

REGULAR MEETING  
TOWN OF WAYNESVILLE  
BOARD OF ALDERMEN  
TOWN HALL – 9 SOUTH MAIN STREET  
AUGUST 28, 2012  
TUESDAY – 7:00 P.M.

The Board of Aldermen of the Town of Waynesville held a regular meeting on Tuesday, August 28, 2012. Members present were Mayor Gavin Brown, Aldermen Gary Caldwell, Julia Freeman, J. Wells Greeley and LeRoy Roberson. Also present were Town Manager Marcy Onieal, Assistant Town Manager Alison Melnikova, Town Clerk Phyllis McClure, Town Attorney Woodrow Griffin and Planning Director Paul Benson. Mayor Brown called the meeting to order at 7:00 p.m.

Upcoming Events

Mayor Brown said there are several events coming up during September and October, including the Block Party, Community Food Drive, Church Street Art & Craft Show and Haywood County Apple Harvest Festival. Alderman Caldwell said on October 20 ARC of Haywood County will be holding their fourth Annual “Arctoberfest” at The Gateway Club. The band for this fundraising event is “Social Function”. Dressing up in Halloween costumes will be optional.

Staff Recognitions

Town Clerk Phyllis McClure Receives State Certification Designation - Manager Onieal announced that Town Clerk Phyllis McClure has received certification as NC Certified Municipal Clerk. This certification was attained through the completion of the NC Association of Municipal Clerks Program conducted by the School of Government of the University of North Carolina at Chapel Hill. This is a five-year designation with requirements for continuing education. Ms. McClure has been certified as Certified Municipal Clerk and Master Municipal Clerk for a number of years through the International Institute of Municipal Clerks Organization.

Area Wide Optimization Award (AWOP) - Manager Onieal announced that the Town has received the Area Wide Optimization Award through the North Carolina Division of Water Resources Public Water Supply Section. This award recognizes “the exemplary performance of the Town of Waynesville’s surface water treatment facilities” and “is a very significant achievement that represents true value to every user that is connected to Waynesville’s water system”. Manager Onieal recognized Water Treatment Plant Superintendent Kyle Cook for this achievement, adding that this is a great stewardship performed for the citizens.

2012 Gertrude S. Carraway Award of Merit - Manager Onieal announced that Waynesville has been recognized with the 2012 Gertrude S. Carraway Award of Merit from Preservation North Carolina for the renovations of the Waynesville Municipal Building. These awards are presented each year to people and organizations demonstrating genuine commitment through extraordinary leadership, research, philanthropy, promotion and/or personal participation in historic preservation. Manager Onieal recognized Assistant Town Manager Alison Melnikova for her work in this project and invited the Board to join her in receiving this award in Asheville at The Venue on Friday, September 21 at 11:15 a.m.

Approval of Minutes of July 24, 2012

Alderman Caldwell moved, seconded by Alderman Roberson to approve the minutes of the July 24, 2012 meeting as presented. The motion carried unanimously.

Special Event Request – Permission to Sell/Serve Beer & Wine on a Public Sidewalk during Downtown Waynesville Block Party on September 1

Mr. Jon Bowman requested approval to operate a full service sidewalk café with alcohol sales, in front of his business during the annual Downtown Waynesville Labor Day Weekend Block Party on September 1, 2012, as allowed by Section 42-4(e) of the Town Code, during the time of the Block Party from 7:00 p.m. until 10:00 p.m.

Manager Onieal reported that the Downtown Waynesville Association is comfortable with this and has asked that Mr. Bowman add DWA as an “additional insured” on the Tipping Point’s event liability insurance policy as protection against any claims arising directly from the sale of alcohol or the restaurant’s operations on public property as part of the festival. With that caveat, the DWA Board endorsed Mr. Bowman’s request at its regular board meeting of August 23, 2012. Mr. Bowman intends to comply with DWA’s request and all applicable ABC & Health Department regulations in operating outdoors, and is in the process of obtaining appropriate permits from the NC State Alcoholic Beverage Control Commission.

Alderman Roberson asked if allowing the sell/serving of beer & wine on the public sidewalk would restrict sidewalk traffic. Manager Onieal said there is adequate pedestrian access, as the street is closed for the event. Alcohol consumption within this area is closely supervised by staff. The Downtown Waynesville Association Board will continue discussion regarding alcohol sales and service at downtown events and would like to have input on the creation of a town policy and procedure that could be applied systematically when similar requests arise.

