

REGULAR MEETING  
BOARD OF ALDERMEN  
TOWN OF WAYNESVILLE  
NOVEMBER 22, 2005  
TUESDAY - 7:00 P.M.  
TOWN HALL

The Board of Aldermen held a regular meeting on Tuesday, November 22, 2005. Members present were Mayor Henry Foy, Aldermen Gavin Brown, Gary Caldwell, Libba Feichter and Kenneth Moore. Also present were Town Manager A. Lee Galloway, Town Clerk Phyllis McClure, Finance Officer Eddie Caldwell and Town Attorney Woodrow Griffin. Mayor Foy called the meeting to order at 7:00 p.m.

Approval of Minutes of November 8, 2005

Alderman Caldwell moved, seconded by Alderman Feichter, to approve the minutes of the November 8, 2005 meeting as presented. The motion carried unanimously.

Public Hearing - Change in Extraterritorial Jurisdiction Boundary

Several years ago, Sherell Johnson purchased land on the north side of Eagle Nest Mountain for the development of log homes. As a part of the project, Mr. Johnson participated in the cost of constructing a larger tank for the third phase of the Eagle Nest system as well as pay for the pump station and the water tank to serve the level four phase of the Eagle Nest system.

In continuing to develop home sites on the north side of Eagle Nest Mountain, Mr. Johnson has discovered that a portion of the land he owns is shown as being in the Extraterritorial Jurisdiction District of the Town of Waynesville. Since this is on the north side of the Eagle Nest ridge, he felt that what the county records showed must be in error; however, a closer check of the boundary description reveals that there are about six lots owned by Mr. Johnson shown to be in the ETJ. Apparently this situation occurred in 1993 when the boundary for the ETJ in that area was first established. That boundary was adopted upon approval of Ordinance 1-93 on January 12, 1993. John Swift who was Director of Planning and Zoning at that time and who drew the boundary description was surprised to learn that the boundary crossed the Eagle Nest ridge, as he believed that the ETJ was set to run with the boundary of the Eagle Nest Estates Subdivision.

Upon learning that there was an apparent error in 1993 when the ETJ boundary was established, Town Manager Galloway consulted with Town Attorney Woody Griffin. It was his opinion that since the ETJ boundaries are set by passage of an ordinance, the only proper and correct way to change those would be through the repeal of that ordinance and the adoption of a new boundary ordinance. In doing so, the Town Attorney recommended that a public hearing be held on excluding that property identified as "Phase 3, Lots E-1 through E-12 of the Smoky Mountain Retreat at Eagle Nest" from the Eagle Nest Rural District of the Town of Waynesville's Extraterritorial Planning Jurisdiction. This matter was presented to the Planning Board at a

special meeting they held on November 17, and that body voted to recommend that the ETJ boundary follow the ridge line, excluding those lots E-1 through E-12 of the Smoky Mountain Retreat at Eagle Nest subdivision.

As it was apparently an error that these lots were included in the Waynesville ETJ, Manager Galloway said it would be the recommendation of town staff that this area is removed from the ETJ and that the boundary follow the subdivision boundary of the Eagle Nest Estates subdivision.

Attorney Griffin opened the public hearing.

David Pope, representing Carolina Log Homes, said until six months go it was his belief that these thirteen acres were located outside Waynesville's Extraterritorial Jurisdiction. He requested that the Town remove this area from its ETJ and put it back in the hands of Haywood County's Subdivision Ordinance regulations. In developing this property, he said roads have already been installed according to Haywood County's regulations, the lots have been sold and the plat is ready to record.

