres.

Griffin Bell, of Brushy Face, appeared before the Board advising that he purchased his property in 1996, has watched Mr. Shearl’s business grow and that he had no objection to a continuance of this hearing.

Town Attorney William Coward advised that continuing the hearing would be at the Board’s discretion and that the request for continuance from the Van Winkle law firm was untimely received. Tracy Hedden discussed Mr. Shearl’s property and her children who are now fearful to play outside.

There was continued discussion amongst the Board members concerning this matter. Vice Mayor Patterson stated that this is a “simple” zoning request and further discussed the Planning Board, Zoning Board of Adjustments and their procedures. Commissioner Gary Drake inquired of Joe Cooley if rezoning this particular parcel would set a precedent. Mr. Cooley advised that it would not as each request would have to come before a board for review and approval and are handled as individual cases.

It was ultimately decided that the hearing would take place.

John Shearl appeared before the Board and discussed the Zoning Board of Adjustment and the Planning Board rulings. Mr. Shearl stated that he purchased the subject property for his business, that his business has grown over the years and stated that he understands that he has many pieces of equipment. Mr. Shearl further stated that if he were to lose the 0.42 acres, all of his equipment would have to be placed on the remaining 0.53 acres and asked “what would that look like?” Mr. Sheal continued and stated that he has tried to be cooperative regarding working hours, that he never saw the plat, which showed the zoning line, that zoning lines should following lot lines and feels that he should be “grandfathered in”. Mr. Shearl advised that he has looked to the Board for help but that this matter is still not resolved and if the property were not rezoned Mr. Shearl stated that “you just took it away from me” and it will have zero value. Mr. Sheal stated that he had sent letters to homeowners in the vicinity but never received any response, had had items stolen from his business and feels that his property is not the “only eyesore” in the area. Mr. Shearl stated that he feels that no ordinances have been followed, that the only zoning map he needs cannot be located and further stated that he does not want to go against the town but will fight for what is “rightfully mine”.

Richard Melvin inquired if the Board was going to continue the hearing otherwise he would make a statement.

Commissioner Larry Rogers stated that he agreed with everyone one and discussed the zoning line and the timing of the placement of the line and that the Town was wrong. Commissioner Rogers further stated that the parties should come to a compromise and feels that the property should be zoned commercial.

Members of the public spoke and stated that this matter was previously continued because of the absence of Joe Cooley and further stated that Mr. Cooley was being silent at tonight’s meeting.

Mr. Cooley addressed the Board and stated that if the property were to be rezoned to B-3, that a fence or landscape buffer would be required to screen the commercial storage area from view of the adjacent roadway (Catawba Trail). However, in that approximately 34 feet of the subject property long Catawba Trail is within the dedicated right-of-way, the Applicant would also have to obtain a variance from the Board of Commissioners to place any structure within the right of way. Mr. Cooley also discussed the Planning Board and its procedures.

Vice Mayor Amy Patterson moved to close the public hearing, was seconded by Commissioner Larry Rogers and was unanimous.

Richard Melvin voiced his objection to the closing of the public hearing and Town Attorney William Coward advised the Board to let Mr. Melvin speak.

Vice Mayor Amy Patterson moved to re-open the public hearing, was seconded by Commissioner John Dotson and was unanimous.

Mr. Melvin addressed the Board and stated that John Shearl's property was commercial before it was annexed into the town and advised that he was on the Planning Board for 15 years or more and was on that Board when the first zoning and subdivision ordinances were enacted. Concerning Mr. Shearl's property, Mr. Melvin questioned how could the Town take away what he (Shearl) had been doing for twenty years.

Mr. Melvin request that Commissioner John Dotson be recused as he was a realtor involved in the Shearl purchase. Mayor Wilkes discussed with the Board members and the public the process of recusal and in this instance, it was not an option.

Vice Mayor Amy Patterson moved to close the public hearing, was seconded by Commissioner Larry Rogers and was unanimous.

8. Consider Approval/Disapproval of John Shearl Zoning Request

Vice Mayor Patterson stated that it was this Board's job to decide rezoning and further stated that there were many businesses that have outgrown their properties. Vice Mayor Patterson concluded by stating that there were lots of properties where there were sections that were not useable, that the purpose of restrictions is to be protective, that the portion of Mr. Shearl's property that is zoned residential should remain so and that Mr. Shearl's request should be denied.