Alderman Roberson moved, seconded by Alderman Freeman to adopt Resolution #13-12 authorizing the sale and service of beer and unfortified wine, on a public sidewalk, in a

controlled enclosure fronting the Tipping Point Tavern, 188-190 N. Main Street, on September 1, 2012 from 7:00 p.m. until 10:00 p.m., as requested and as permitted by Section 42-4 of the Town of Waynesville Code of Ordinances. The motion carried unanimously. (Res. No. 13-12)

#### Designate Voting Delegate and Alternate for NCLM Conference October 21-23, 2012

The Town of Waynesville is a member of the North Carolina League of Municipalities (NCLM), which acts as a professional resource, legislative liaison, and lobbying agency on behalf of its 500+ municipal members. As a full member in good standing, the Town has the right and responsibility to cast votes at the annual membership meeting on all matters undertaken by the NCLM board and staff on behalf of its members, most notably a legislative agenda, election of board members and matters of universal interest to cities and towns across the state. This year the annual meeting and conference will be held October 21-23, 2012 in Charlotte, NC. One voting delegate and one alternate member should be appointed to represent the Town's interest.

Alderman Roberson moved, seconded by Alderman Caldwell to nominate Alderman Greeley as Voting Delegate and Town Manager Marcy Onieal as Alternate. The motion carried unanimously.

#### Request of the Waynesville ABC Board to Exceed Maximum Allowable Working Capital Retained in FY 12 and FY 13

Manager Onieal explained that the Waynesville ABC Board had discussed plans to build a new store since 2008 and was finally moving forward with plans for construction of a 6000 square foot store on Dayco Drive, located between the Hardees and Car Wash in the Walmart Shopping Center on the west end of Waynesville. The ABC Board intends to pay cash for the purchase of the property, which will require them to retain cash in excess of the maximum amount of working capital allowable by state law. In order to retain excess working capital, the ABC Board must have permission of the Board of Aldermen, since these excess funds would normally be distributed to the Town, and other recipients as general fund revenue on a quarterly basis. The ABC Board has, in fact, already withheld distributions of net profit to the Town and County for this purpose and is seeking permission retroactively to exceed maximum allowable working capital for FY2012 and to withhold any profit distributions through June 30, 2012. The Board of Aldermen does not have authority to dictate to the ABC Board how or when to acquire property, borrow money, build a new store or manage daily operations, however, there are four specific areas over which the Board of Aldermen does have statutory authority for ABC activities.

The Board of Aldermen is responsible for:

- 1) Appointing, and removing from office for cause, the members of the local ABC Board.
- 2) Setting the level of compensation for service by the local ABC board members and chair.

- 3) Changing the formula by which ABC's net profits are distributed back to local government (subject also to County approval).
- 4) Granting authority to exceed the statutory maximum amount of working capital the ABC Board may retain, (which affects the amount of net profit available for distribution, and which may affect the ABC Board's ability to borrow money or carry out property acquisition & construction projects).

Manager Onieal said the annual distribution of net profits to the Town's General Fund from ABC operations has averaged nearly \$120,000 per year over the last four years, with a 10-year history, ranging from a low of \$47,000 in 2004 to a high of nearly \$150,000 in 2011, noting that this revenue constitutes the equivalent of more than one-cent on the tax rate.

The maximum allowable working capital (MAWC) is based on a formula established by NC State Statute. For the year ended June 30, 2012, the Waynesville ABC Board's MAWC was \$548,878, however, as of that date the ABC Board had accumulated \$637,592, in anticipation of purchasing land and beginning construction on the new store. The difference in those two figures (\$88,714) is net profit, which ordinarily would have been distributed back to the Town of Waynesville during Fiscal Year 2012. The Town's Fiscal Year 2012 General Fund budget anticipated ABC distributions in excess of \$60,000. The Town received only \$21,280.

The ABC Board plans to close the property purchase by September 10, 2012, and acquire a construction loan from BB&T in the amount of \$1.3 million at 4.15% for a 10-year term (amortized over 20 years), with a balloon payment due at the end of the term. Waynette Davis, representing BB&T, attended to answer questions. Upon completion of construction, the ABC Board anticipates acquiring a second loan in the amount of \$150,000 for purchase of inventory for the new store, while continuing to operate the old store. Ms. Onieal cautioned that once the ABC Board commits to this project, it is unlikely that ABC will be financially able to provide customary profit distributions to the Town and other recipients for the life of the loan unless an extraordinary increase in gross sales is realized.

The ABC Board has expressed a priority for retiring debt over distributing net profit for the life of the loan, but is willing to consider the Town's financial expectations in this regard. The anticipated loss in revenue will also impact Haywood County's General Fund since the Town and County share net profit distributions on a two-thirds/one-third basis. In addition other agencies and purposes which share in the city and county distributions, such as the public library and county school system, will also suffer loss of revenue.