Alderman Brown said he always assumed that the ridge line was the end of Waynesville's extraterritorial jurisdiction and he did not see a problem with removing the area discussed from the ETJ. Alderman Brown moved, seconded by Alderman Feichter, to repeal Ordinance No. 1-93 and adopt an Ordinance to exclude the following area from the Town's Extraterritorial Jurisdiction: "Phase III, Lots E-1 through E-12 at the Smoky Mountain Retreat at Eagle Nest". The motion carried unanimously. (Ord. No. 30-05)

#### Public Hearing - Amendment to Section 154.124(B)(8)(b) Permitted Uses Raccoon Creek Neighborhood District

At the meeting of November 8, 2005, the Mayor and Board of Aldermen held a public hearing on changing the permitted uses in the Raccoon Creek Neighborhood District as they apply to the eight lots located between Zemery Lane and Hillside Terrace Drive. There was a recommendation from the Planning Board that the eight lots located between Zemery Lane and Hillside Terrace Drive be allowed the same permitted uses as are already permitted in that portion of the district located 200 feet from the west side of U. S. Route 23 Business between Sims Circle Road and Monte Vista Drive. There were a variety of uses permitted under the "Business, Professional and Personal Services" Category as well as under the "Retail Trade and Food Services" Category.

At the meeting on November 8, the Board did not have many problems with allowing the uses permitted under the "Business, Professional and Personal Services" Category; however, there was concern expressed about the uses permitted under the "Retail Trade and Food Services" Category. Not wanting to delay the applicant for a beauty shop on one of the lots between Zemery Lane and Hillside Terrace Drive, the Board approved the recommendation to allow the uses on these lots. The Board then set a public hearing date to consider repeal of the uses permitted under the "Retail Trade and Food Services" Category on those lots located in the

Raccoon Creek Neighborhood District, abutting U. S. Route 23 and laying between Zemery Lane and Hillside Terrace Drive.

Attorney Griffin opened the public hearing. No one spoke; Attorney Griffin closed the public hearing.

Mayor Foy asked about the uses allowed in the area between Sims Circle Road and Monte Vista Drive. Manager Galloway said Planning Staff suggested that this area have the same regulations as the area between Zemery Lane and Hillside Terrace Drive so that there would not be three different regulations within the Raccoon Creek Neighborhood District. However, before a public hearing is scheduled to consider this change, it was recommended that the Planning Board review the issue and make a recommendation.

Alderman Brown said it was his hope that the people who plan to develop this property are familiar with issues such as parking regulations before they begin their development. Mayor Foy said he spoke with the father of the lady who intends to locate her beauty salon in this area and told him that he hoped she knew everything involved before beginning her business. Alderman Feichter said she has done a lot of research and feels that everything is ok. Alderman Brown stressed the importance of people doing research before they request amendments to the zoning.

Alderman Brown moved, seconded by Alderman Feichter, to amend Section 154.124(B)(8)(b) as recommended. The motion carried unanimously. (Ord. No. 31-05)

Alderman Moore moved, seconded by Alderman Feichter, to request that the Planning Board take a look at the area within the Raccoon Creek Neighborhood District, between Sims Circle Road and Monte Vista Drive, and make a recommendation regarding the uses allowed in this area. The motion carried unanimously.

Kevin O'Donnell, President NOVA Energy Consultants, Inc.

Over the past year, the Town Board and Staff have spent considerable time discussing the rising cost of electricity directly tied to the increased cost of fuel to produce that electricity. Progress Energy has experienced higher costs for natural gas and coal, two energy sources that they use to produce the electricity which the utility company sells to the Town as a wholesale customer as well as to thousands if not millions of residential and business customers throughout the southeast. As the Town's charges from Progress Energy have risen, it was initially thought it might be a short term situation, and the Town absorbed over \$400,000 in increased costs. Eventually, the charges to the Town's own customers had to be increased or risk the financial stability of its Electric Fund.

Throughout the winter and spring of 2004-2005, Manager Galloway has been in regular contact with Mr. Kevin O'Donnell, the electrical consultant that the Town has been working with for the past several years. He discussed various options with Mr. O'Donnell and came to depend upon his advice and guidance in making timely responses to the increasing charges for fuel from Progress Energy. During the summer, Mr. O'Donnell indicated that he was doing some research

on projected fuel costs for the immediate and short term future, and volunteered to present some information to the Town Board in the fall.

Waynesville is not the only supplier of electricity experiencing this situation, as other wholesale customers from any utility company are seeing higher fuel charges. Progress Energy has been increasing rates, and recently, Haywood Electric Membership Corporation announced a rate increase to take effect soon.