Vice Mayor Amy Patterson moved to deny the John Shearl Zoning Request and was seconded by Commissioner Dennis DeWolf. The vote was 3 to 2 with Commissioners Larry Rogers and Gary Drake voting in favor of the rezoning.

Richard Melvin stated that he wanted the record to show that Commissioner John Dotson voted to deny the Zoning Request.

9. OEI Valet Parking

Town Manager Jim Fatland received the following correspondence from Richard M. Delany, President and Managing Director of Old Edward Hospitality Group, as the valet parking issue had been overlooked:

For the previous two years, 2008 and 2009, Old Edward Inn and Spa had had an

agreement with the town to occupy two valet spaces outside the front entrance of the inn. These spaces are intended for the sole purpose of our arriving guests to check in and unload their luggage. Our bellmen then valet their cars in our valet lot on Spring Street removing them from public parking.

I was recently informed that the agreement between OEHG and the town expired at the end of 2009 so I am writing to formally request from our town commissioners an extension of this agreement for an additional five years. I apologize for the tardiness of this request but I was not here when this agreement was made so was not aware such an agreement existed, nor of the expiration.

Not only do these spaces allow us to provide a heightened level of service at Old Edwards, but more importantly they help us remove a substantial number of cars from prime spaces on Main Street and Church Street, freeing up valued spaces for day visitors and restaurant guests. Since many of our guests arrive Friday afternoon and depart Sunday, and many times do not use their cars while they are here, those spaces would otherwise remain occupied for 48 hours with little chance of turning over for daily visitors and restaurant guests. This is especially true in the summer and fall when the demand for spaces is at its highest. Valet use obviously decreases in the winter season.

Looking at some of our occupancy estimates for 2010 I feel that losing those spaces would have a serious negative impact on businesses in town. Even at a minimum of 20-30% valet use we would remove several thousand vehicles from downtown parking in 2010, freeing up those spaces in town for others.

We are also making a concerted effort to continually increase the percentage of valet use with our pre-arrival correspondence, during the reservation process, and even at arrival. Obviously, not every guest allows us to park their cars but we do our best to encourage this. This is a complimentary service to our guests so there is no value or motivation for them to self-park.

In addition, I would be very concerned about traffic flow as arriving guests pull in front of the Inn and try to drop off a spouse or unload luggage with no spaces available. There are numerous precedents in small towns all over the United States of hotels having dedicated valet or 15 minute drop off spaces for arriving guests to allow for safe traffic.

I truly feel that the businesses, residents, and visitors to Highlands would not want all these guests occupying so many valuable spaces.

I would like to extend my sincerest thanks in advance for the commissioners consideration of this request.

Vice Mayor Amy Patterson stated that she had no issues with the valet parking to which Commissioner Gary Drake concurred and further stated that approval should not be a yearly issue. Vice Mayor Patterson agreed that it should not be necessary that Old Edwards Inn come before the Board yearly for valet parking approval.

Commissioner Dotson raised his concerns and discussed an informal study/photographic essay he personally conducted in 2008-2009 as to the amount of cars parked in the valet lot over a period of a year. Mr. Delany admitted that in the past, the lot was not used properly.

Richard Delany of Old Edwards Group addressed the Board and advised that he had been unaware of the agreement with the Town. Mr. Delany also discussed

the value of public parking and any spaces that can be freed up would be beneficial to the Town.

Mindy Green, Sabrina Hawkins and Arthur Paoletti all addressed the Board and stated that they had no objection to the valet parking spaces at Old Edwards Inn.

Further discussion was had amongst the Board members that Old Edwards Inn should seek approval every five years but it was ultimately agreed that there should not be a time limit. Commissioner Dotson encouraged Old Edwards Inn to take full use of “this as this is a gift” by the Town.

Commissioner Gary Drake moved to renew OEI Valet Parking, with no time limit, was seconded by Commissioner Larry Rogers and was unanimous.

10. **Planning Board Appointments**

This matter was continued from the June 2, 2010 meeting in order to provide more time for the Board to make inquiries of the applicants.

Betty Snow submitted her application for consideration.

The following submitted applications for review and consideration for the June 2, 2010 meeting:

Richard Lee Boger, Robert “Bob” H. McEver, Richard “Dick” A. Hills, Jr., Rick Siegel, Patrick Leonard, and Alan Marsh.

It was announced that Richard “Dick” A. Hills, Jr. had pulled his application for consideration.

