

REGULAR MEETING
BOARD OF ALDERMEN
TOWN OF WAYNESVILLE
NOVEMBER 23, 1999
TUESDAY - 7:00 P.M.
TOWN HALL

The Board of Aldermen held a regular meeting on Tuesday, November 23, 1999. Members present were Mayor Henry Foy, Aldermen Gary Caldwell, J. Kenneth Moore, Sam Wiggins and James Williamson. Also present were Town Manager A. Lee Galloway, Town Clerk Phyllis McClure and Acting Town Attorney Woodrow Griffin. Mayor Foy called the meeting to order at 7:05 p.m.

Approval of Minutes of November 9, 1999

Alderman Wiggins moved, seconded by Alderman Caldwell, to approve the minutes of the November 9, 1999 meeting as presented. The motion carried unanimously.

Recognition of Out-Going Board Members

Mayor Foy said that Alderman James Williamson has served on the Board with him for the past eight (8) years, and during that time Alderman Williamson was not just a supporter, he was a firm supporter of the new Recreation Center and can take pride in the new Recreation Building which is now almost finished.

Mayor Foy said that two (2) years ago, Sam Wiggins began to serve in the position left with the resignation of Earl Clark. Mayor Foy said that Alderman Wiggins has not only been an asset to this Board, but has also been instrumental in keeping the Recreation Program on track, as well as many other issues.

Mayor Foy presented gifts to out-going Aldermen James Williamson and Sam Wiggins expressing appreciation for their service to the Town of Waynesville.

Swearing-in of Mayor and Board of Aldermen

Judge Richlyn Holt attended the meeting to administer the oaths of office to the Mayor and Board of Aldermen. Refreshments were served and several family members attended. After taking their oaths, Mayor Foy and Aldermen Gavin Brown, Gary Caldwell, Elizabeth (Libba) Feichter and Kenneth Moore took their seats.

Election of Mayor Pro Tempore

Alderman Caldwell moved, seconded by Alderman Moore, to nominate Alderman Libba Feichter to serve as Mayor Pro Tempore. The motion carried unanimously.

Re-Appointment of Town Manager

Alderman Caldwell moved, seconded by Alderman Feichter, to re-appoint A. Lee Galloway to serve

as Town Manager. The motion carried unanimously.

Re-Appointment of Town Attorney

Alderman Brown moved, seconded by Alderman Caldwell, to re-appoint Michael Bonfoey to serve as Town Attorney. The motion carried unanimously.

Garbage Collection Fees for Commercial Customers

Town Manager Galloway reported that Haywood County has decided to raise their fees for commercial customers from \$25 per ton to \$38 per ton, an increase of 52%. This increase is necessary in order to cover the costs associated with expanding Haywood County's Landfill.

Prior to 1994, on each tax bill for residential property, Haywood County added a charge of \$38 annually for each residence. There was also a flat charge for each commercial customer, but it was the same regardless of the size of the business or the volume of refuse produced. The County Commissioners decided to drop the commercial fee; however, that fee was replaced with a "tipping fee" charged to every truck hauling commercial wastes into the Materials Recovery Facility. Initially the County set the tipping fee at \$23 per ton, and Town staff estimated that the charge which the Town would have to pay would total approximately \$100,000 annually. A rate structure of \$20 for a customer using a dumpster that is emptied once per week was recommended. If the dumpster is emptied more frequently, the charge increases. It was also recommended that the rate for commercial customers using garbage cans rather than dumpsters, be set at \$9.50 per month. Town staff realized that the income for these rates was exceeding the tipping fees charged by the County and recommended that the rates be reduced to \$18 monthly per dumpster and \$5 monthly for commercial customers not using dumpsters.

When the County raised the tipping fee to \$25 per ton, Town Staff recommended that the Board increase the commercial refuse fees to \$20 for a dumpster customer while leaving the \$5 charge the same for commercial customers not using dumpsters. The Mayor and Aldermen approved those rates and they remain the same today.