Manager Galloway said another topic that he and Kevin have been discussing in recent months pertains to the wholesale power supply agreement between the Town and Progress Energy. In 2002, under Kevin's guidance, the Town negotiated a contract with Progress Energy which will expire in 2010. In the past, there was some possibility of rate deregulation and the chance that the Town could buy power from some other utility. Now, Progress Energy says it does not have the capacity to meet its own needs, much less distribute power to Waynesville from Ohio or Alabama.

Mr. Kevin O'Donnell attended the meeting and gave a power point presentation. He said the two things he wanted to discuss included the current state of the energy market and specific news for Waynesville. Mr. O'Donnell said everyone has seen the rise in energy costs and it is going to be a very painful winter. Gasoline prices have doubled and natural gas has increased four-fold over the past three years. This is three times higher than forecast about three years ago. The economy has grown stronger and we are now in a territory we have never seen before. Hurricanes Katrina and Rita have caused increases in fuel costs with the loss of over 150 natural gas wells in the Gulf.

A graph was presented regarding the costs for coal which he explained competes with natural gas, and that natural gas competes with oil. When the price of one goes up the others go up. Coal forecasts indicate that coal is beginning to top out in its price and this is good news. The cost of coal is expected to come down through 2010. There is a tremendous amount of natural gas off the coast of the United States, particularly off the coast of Florida, however we lack the ability to get to the natural gas with the moratorium for off coast drilling that was put in place in 1993. This will become a very hotly debated Legislative issue. It is felt that natural gas will continue to come down through 2009. Natural gas in the US now is about \$12 per decotherm; in the far east it is \$4.50 per decotherm. It appears that nuclear power is on its way back and several nuclear plants are expected to be built.

In April 2004, news was received from Progress Energy regarding their transmission report and they determined that they had no more transmission capacity. This puts the Town back in a regulated environment, because when Progress Energy has no more transmission import capacity they have "market power". However, they can only offer cost based rates. When the Town renegotiates with Progress Energy again a rate making formula process will need to be worked out. The benefit will be that the Town will get system average prices from Progress Energy. The negative aspect is the ability to leverage the competitive market because we have no ability to bring this power in from other companies because Progress Energy has no more transmission capacity. Legally, Progress Energy no longer has an obligation to serve Waynesville due to an FERC ruling. However, politically they would not leave Waynesville without power.

Waynesville helped to build the system and Progress Energy gains revenue stability by serving Waynesville.

Duke's rates are about 25% less than Progress Energy due to the fact that they built better nuclear plants and Appalachian Power has rates 25% less than Duke. Mr. O'Donnell said Waynesville remains competitive in selling electricity which makes money for the Town and helps to fund its municipal services. He felt that things will be much better one year from now and especially by 2009, and forecasts are for steadily falling on-peak prices through 2009.

Alderman Brown and the other board members thanked Mr. O'Donnell for attending the meeting and giving a report to the Board. Alderman Feichter said it is nice to know that the Town has an advocate such as Mr. O'Donnell. Manager Galloway added that Mr. O'Donnell keeps the Town well informed. Mayor Foy commended Manager Galloway for his skill and diplomacy in dealing with Progress Energy. Manager Galloway said negotiations went well in 1994 and again in 2002. Mr. O'Donnell added that Waynesville got a better deal than he thought they would due to Mr. Galloway's negotiations with Progress Energy. No action was necessary.

#### Petition to Close an Unopened Alley - 1093 Brown Avenue

A petition was received from the owners of property abutting an unopened alley located next to 1093 Brown Avenue. On one side of the alley is a lot owned by Ms. Violet Massey and another lot on which a modular home is to be placed. On the other side of the alley is the lot where the old Hazelwood Town Hall once stood. In 1997, the Town of Waynesville sold that tract of land after coming into possession of the property during the merger with the Town of Hazelwood.

The abutting owners have requested that the unopened alley be closed. There is a procedure under State statute which must be followed when the Town decides to close an alley. The intention to close the alley must be advertised in a local newspaper for several weeks and a public hearing held regarding the closure. Should the Board decide to take this action, the alley would be equally divided between the abutting property owners, which in this case would mean that each abutting owner would receive approximately 7.5 feet of the alley.