Ms. Davis indicated that the cash flow projection on which loan approval was granted was based on actual historical financial data from FY10 & 11, and that net cash after operations, including operating expenses, state taxes and required statutory distributions was \$134,810. Future revenues were calculated based on a 10% increase in gross revenue in year one and 20% increase

in the second year, with the bank requiring a 10% contingency set-aside to cover operating costs in the event gross revenues failed to meet projections. She acknowledged however, that the loan was qualified solely on the basis of operating capacity, without considering the need to provide for general profit distributions back to the City and County. It was noted that the 10% contingency set aside is the reason the ABC board was requesting permission to exceed maximum working capital and that without this additional cash set-aside, they would not qualify for the loan.

Alderman Greeley asked what would happen if the ABC Store was unable to make their loan payments, specifically the balloon payment due at the end of 10 years. Ms. Davis said that the building itself would be considered as collateral, and that the equity injection of 10% cash set-aside would create the cushion necessary to make monthly payments if revenues failed to meet operating costs. Alderman Freeman asked if there is an early payoff penalty. Ms. Davis said there is a prepayment penalty during the first five years of 1%. At the end of the ten year loan term, if unable to make the balloon payment, then ABC would have to refinance the outstanding balance, but ABC board members expressed their belief that they will be able to pre-pay additional principal over the life of the loan, reducing the balance due in year 10.

Manager Onieal said that once ABC uses its excess working capital (or cash reserve) to pay for the property, it will be quite some time before the ABC operation rebuilds working capital to a level that would require input or approval from the Board of Aldermen, therefore, this is probably the only time in the foreseeable future that the Board of Aldermen will have the opportunity and responsibility to exercise administrative and financial stewardship over a major public revenue stream, which is guaranteed to disappear in the short term, and very likely to decline significantly for as much as five, ten or twenty years, if this construction project is undertaken as planned. Alderman Wells said in another year the Board of Aldermen may potentially have to face the request to withhold distributions again. Manager Onieal clarified that scenario is unlikely, as the Board of Aldermen has no authority to require ABC to make discretionary distribution of net profits, so long as ABC maintains working capital in an amount between the minimum required and the maximum allowed by statute. For that to happen, the ABC operation would have to generate sufficient profit to have paid off its construction loan, met annual operating costs each year, and set aside a cash reserve in excess of \$550,000 before permission of the Board of Aldermen is required again. She reminded the board that the board's decision tonight could negatively impact revenue streams not only for the Town, but for other agencies which receive a portion of those profit distributions, noting that these agencies are probably not even yet aware of ABC's plans, as there has been no publicity or formal communication. The distribution formula is 64% to the Town of which 5% goes to the Haywood County Library, 15% is reserved for Economic Development, 5% is reserved for recreation activities and the 75% remainder goes to the general fund. Of the 36% of the total that goes to Haywood County, 50% is reserved for the Board of Education and 50% goes to the county's General Fund.

Mayor Brown said the ABC Board is required to maintain two weeks of revenue sales and maximum is three months. In 2003 they had \$70,000; 2005 up to \$389,000; \$545,000 in 2009 and have been building up over the past ten years. The long range decision to be made by the board is to forego short term gain for what is hopefully a long term gain.

ABC Board Chair Earl Clark said he has been on the ABC board about 10 years and a new location for the ABC Store was considered even during the 1980's. The ABC Store has been in the same location since 1967, operating within the same square footage. Now Waynesville allows mixed beverages, and local breweries have added items that the ABC Store does not have room to stock. Constructing a new store will cut their revenues short for the first few years, but it is felt in the long run that the revenues will be much more. They have worked very hard on this for about three years and they felt that it would be better to build a new building that would fit in with the town and look good. The Board has looked at several properties with buildings already existing, but remodeling can be a problem. Appraisal on the property being considered was performed last Monday and results should be known by September 4. Ms. Davis said the loan can be finalized on the property once the appraisal is received. Mr. Clark said Architect Randy Cunningham is designing the new building, consisting of 6,600 square feet, including the 3,000 square foot sales floor. The current location totals approximately 3,400 square feet.