With Haywood County increasing the commercial fees by 52%, Town Staff is now recommending that the dumpster fee be increased from \$20 to \$30 per dumpster, per month for once weekly pickup and that the commercial fee for those customers not using dumpsters be increased from \$5.00 to \$7.50 per month. It is recommended that this increase be effective January 1, 2000.

Alderman Feichter moved, seconded by Alderman Caldwell, to adopt a budget ordinance amendment which increases the user fees as recommended by Town Staff. The motion carried unanimously. (Ord. No. 27-99)

Agreement With John Shubash Regarding the Mini-Park at the Intersection of North Main Street and Depot Street

The Board of Aldermen recently adopted a Resolution of Intent to enter an agreement with John Shubash regarding the mini-park property at the southwest corner of the intersection of North Main and Depot Streets. The Board authorized Town Attorney Bonfoey and Town Manager Galloway to enter into discussions with Mr. Shubash and his attorney, Michael Jordan, regarding the agreement and any conditions which may apply.

The Mini-Park Committee of the Downtown Waynesville Association (DWA) met with Mr. Shubash last week to discuss the proposal. It was recommended that the restrooms which had been proposed at the eastern end of the mini-park, next to Main Street, be moved instead to the western end or back of the mini-park, in order to give the mini-park a more open feeling. Another meeting was scheduled with Mr. Shubash and the Downtown Waynesville Association on Tuesday, November 23. Mark Clasby, representing DWA reported on that meeting.

Mr. Clasby said two ½ years ago, the DWA Board appointed a sub committee to review and make recommendations for improvement for the mini-park. At that time, the goal was to try to redesign the mini-park to make it more user friendly, more accessible to the public and make improvements from its present deteriorated condition. Some of the recommendations for improvement are to maintain the Japanese Maple, replace the overgrown Bradford Pear Trees, redesign the water element and try to provide public restrooms. Mr. Clasby said that although new restrooms have been built on the other end of Main Street there is also a need for restrooms on this end of the street. Mr. Clasby said that DWA met and supports restrooms in the mini-park as long as they are placed at the back of the park.

Mib Medford, 99 Pisgah Drive, said that she was associated with the mini-park when it was built and that she has put a lot of work into the park. Ms. Medford said that the water feature has never worked properly and a new system is needed. She said that this past Saturday, at about dusk, she visited the park and found it to be quiet, serene and very usable. She said that a plaque was given by First Union National Bank in honor of Mr. Jonathan Woody and the park was dedicated somewhere between 1981 and 1983. Ms. Medford said that the park has been used by skateboarders and various others and the park has diminished over time. However, she said that this is a public park and should not become part of a private business. Ms. Medford said that Waynesville has public restrooms on the other end of the street and that the Haywood County Courthouse has restrooms for this end of the street.

Laura Woody Soltice said that the property where the mini-park is located was given in memory of her father, Jonathan Woody, and she felt that the Town should keep the park public and not attach it to any business. Ms. Soltice expressed concern with what could happen to the proposed restrooms if the proposed restaurant went out of business.

Philan Medford said that she had a couple of concerns. She said that when the Town did work on Church Street or in the Frog Level area it was in the public realm and that the public could be part of the planning process. Ms. Medford said that the drawings for the park appear to be for a private dining patio, and that you can't make something into something that it isn't. She said that she could install a sign on Clifton Street that says Waynesville By Pass, but this would not make Clifton Street a By Pass. She said that she was clueless about the expenditures for improvements to the park; she has heard that the Mr. Shubash is willing to pay anything above \$40,000. Ms. Medford asked that the Board make improvements to the mini-park a public process.

Roscoe Wells, 200 Ridge Road, Waynesville, asked what type of legal arrangements the Town would have regarding the proposed restrooms. He asked what the Town's liability would be if someone tripped from the clutter left from an eating establishment and what would happen to the restrooms if the restaurant went out of business. Mr. Wells said that he believes in the separation of Church and State and he also believes in the separation of public and private. Mr. Wells asked how a restaurant employee would wash his hands if the restroom was full.

