

REGULAR MEETING  
BOARD OF ALDERMEN  
TOWN OF WAYNESVILLE  
SEPTEMBER 26, 2006  
TUESDAY - 7:00 P.M.  
TOWN HALL

The Board of Aldermen held a regular meeting on Tuesday, September 26, 2006. 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 and Town Attorney Woodrow Griffin. Mayor Foy called the meeting to order at 7 p.m.

Approval of Minutes of September 5, 2006

Alderman Caldwell moved, seconded by Alderman Feichter, to approve the minutes of the September 5, 2006 meeting as presented. The motion carried unanimously.

Request of Greg and Jennie Boothroyd Regarding Restriction Against Alcohol at 105 Montgomery Street

During the 1990s, the Town of Waynesville Police Department had a number of complaints and problems with a business known as the Stage Door which was located at 105 Montgomery Street. The business, which was a bar and pool room, was located directly north of the Lomo Grill. Over a period of years, police responded to countless calls for public drunkenness, disruptive behavior, fights, loud noise, indecent exposure, and the list goes on. Former Police Chief Frank Ross attempted to convince then District Attorney Charles Hipps that the Stage Door was a public nuisance and should be shut down, but the Chief was not successful in his efforts.

The situation reached the point that drugs were sold from the Stage Door on a regular basis, and Mr. Hipps was willing to move forward with Court action seeking to declare the business a public nuisance. The Stage Door was leased and operated by a local resident from a lady in Orlando, Florida who owned the property. Upon being served with court orders, the owner was very cooperative. She terminated the lease with the tenant and then signed court papers agreeing that all persons and entities are perpetually prohibited from possessing for sale or selling alcohol beverages upon the property or from using the property as a bar, club, dance hall, pool room, video arcade, game room, adult establishment or any business that is opened for business between 11:00 p.m. and 5:00 a.m. In addition, it was agreed that the Judgment in this case would be attached to all future documents or sales agreements for the sale or lease of the property. This Judgment was entered against the defendant on June 5, 2001.

In late 2001, the owner sold the property, and it was subsequently sold to Greg and Jennie Boothroyd in November 2004. Mr. and Ms. Boothroyd wish to redevelop this property in some manner and one of the options might be for a business that would sell alcoholic beverages. With the restrictions placed upon the property in the Judgment from 2001, the sale of alcoholic beverages is forever prohibited.

Mr. and Ms. Boothroyd have consulted with the current District Attorney Mike Bonfoey, as have Police Chief Bill Hollingsed and the Town Manager. Mr. Bonfoey has indicated that before he would argue for a change in the restrictions against this property, he would look to the Town Board for its feeling on removing or changing these restrictions.

Mr. and Ms. Boothroyd are requesting that the Town Board give approval to the lifting of the Judgment restricting alcohol sales at 105 Montgomery Street. Manager Galloway said he and Police Chief Hollingsed have discussed this matter and feel that with the redevelopment occurring in the downtown area and the changing character of the downtown, a perpetual restriction against the sale of alcohol may have been extreme.

Mr. Boothroyd said he has plans to tear the building down and may have a restaurant in its place, and he could possibly sell the property. He did not want to be restricted on this property, but would like to have the same rights as any other property in town.

Alderman Brown moved, seconded by Alderman Feichter, to endorse a resolution to request the removal of the restriction as presented to the Court in the Motion of Cause by Greg and Jennie Boothroyd in paragraph 5 regarding the prohibition of alcohol on the property located at 105 Montgomery Street and that Attorney Griffin be directed to present the resolution to the District Attorney. The motion carried unanimously. (Res. No. 25-06)

#### Request to Close Portion of West Marshall Street 6 to 10 P. M. On Saturday, September 30, 2006

A request was received that the Town Board close that portion of West Marshall Street between Walnut Street and North Main Street between the hours of 6 and 10 p.m. on Saturday, September 30, 2006. The purpose of this is the staging of a Cruise-In and musical entertainment in and around Duvall's Restaurant. This organization has held Cruise-Ins at various places in Waynesville and adjacent areas in recent years. They wish to have an end of the season, close-out event at Duvall's during the times and on the date noted. Manager Galloway said the Town has never experienced problems with this group or their events and recommended approval of the request.

Alderman Moore moved, seconded by Alderman Brown to close the portion of West Marshall Street between Walnut Street and North Main Street between the hours of 6 and 10 pm on Saturday, September 30, 2006 as requested. The motion carried unanimously.

#### Appointments - Waynesville Housing Authority

The terms of Dr. George Brown and Mr. Glenn Harriott on the Waynesville Housing Authority will expire on September 30, 2006. Both Dr. Brown and Mr. Harriott have been contacted and have agreed to continue serving on this Board.