Mayor Brown said in 2008 or 2009 the ABC Board began searching for property. In 2008 the ABC Board came before the Board of Aldermen with a similar request to retain excess working capital, but was asked to come back with a solid financial plan, which they are doing tonight. Approval to build a second store was also needed from the State ABC Commission, which was received in March, 2010. The ABC Board has a five-year lease with Bill Norris for the current store location, which expires in September 2012. A request was made to extend the lease for one year with the option for four additional years because ABC does not want to be obligated to operate two stores for a full five years. Once the new store is completed, ABC intends to operate two stores for anywhere from a few months up to a year or 18 months to test the profitability and feasibility of maintaining two locations indefinitely, and will close the old store if it proves unprofitable. There will be at least 25 parking spaces at the new location. Mayor Brown said this would be a nice addition for the west end of town to show that this end of town is a good place to do business. Mr. Clark said allowing mixed beverages helped the ABC Store sales, and if new restaurants were developed that serve mixed beverages, this will also help.

There was discussion regarding how privatization could affect the ABC Store.

ABC Board member Raymond Ezell said if they were able to operate two stores they would not need the same amount of square footage and could operate on one shift, reducing overhead expenses. Their main goal is to make sure they can fund the debt service, pay off the loan principal and operate in an efficient manner and, if possible, return money to the town and

county as they have in the past, but probably not in the amounts that they have in the past. They have been told that their sales would probably increase 15 – 20 percent, but they are basing their plans on an annual increase of 5%.

Alderman Roberson asked if there were any thoughts of distributions returning sooner. Chairperson Earl Clark said that is what they are hoping to do.

Raymond Ezell said the ABC Board would like to retain the \$90,000 they have built up now, which otherwise would by statute have to be distributed to the Town. This would be used as capital and next year there probably wouldn't be any distribution either. He felt that after reevaluating at the end of the following year, as long as ABC is on good sound financial footing they could consider resuming some distributions. Earl Clark expressed appreciation to the Board for considering their request, adding that they are currently waiting on the property appraisal before continuing forward and would like to see this approved.

Alderman Greeley moved, seconded by Alderman Roberson, to authorize the Waynesville ABC Board to exceed maximum allowable Working Capital Retained, by withholding customary distributions to the Town of Waynesville and Haywood County during Fiscal Year 2012 and Fiscal Year 2013, in anticipation of land acquisition for and construction of a second (new) ABC store during Fiscal Year 2013. The motion carried unanimously.

#### Reappointment of Raymond Ezell to Alcoholic Beverage Control Board

Raymond Ezell was appointed in 2009 to a three-year term on the Waynesville ABC Board, which expired on August 15. The ABC Board has requested his re-appointment for the sake of continuity, in light of the current Board's extensive work to secure property and develop construction plans for a second ABC store during FY13. In addition, applications on file from six individuals were submitted to the Board of Aldermen for consideration.

The new term for this vacancy will expire on June 30, 2015 in keeping with the board-adopted change in appointment procedure that calls for all board and commission appointments to run concurrent with the Town's fiscal year.

Alderman Roberson moved, seconded by Alderman Caldwell to reappoint Raymond Ezell to the Alcoholic Beverage Control Board, for another three-year term, ending June 30, 2015. The motion carried unanimously.

Second Reading – Request to Rezone 0.3 acre lot at 154 Hemlock Street (PIN #8605-80-2744) from Hazelwood Urban Residential/Mixed Use Overlay to South Main Street Business

A public hearing on this matter was conducted by the Board of Aldermen at a regular meeting on July 10, 2012, with the board voting 3-2 in favor of the requested rezoning (Aldermen Caldwell, Freeman & Greeley in favor and Mayor Brown & Alderman Roberson opposed). In order to adopt or amend an ordinance on a first reading there must be an affirmative vote equal to, or greater than, two-thirds of the actual membership of the Board of Aldermen. The motion may pass on a second reading with affirmative votes of a simple majority.

Alderman Caldwell moved, seconded by Alderman Freeman to find the requested rezoning consistent with the Town's adopted 2020 Land Development Plan; and to adopt an amendment to the Land Development Standards Map, rezoning property at 154 Hemlock Street from Hazelwood Urban Residential/Mixed Use Overlay to South Main Street Business. The motion carried with three (3) affirmative votes (Aldermen Greeley, Freeman and Caldwell) and two (2) opposing votes (Alderman Roberson and Mayor Brown) (Ord. No. 13-12)

Report of Planning Board Approval of Minor Revisions to the Ingles Conditional Development (CD) Master Plan on Russ Avenue

In February, 2011, the Board of Aldermen approved a Conditional Development Master Plan for Ingles Markets and rezoned property at 201 Barber Boulevard as the Russ Avenue Regional Center Conditional District. Ingles has submitted proposed changes to the previously approved Plan. The proposed changes are not "substantial" as defined by the Land Use Code and require no action by the Board of Aldermen. The Planning Board unanimously approved the proposed changes at their meeting on August 20, 2012.