Mayor Wilkes discussed the applications and the research done concerning the applicants. Mayor Wilkes further stated that the procedure would change next year. Richard Boger was present at the meeting and stated that although his application showed an out of state cell phone number, he explained to the Board that he owns three properties in the area, is a registered voter and pay Macon County taxes. He advised that his tax bills go to his Atlanta, GA address but stated that he would change that to reflect his Highlands mailing address.

Joe Cooley stated that he checked each address of the applicants with the County to ascertain if in fact they were residents. Mr. Cooley discussed the requirement of residency and the necessity of attendance at the meetings.

Patrick Leonard, an applicant, was in attendance and introduced himself to the Town Board, and expressed his interest of being part of the Planning Board.

Mayor Wilkes passed out ballots to the Board members so that a vote could be taken.

The votes were counted and Alan Marsh and Patrick Leonard have been appointed to the Planning Board. Commissioner DeWolf advised the new appointees that they had “big shoes to fill”.

Attached hereto and made a part hereof are copies of the signed ballots.

11. **Resolution Authorizing Macon County to Enforce Animal Control Ordinance in Town Limits**

The Town Board was given the following Resolution for their review and

approval.

STATE OF NORTH CAROLINA
COUNTY OF MACON

RESOLUTION OF THE TOWN OF HIGHLANDS BOARD OF COMMISSIONERS FOR THE TOWN OF HIGHLANDS, NC, REQUESTING, AUTHORIZING AND PERMITTING MACON COUNTY, NC, TO ENFORCE WITHIN THE TOWN OF HIGHLANDS, NC, THE MACON COUNTY ANIMAL CONTROL ORDINANCE SET FORTH IN CHAPTER 90, ANIMAL CONTROL, OF THE CODE OF ORDINANCES OF THE COUNTY OF MACON, NORTH CAROLINA, AS AMENDED

THAT WHEREAS, Macon County did on October 13, 2008, adopt the Macon County Animal Control Ordinance set forth in Chapter 90, Animal Control, of the Code of Ordinances of the County of Macon, North Carolina; and

WHEREAS, said ordinance has been amended from time to time including an Amendment to the same on June 14, 2010, to amend the "Jurisdiction" of the same; and

WHEREAS, the Town of Highlands has requested Macon County to enforce the Macon County Animal Control Ordinance set forth in Chapter 90, Animal Control, of the Code of Ordinances of the County of Macon, North Carolina, as amended, within the Town of Highlands corporate limits; and

WHEREAS, the Town of Highlands does desire for Macon County to enforce the Macon County Animal Control Ordinance set forth in Chapter 90, Animal Control, of the Code of Ordinances of the County of Macon, North Carolina, as amended, within the Town of Highlands corporate limits; and

WHEREAS, the Town of Highlands and its Board of Commissioners do, by this resolution, hereby request, authorize and permit Macon County to enforce the Macon County Animal Control Ordinance set forth in Chapter 90, Animal Control, of the Code of Ordinances of the County of Macon, North Carolina, as amended, within the Town of Highlands corporate limits.

NOW THEREFORE, upon Motion of Commission Member _____, seconded by Commission Member _____, and duly approved, be it hereby resolved by the Town of Highlands Board of Commissioners as follows:

RESOLVED, the Town of Highlands, NC, does hereby request, authorize and permit Macon County, NC, to enforce the Macon County Animal Control Ordinance set forth in Chapter 90, Animal Control, of the Code of Ordinances of the County of Macon, North Carolina, as amended, within the Town of Highlands corporate limits, and the same shall be applicable within the Town of Highlands, NC.

Adopted at this ____ day of _____, 2010, Regular Meeting of the Town of Highlands Board of Commissioners.

Mayor of the Town of Highlands, NC

ATTEST:

Town Clerk

(Official Seal)

Mayor Wilkes explained the necessity of the Resolution and expressed the need for approval.

Commissioner Gary Drake moved to approve the Resolution Authorizing Macon County to Enforce Animal Control Ordinance in Town Limits, was seconded by Commissioner John Dotson and was unanimous.

12. **Adjourn**

Vice Mayor Amy Patterson moved to adjourn, was seconded by Commissioner Gary Drake and the Town Board meeting adjourned at 8:40 p.m.

James R. Fatland
Town Manager

Jane J. Capman
Recording Secretary

David Wilkes
Mayor