Alderman Feichter said that there were a lot of unanswered questions and she asked what would happen to the process if a decision were delayed. Alderman Feichter added that she felt that more time was needed to investigate and study the issue. Mayor Foy questioned the issuance of a building permit and the fact that the building is in a Class I Fire District which has a different set of standards to comply with.

John Shubash said that this has been an “odyssey” and very difficult for him to put in a capsule. Mr. Shubash said that he has lived in this area, raised four children and has been successful in his ventures in Waynesville. Mr. Shubash said that he has discussed this proposal over the past six months and felt that he has constantly been on the defensive. Mr. Shubash said that there was not a pre-conceived notion to purchase this building and build a 1950's diner. It all happened when he and his wife were driving up Main Street and in anger he said this is enough to see this building empty for the past fifteen years and he was tired of seeing ugly scenes in the mini-park which have not been an enjoyment for the public during this time. Mr. Shubash said that he has seen dead animals in the mini-park and people urinating, vomiting and sleeping in the mini-park. He saw an opportunity for public and private to get involved in a partnership and that both could make it work for the good of the community.

Mr. Shubash said that there have been arguments that he will profit from his proposal. He agreed with this, adding that even if he had a hot dog stand at this location he would also benefit. But he said that his intention was to take part of his profit and build restrooms which would help both his business and the public. Mr. Shubash said that he had intended to hire someone to keep the restrooms clean and maintained and that this alone would cost him \$30,000 - \$40,000 per year. Mr. Shubash said that the mini-park has been in a deteriorated condition for the past 15 - 20 years and no one has done anything to improve it and now people are coming forward to speak about how this is a “holy grail”. Mr. Shubash said that this has been the most frustrating thing that he has gone through because he intended to do something good and should not have been treated this way. He added that he was upset with the “crusades and tea parties” that have taken place in this community regarding this project. Mr. Shubash said that during the past thirty-five years as a businessman he would like to have included in the record that he has never come across a more intelligent, honest businessman than Waynesville’s Town Manager Lee Galloway.

At this point, Mr. Shubash withdrew his proposal and plans for restrooms in the mini-park and said that he would build restrooms on the other side of his building and have his own little park. Mr. Shubash asked that the Town, as his neighbor, clean up the mini-park.

Minor Subdivision - Andy and Susan Brown - Crymes Cove Road

Dr. George W. Brown is subdividing a 54.64 acre tract to create a 1.83 acre lot to give to his son, Andy Brown. The property is zoned “R-1”, Low Density Residential, and is located on Crymes Cove Road near the cul-de-sac on Farley Street. The plat meets or exceeds all Town standards, and Town Staff recommends approval with the following condition:

1. Submit a soil evaluation report from the Haywood County Health Department to provide evidence that the lot will accommodate a septic tank; and
2. Submit a revised plat showing the building setbacks for the 1.83 acre lot.

Alderman Moore moved, seconded by Alderman Feichter, to approve the minor subdivision, subject

to the conditions recommended by Town Staff. The motion carried unanimously.

Request by the Planning Board Regarding a Land Use Study

During the regular monthly meeting of the Planning Board held on November 15, 1999, the Planning Board heard a rezoning request from Jack Smith, Jackie Haynes and others, to rezone a 27 acre tract of land from "R-1" Low Density Residential to "C-3" Highway Commercial. The Planning Board did not vote to recommend the rezoning to the Town Board. However, after the rezoning decision, the Planning Board voted unanimously to request that the Board of Aldermen fund a land use study of the Russ Avenue/Highway 276 Corridor from K-Mart to Highway 19. The members feel the existing zoning classifications and land use regulations, as well as the request to rezone the corridor to commercial, is not in the best interest of the Town or the property owners along the corridor. The Planning Board told the rezoning petitioners to resubmit the rezoning application in sixty (60) days if the Board of Aldermen fail to fund the study within that period of time. At such time, the Planning Board members indicated that they will support a rezoning to commercial.