Mayor Foy announced that he has reappointed Dr. George Brown and Mr. Glenn Harriott to another five-year term on the Waynesville Housing Authority to expire on September 30, 2011. Mayor Foy pointed out that Dr. Brown and possibly others have served on the Waynesville Housing Authority since its inception. He said Dr. Brown has served as Chairman during this time and done a very

good job, deserving some type of special recognition.

#### Appointments - Recreation and Parks Advisory Commission

The terms of Mr. Don Frady, Ms. Kitty Burgin Eaker and Ms. Rhonda Schandavel on the Recreation and Parks Advisory Commission will expire on September 30, 2006. Mr. Frady and Ms. Schandavel have agreed to continue service on this Commission. Mr. Frady has been one of the longest serving members on the Commission and has expressed a desire to be reappointed and work with Rhett Langston on future changes. Ms. Schandavel has been an active and involved member who has regularly attended meetings. There was some uncertainty about the reappointment of Ms. Eaker.

Alderman Brown moved, seconded by Alderman Caldwell, to reappoint Don Frady and Rhonda Schandavel to serve another three-year term on the Recreation and Parks Advisory Commission. This term will expire on September 30, 2009. The motion carried unanimously.

#### First Draft and Discussion of Possible Taxi Ordinance

A draft ordinance was presented by Attorney Griffin for the Board to review. Police Chief Hollingsed has reviewed a variety of ordinances and the result was a basic type ordinance that the Police Chief felt like he could realistically enforce. The ordinance does not include the establishment of rates and fares, but it does include a provision that rates and fares are made available to the public. It includes requirements for background checks. Attorney Griffin asked that the Board look over the ordinance to get an idea of what type of ordinance they would like to put into effect. Manager Galloway said the Police Chief could attend the next meeting to answer questions that the Board may have. No action was necessary.

#### Public Hearing - Request for Rezoning Property at 683 Dellwood Road and 18 Arnold Heights From the Love Lane Neighborhood District (LL-ND) to Russ Avenue Town Center (RA-TC)

Ms. Lena H. Milner requested a zoning change from the Love lane Neighborhood District to Russ Avenue Town Center for .30 acres of property located at 683 Dellwood Road and 18 Arnold Heights. Town Staff Report notes that this property is a combination of commercial and residential use, and the adjacent property includes both residential and commercial uses.

While the Love Lane district permits some commercial use, staff feels that by opening the property to a wider range of uses, it would encourage the redevelopment of this property. The Planning Board concurred with the recommendation and now presents the issue to the Town Board with a vote of support for the requested change.

Attorney Griffin opened the public hearing. No one spoke at the public hearing. However, a letter supporting the rezoning was received from Mr. Keith Gibson.

Alderman Moore moved, seconded by Alderman Caldwell, to rezone the property located at 683 Dellwood Road and 18 Arnold Heights from the Love Lane Neighborhood District (LL-ND) to Russ Avenue Town Center (RA-TC). The motion carried unanimously. (Ord. No. 23-06)

Public Hearing - Amendments to Section 154.212 Supplemental Use Regulations and Section 154.117 Hyatt Creek Area Center

There have been a number of meetings with the developers who are attempting to redevelop the site of the former location of Dayco Industries into a retail shopping center. Requests for variances from the Town's ordinances and for changes in the Town's ordinances have been received and evaluated and considered by members of the Waynesville Planning Board.

At its meeting on August 21, 2006, the Planning Board voted to recommend the creation of a conditional use to be called "Brownfield Development" and add that conditional use to the Hyatt Creek Area Center District. The amendment is proposed for the purpose of promoting the redevelopment of large Brownfield sites.

Planning Director Paul Benson said an application for these amendments was received this past June. During discussions with the developer and town staff, standards in the Town's Ordinance were identified that the developer could not comply with resulting in the proposed amendments. This only applies to sites of 25 acres or more that are designated by the State of North Carolina as a Brownfield site with some type of environmental contamination that makes development difficult. The specific amendment requests include:

1. Eliminate the requirement that parking be only to the side or rear of principal buildings.
2. Exempt interior parking lot lanes and access drives from street design standards.
3. Eliminate the building design requirements for articulation and permeability.
4. Permit 2 additional freestanding signs up to 35' high, and 1 additional freestanding sign up to 75' high.
5. Eliminate any requirement for interior parking lot or use buffers.
6. Reduce the maximum size of parking lot tree islands from a minimum dimension of 8' per side to 5' per side.