In the past, when a request of this nature has been received and the Board wishes to proceed with action, those petitioning for the abandonment have been asked to agree to pay the advertising, survey and legal cost of the action. This action would be a benefit for the abutting property owners, not specifically for the benefit of the Town. Should the Board wish to consider this request from these three owners, Manager Galloway recommended that they agree to pay the cost of action so that there is no direct cost to the Town.

Alderman Brown moved, seconded by Alderman Moore, to adopt a resolution of intent to close the unopened/unimproved 15' alley as requested and proceed with the necessary legal notifications to set a public hearing date of January 10, 2006. The motion carried unanimously.

#### Report on Attendance Requirements - Boards and Commissions of the Town

At the meeting of October 25, Alderman Brown noted that some of the Boards or Commissions appointed by the Town Board are unable to meet due to the inability to have a quorum at their meeting. There was a general discussion about whether there should be some type of attendance requirements at these meetings. Missing three consecutive meetings or being required to attend at least 75% of the meetings in a year's period were two possible criteria mentioned by the Town Board members.

Town staff noted that there were some attendance requirements already in place for some of the Boards and Commissions. The Town Board asked that a report be prepared for them detailing the existing attendance requirements, if any, for the various Boards and Commissions appointed by the Town Board. A report was distributed to the Board as requested which revealed that the attendance requirement was already in place that if a member misses more than three (3) consecutive meetings he/she may be replaced at the discretion of that particular board or commission.

Bylaws for Planning Board, Board of Adjustment, Community Appearance Commission, Historic Preservation Commission and Recreation and Parks Advisory Commission are established by the Board of Aldermen. The Alcoholic Beverage Control Board and Waynesville Housing Authority are established by the Board of Aldermen according to State Law. Their bylaws are established within their own boards.

It was the consensus of the Board that a draft be prepared for the next meeting and the wording should be changed as follows: If any member misses more than three (3) consecutive meetings and does not attend at least 75% of the meetings in one calendar year, he/she may be replaced at the discretion . . ."

The Board of Aldermen asked Town Manager Galloway to direct a letter to the Alcoholic Beverage Control Board and the Waynesville Housing Authority to encourage that they establish bylaws regarding attendance.

#### Notice of Closure of Landfill

The Town spent time during the spring of this year dealing with some problems at the inert landfill the Town operates off Russ Avenue at the end of Bible Baptist Church Road. In that process, the State determined that because this property was used as a solid waste landfill at some point in the past, the Town has to file a legal document as an attempt to make others aware of that fact. Essentially, the process just requires a description of the property involved and a statement of the fact that it has been used for the disposal of solid wastes.

Town Attorney Griffin prepared the draft copy of this document, and a copy has been mailed to the State Department of Environment and Natural Resources for their review. It was requested that the Board authorize the Mayor to sign the Notice of Closure of Landfill as required by the State of North Carolina.

Alderman Brown moved, seconded by Alderman Moore, to authorize Mayor Foy to sign the Notice of Closure of Landfill as required. The motion carried unanimously.

## Assistance With Heating Bills

In many communities the utility companies have a program to which their customers can donate to assist other utility customers having a hard time meeting their utility bills. Manager Galloway said while he was in Georgia, the natural gas company had a program called SHARE or HEAT, where you could send in a donation each month or have a set amount drafted from your utility bill for this assistance program. Progress Energy has a similar program in North Carolina for their utility customers.

A few months ago, as energy costs rose higher in the wake of Hurricanes Katrina and Rita, Manager Galloway said he heard several stories about families having difficulty with the cost of filling their tanks with heating oil for the start of winter. He spoke with Finance Director Eddie Caldwell as to whether the Town's computer system was set up to accommodate a program like the ones operated by other utility firms, and was assured that this could be managed without any problem. This week, he read that Mountain Projects has nearly exhausted its wood supply for the winter and they have many people in need of wood for cooking and heating. He also read about the crisis that Haywood Christian Ministries is facing, having spent a goodly portion of the money they have for fuel assistance at such an early point in the winter. The Salvation Army has been hit hard with requests for assistance with heating costs so far and cold weather is just beginning.