Planning Director Paul Benson said the biggest change being proposed by Ingles Markets is the relocation of the convenience store. They plan to move the gas station from its location behind the HomeTrust Bank to another location closer to Russ Avenue. The only other changes were to remove the proposed 20,000 sq. ft. garden center and reduce the square footage of the Ingles store from 120,000 to 106,000. Both changes would lessen the impact of the store. They are extending the sidewalk that ended behind the bank and the sidewalk now follows the side road behind the bank and along the Russ Avenue frontage in front of the convenience store. Landscaping and street trees are to be installed. No modification of parking lot buffers was requested, but trees were redistributed. One condition added by the Board in February 2011 was to add a transit stop which is shown on the plan between Belk and Ingles. No new roads are shown as a result of the change, but some traffic will be shifted. The main entry is from Barber Boulevard. There is an existing road behind the bank coming down on the north side of bank to Russ Avenue that is right/in-right-out only. These roads are already in place and will provide access for the convenience store.



Former Mayor Henry Foy said Ingles has always tried to get a service station in. They have done a nice job where their store is located, but as they get down to the Russ Avenue area it tends to fall apart. Mr. Foy felt that the design does not conform to the Town's Land Use Plan with all the asphalt in front of the building. He added that the appearance of the HomeTrust Building made a quality piece of property fronting Russ Avenue. The fuel pumps have been run parallel with Russ Avenue and he does not feel that the pumps should be located at Russ Avenue. His suggestion was to send this back to the drawing board and ask Ingles to put the convenience store back to its original proposed location.

Mayor Brown said a gas station is allowed in that district. As Paul Benson has pointed out to him this this is a land use issue.

Philan Medford asked to look at the public transit shelter location, adding that she is thrilled that sense of place will get to witness the first transit shelter on a project. Location matters – a suitable location should be useful for all patrons and meet ADA criteria. Transit services a wide variety of people. Some details to consider are that some patrons use carts for walking, others use motorized carts, but both require close proximity to the grocery store and to leave their carts. Some people can be mobility challenged. Ms. Medford said she did not see bike racks on the plan. Mr. Benson said they are on another sheet. They were not included on the first approval because they were not require, but have since been added.

Ms. Medford said she is thrilled that Waynesville is one of the few towns in NC that has earned Tree City USA recognition, but felt that Ingles has failed on the choice of tree species and location of trees. The Community Appearance Commission worked very hard to recommend and use different species of trees in different locations and specific design principles were drawn from various methods such as using deciduous trees which are effective as a canopy to reflect heat. Ms. Medford said there is plenty of room and setback to allow a second row of trees and there is adequate space to place trees between the sidewalk and shrubs.

Paul Benson said there was a lot of discussion during the land development process and they decided to get away from such rigid street tree requirements. The Horticulturist recommended a more diverse process and has been replacing some of the trees along Russ Avenue as needed.

Philan Medford expressed concern regarding trees designated for the Ingles project. Ms. Medford gave examples of street trees for Russ Avenue and suggested that Town Horticulturist Jonathan Yates diplomatically address the street trees at the Ingles site. Ms. Medford felt that there should be some mitigation between town staff and developers and two rows of trees would have been better. Mayor Brown deferred this issue to Mr. Benson and the Planning Board.

Mayor Brown asked about the transit location. Paul Benson said Ingles' attorney said they would be able to provide a transit stop but they would need to look at a location.

Alderman Roberson asked why they decided to move the convenience store. Mr. Benson said he understood that Ingles wanted to have better exposure for the convenience store.

No action was necessary. These changes were unanimously recommended by the Planning Board at their meeting on August 20, 2012.

#### Attendance of Southwestern Commission – Region A Meeting

Mayor Brown reported that several Waynesville representatives attended the Southwestern Commission Region A Meeting in Cherokee On Monday evening, August 27. Waynesville was described as the most vibrant community he has been. Other towns have done a good job as well, but he feels fortunate to be a part of Waynesville.

#### Comments Regarding Recent Meeting at Lake Junaluska

Town resident Pat Maier said she attended the recent meeting at Lake Junaluska where Town Staff presented information about Waynesville. Ms. Maier knows several residents of Lake Junaluska and has had conversations with many of the residents. Ms. Maier said residents were totally blown away and impressed with the presentation that was given there by the town manager and staff.

#### Adjournment

Alderman Greeley moved, seconded by Alderman Caldwell to adjourn the meeting at 8:24 p.m. The motion carried unanimously.

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Phyllis R. McClure  
Town Clerk

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Gavin A. Brown  
Mayor