In response to the requested amendments town staff recommended the following:

1. Allow parking to the front of interior buildings, but maintain a requirement that at least 1 principal building on every lot with 100' or more of street frontage have no parking between the front building line and the street right of way in order to maintain a street wall on exterior streets.
2. Exempt interior parking lots, parking lot lanes, and rear access drives from minimum driveway separation requirements, minimum street width, minimum right-of-way width, and sidewalk requirements, but maintain the requirement for street trees along both sides of such drives. (Located a maximum of 8' from the traveled way, in minimum 5'x'5' tree pits at a spacing of 40' average/50' maximum on center, including any side of such drives adjacent to buildings, railroad tracks, and external or internal property lines.). However, where developments involve subdivision of land, access drives connecting public streets with interior lots and serving more than one lot, shall be developed as a street and be designed to the applicable street classification.
3. Maintain the existing articulation, scale and permeability standards for most buildings, with the exception of changing the articulation standard to "automobile scale". For large interior buildings over 100,000 square feet adopt the following design standards:

a. Articulation: require architectural detail on the front facade such as change in materials, recesses, projections, and windows with a linear spacing no greater than the maximum height of the building.

b. Scale: require a minimum 2' depth change, or material change, in sections with a linear dimension of at least 10% of the facade length so that no unbroken walls may extend greater than 25% of the total facade length.

c. Permeability: require that 25% of the front facade be transparent.

4. Signage: Allow multiple tenant identification signs at each public street entrance with a maximum height of 25', and a maximum sign face of 160 square feet, with such signs incorporating decorative supporting structures, a unified architectural design and being designed to accommodate multiple panels, each identifying a separate business. These signs shall also incorporate a name and logo for the development as a whole. The staff does not recommend the requested amendment for the 75' high "highway pylon sign", because a sign of that height could detract from our mountain scenery.

5. Parking lot buffers would not be required between shared parking areas, no amendment necessary.

6. Reduce the interior parking lot tree islands to a minimum dimension of 5' as is the current standard for street tree planters.

Todd Miller, Vice President of Cedarwood Development in Akron, Ohio said it has been a pleasure working with the Town on this project. They are very satisfied with the amendments that are proposed and are prepared to move forward. He said this will be a very attractive project for the Town. He said they have had experiences with irrigation and found that over time the plants survive on their own very well and irrigation can have a negative effect, including failure on the parking lot. He asked that the Board have further consideration regarding the requirement of irrigation.

Attorney Kirk Kirkpatrick, representing Cedarwood Development, presented a letter from Mr. Daniel Hyatt which outlined some of the reasons why irrigation for 5' x 5' pits would not be acceptable and would not necessarily be good for the trees. This is something they do have concern about. He requested that this requirement be removed because of the problems it could cause. He also requested that the requirement of trees on the site within 100 feet of the railroad right-of-way be removed since it may be difficult to get permission from the railroad to plant these trees. Also, there is some uncertainty about the trees along the building facade. The developer has indicated that it may be possible to cluster ten (10) trees together and still allow safe access to the building. If the architect feels that the trees may not survive by clustering, a variance may be needed.

Attorney Griffin opened the public hearing. The following persons spoke:

Philan Medford, 99 Pisgah Drive, said she knew that other NC towns place stringent height limits on ground mounted signs even in their large retail multi-tenant developments including big box tenants. She suggested that the Town be consistent where sign heights have been changed such as Russ Avenue and the Central Business District. She asked for verification that a 25' sign is a deal-breaker that is measured by another town's public documents such as ordinances, minutes, press coverage and that at a similar point in the process where we are now that Cedarwood and the

announced tenants have walked away from the table.

Roscoe Wells, 85 East Marshall Street, said he can't say much about the ordinances being proposed but has a large problem with how this seems to be integrated with the existing Land Use Ordinance. He said these are supplemental use regulations for a specific district. Mr. Wells asked that the Board consider doing what was done on Main Street, particularly in the Justice Facility area, and create an overlay district in the Hyatt Creek area. He said the definitions being used in the ordinances are not being carried over in the definitions in the existing Land Use, specifically the regional center statement. It appears to be a definition within the ordinance itself and it should be integrated into the Land Use Ordinance. He felt that the proposed amendments could be a form of spot zoning. He also said he has lived in areas where if you didn't irrigate, it wouldn't grow. There are many types of irrigation methods, one in particular is called a drip station where only a couple of gallons of water per hour are placed on the plants.

Edward Boch, 28 Villa Court, said is concerned about the traffic situation at Exit 98, has attended other meetings and has not heard how this would be accomplished.

Melissa Van Noppen said that she likes trees and has watched the trees at the Haywood Regional Medical Center which were planted between rows of cars without any type of irrigation. Most of those trees died and had to be replaced.

Bernie Branhut, 142 Meadow Street, said he has heard a lot about trees, but felt that the Town of Waynesville wants Wal Mart and Home Depot here and felt that these businesses should be built and worry about the trees later. This property has an old contaminated building which does not bring any revenue to the Town. He felt that anything at this location would be an improvement, because what is there now is an eyesore.