Manager Galloway asked the Board's opinion about setting up a program in which town citizens or others could donate to a program to assist others with meeting energy costs. This program could be made available through utility bill mailings, giving a person a chance to send in a one time or a regular contribution toward the program.

Details have not been worked out of such a program, but, whenever a customer who gets behind in their electric bills and is at risk for being cut off or has already been cut off, town staff usually refers them to Haywood Christian Ministries, the Salvation Army, Department of Social Services or Mountain Projects. If details can be worked out with the organizations, it was Manager Galloway's recommendation that whatever money is collected be equally divided between Haywood Christian Ministries and the Salvation Army with the stipulation that the money be used for residents within the Town of Waynesville who have difficulty with energy bills. Manager Galloway said he would not think it necessary that they be on the Waynesville electric system, just that they be inside Waynesville if possible and meet whatever criteria that those organizations use for the distribution of energy assistance. Finance Director Eddie Caldwell said the Town would issue a check once or twice per month to those organizations to distribute the funds. The issuance of the check, which would be minimal, would be the only expense to the Town.

Attorney Griffin recommended that the Town enter into a memorandum of understanding with those organizations involved with the distribution of the monies collected for the program.

Alderman Brown moved, seconded by Alderman Moore, to authorize Town Manager Galloway to proceed with the development and implementation of the heating assistance program. The motion carried unanimously.

### Discussion Regarding Brush and Tree Trimmings

Mayor Foy asked to discuss brush and tree trimming pickup for Waynesville citizens. He said according to the Town's ordinance if a contractor is hired to perform this work, the contractor is required to haul the material away. He would like to see brush and tree trimmings picked up when there is a house on the lot, but not where there is just a vacant lot. Alderman Brown asked if the public should supplement this service and expressed concerns that providing this service may not be cost feasible for the Town. Alderman Feichter said it would take an incredible amount of man hours to provide this service and contractors should be responsible for removing the debris if they were hired to do the job. Manager Galloway said the Town has a separate ordinance which applies to land clearing. Alderman Brown said when a tree trimming job advances beyond a small project it goes beyond the scope of the Town and should be dealt with by a contractor. Alderman Moore asked if the Town could establish a method to charge a fee for this service. Manager Galloway said the Town is having a problem now with providing the current level of services. For example, since the mowing season is over the cemetery crews have been moved to the landfill to tear open plastic bags and remove items placed in the bags that are not allowed at the landfill and this is very time consuming. Mayor Foy said he would like to discuss the issue further, possibly at the next retreat. No action was taken.

### Upcoming Christmas Parades

Alderman Feichter said there are several parades coming up, the Maggie Valley Parade is scheduled for Saturday, November 26, Waynesville's Parade is Monday, November 28 and Canton's Parade is Thursday, December 1.

### Alderman Moore - Cemetery Committee

Alderman Moore asked if there has been further consideration to the establishment of a cemetery committee. Alderman Brown said several people have approached him willing to volunteer to serve on this committee. Attorney Griffin said the Board has the right to establish regulations regarding its municipally owned cemetery. If the Board feels that a committee is necessary, they would need to determine how the committee should be established and whether they would make recommendations or decisions regarding the cemetery policies. No action was taken.

### Cancellation of December 27 Meeting

The second meeting of December falls on December 27. Town offices will be closed on Friday, December 23 and Monday, December 26 as town employees observe the Christmas holiday. Town offices will be open for business on December 27, but traditionally, the Board has opted to cancel the second meeting in December.

Alderman Moore moved, seconded by Alderman Brown, to cancel the regular meeting of December 27. The motion carried unanimously.

### Adjournment



With no further business, Alderman Brown moved, seconded by Alderman Caldwell, to adjourn the meeting at 8:52 p.m. The motion carried unanimously.

Phyllis R. McClure, Town Clerk  
Henry B. Foy, Mayor