Town Manager Galloway said that he has asked Planning and Zoning Manager John Swift to try to secure some cost estimates for such a study. The City of Forest City is in the process of having a comprehensive land use study done for their entire town by Benchmark, Inc., at a cost of approximately \$36,000. Cost estimates for a land use study may be available for the Board by their meeting on December 14, 1999. Mayor Foy said that a different zoning district may need to be established for this area.

Attorney Kersten said that he represented property owners along the area from Jack's Tire Store to Bargain's. Attorney Kersten said that the property across the street is a cow pasture and is zoned commercial, and that the Planning Board was not sure that commercial would be the appropriate zoning needed for this area. Attorney Kersten said that there were people who lived in this area who wanted to retire and sell their property and he urged the Board to appropriate the money to have a land use study completed for this area. Attorney Kersten said even if a study is done, it would probably be Spring of 2000 before charrettes could be held and August 2000 before action could be taken by the Board regarding the zoning of this property.

Rex Feichter, Chairman of the Planning Board, said that the Planning Board would like to see a full blown land use study of Waynesville's entire land use area, but without knowing how much this would cost the Town, the Planning Board has recommended that a limited study be done of the Russ Avenue Corridor at this time. Mr. Feichter pointed out that the Planning Board is sympathetic toward the business owners in this area whose properties are used as commercial and zoned residential and the fact that they wish to sell their properties.

Alderman Feichter moved, seconded by Alderman Caldwell, to authorize Planning and Zoning Manager John Swift to obtain estimates for a complete land use study of Waynesville's entire land use area, as well as a limited study to include both the Russ Avenue corridor and the Asheville Highway corridor, and that these estimates be presented to the Board of Aldermen at their next meeting or as soon as possible. The motion carried unanimously.

Agreement Between Maggie Valley Sanitary District and the Town of Waynesville Regarding Water for Sherell Johnson Development on the North Side of Eagle Nest

During the past several months, there have been several discussions about a proposed development

of residential property on the north side of Eagle Nest Mountain overlooking Maggie Valley. The developer, Mr. Sherell Johnson, has proposed to construct approximately 500 homes over a number of years, and he prefers a public water supply as opposed to drilling the number of wells necessary to supply that many homes.

Attorney Jack Kersten, representing Mr. Sherell Johnson, attended the meeting, giving a brief history of the request for water. Attorney Kersten said at the last meeting of the Town of Waynesville Board of Aldermen, a rate structure was adopted for the sale of water to this project. At that time, Mr. Kersten said that he was under the impression that the agreement between the Maggie Valley Sanitary District (MVSD) and the Town of Waynesville had been approved. Since then he has learned that a meeting was held at the MVSD and that the District's Board has declined to approve the agreement with the Town. Attorney Kersten requested that Mayor Foy and Town Manager Galloway go directly to the MVSD and try to work this out.

Mayor Foy asked Alderman Moore if he attended the meeting at the MVSD. Alderman Moore said that he did attend the meeting, but that he did not say anything at the meeting. Alderman Moore said that he felt that if the Town Manager and Mayor met with the MVSD Board Members it might help to resolve the matter. He added that he thinks that the MVSD is afraid that Waynesville is trying to take over their territory and that they discussed hiring another attorney at their meeting.

Attorney Kersten said that this needed to be resolved. The issue has been discussed since January, 1999 and at this time approximately 30 people have purchased property in this area and some of those homes are now under construction. Attorney Kersten said that there are some time constraints involved, since the homes currently under construction need water.

Alderman Brown moved, seconded by Alderman Moore, to authorize Town Manager Galloway, Mayor Foy, and anyone else that the Town Manager feels would be necessary, to renegotiate the agreement concerning the sale of water to this proposed development which is located inside the area of the Maggie Valley Sanitary District. The motion carried unanimously.

Adjournment

With no further business, Alderman Brown moved, seconded by Alderman Moore, to adjourn the meeting at 8:32 p.m. The motion carried unanimously.

Phyllis R. McClure
Town Clerk

Henry B. Foy
Mayor