Charles Burris, 243 Allens Creek Road, said he lives in this area and goes by this location every day. He doesn't see the argument about a few trees. He supported the 300 - 400 jobs that would be coming to this end of Town and getting rid of this old building to move on. Mr. Burris added that you can't give this property away because no one wants to come in and clean it up.

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

Alderman Brown said if the trees die, the developer will just have to keep putting trees in.

Alderman Moore read a statement that he did not feel that the ordinances have been relaxed that much. He felt that the compromise and proposals should be accepted as presented. He knows that everyone will not be pleased, and this will bring more jobs to Haywood County. Demolishing this deteriorated building will be an attribute to our community. This development will bring jobs and benefits to many people in our community. Mr. Moore said we have a good thing here and feels that the Town should accept it.

Manager Galloway said a letter was presented from an architect stating that he did not think it was necessary to include an irrigation system as part of this project because this is a wet area and with

the Town's new stormwater regulations, a great deal of the stormwater would be diverted water into the tree pits. The area where trees were planted at the hospital area is on a hill, creating a different situation. Manager Galloway felt that Daniel Hyatt has made some good points in his letter regarding the reasons that an irrigation system is not needed.

Alderman Feichter said if this parking lot is designed properly, the water will go into the places where these trees are planted and will not go rushing down Richland Creek and into Lake Junaluska. Pervious surfaces are valuable to us and the number of trees in this parking lot will assist in removing some of the water. Trees also provide shading, cooling and oxygen.

It was asked how irrigation became recommended by the Planning Board. Rex Feichter, Planning Board Chairman, said he understood that Home Depot said in the meeting that they required irrigation. However, if they are satisfied without irrigation, he is comfortable with removing that requirement. Paul Benson said this was discussed at Planning Board by a member of Cedarwood and the Planning Board decided at that time to add this as a recommendation. Mr. Benson said he has spoken with Daniel Hyatt quite a bit about this and is now convinced that irrigation would not be needed at this site.

Alderman Brown said he was the one who suggested the concept of the Brownfield designation because he felt this is what we had in this site. He has always approached this property as a special entity in our county, referring to this situation as the "orphan" in our community and sometimes the orphan gets treated differently. He felt that this the way that this should be handled because of the way this project sits out there. At some points in time you do have to make an exception.

Alderman Feichter said she spoke with someone who worked at Dayco for years and he said "I know what's in that ground" and she feels that having this developed in the proper manner is of great concern.

Paul Benson said this is a conditional use that could be amended to add to any district in Waynesville and it is not the same as a spot zoning. This amendment only applies to the Hyatt Creek Area Center. It is crafted for this project, but can be amended for other areas as well.

Mayor Foy said he likes the building design but disagrees with the people who don't think the trees are important. Trees are important to Waynesville and the Land Use Plan is based on trees which makes a difference in Waynesville. This will be one of the main entrances to our community and if not done right we will miss the boat. He would like the consultation of a landscape architect on the parking area in general so that this plan could be laid out, feeling that we are still lacking some on the design of the parking lot. He said we have walkways to these buildings which are nice, but we need for them to be attractive.

Paul Benson said there will still need to be some additional plantings added to what is shown on the plan submitted tonight. A more detailed site plan has been submitted for review by the Community Appearance Commission and he has just started his review. The Town's ordinance requires that every parking space be within 30 feet of a shade tree, which results in a pretty uniform coverage.

Alderman Brown asked about the situation with the highway and access to the development and how this is being handled.

Chuck Christy, said he is working with Cederwood developer Gary O’Nesti. Mattern and Craig in Asheville was hired to do a traffic study based on input from the NCDOT office and Public Works Director Fred Baker. The study contains some recommendations which have been forwarded to NCDOT for consideration. These recommendations include a traffic circle on the southbound off ramp, widening Hyatt Creek Road to five lanes up to Main Street, provide some additional lanes for turning at Hyatt Creek as well as additional lanes at the Main Street entrance at Hardee’s, and two additional traffic signals at the new entrances to the development. It is hoped that a response should be received from the NCDOT by the end of October.

Alderman Brown moved, seconded by Alderman Moore, to adopt the proposed amendments as presented, with the elimination of the last sentence regarding the requirement of an irrigation system. The motion carried with four (4) ayes (Brown, Caldwell, Feichter and Moore) and one (1) nay (Foy). (Ord. No. 24-06) Mayor Foy said he objected to the height of the sign. It was the consensus of the Board that if the planting of the trees within the railroad right-of-way and along the building facade cannot be resolved, the developer can come back before the Board for an amendment to this requirement. The motion carried unanimously.

#### Adjournment

With no further business, Alderman Brown moved, seconded by Alderman Caldwell, to adjourn the meeting at 8:30 p.m. The motion carried unanimously.

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Phyllis R. McClure  
Town Clerk

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Henry B. Foy  
Mayor