

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REGULAR MEETING
June 28, 2016

THE WAYNESVILLE BOARD OF ALDERMEN held a regular meeting on Tuesday, June 28, 2016 at 6:30 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Gavin Brown called the meeting to order at 6:30 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Jon Feichter
Alderman Julia Freeman
Alderman LeRoy Roberson

The following staff members were present:

Mike Morgan, Interim Town Manager
Woodrow Griffin, Town Attorney
Amie Owens, Town Clerk
David Foster, Public Services Director
Elizabeth Teague, Development Services Director

The following media representatives were present:

Mary Ann Enloe, the Mountaineer
Cory Vaillancourt, Smoky Mountain News

1. Welcome /Calendar/Announcements

Mayor Gavin Brown welcomed everyone to the meeting and noted the following calendar events including:

- July 4th – Town offices closed
- July 4th – Waynesville celebrates 4th of July – parade at 11:00 a.m.
- July 7th– Special Called Meeting to go into closed session to conduct an interview with a candidate for the Town Manager position.

2. Adoption of Minutes

Alderman Caldwell made a motion, seconded by Alderman Freeman, to approve the minutes of the minutes of the June 7, 2016 special called meeting, and the minutes from the June 14, 2016 regular meeting, as presented. The motion carried unanimously.

B. PUBLIC HEARING

3. Public Hearing to consider a resolution naming a Town of Waynesville maintained road as “Wells Events Way.”

Elizabeth Teague, Development Services Director, provided an overview of the present situation highlighting that the road has been functioning as an alleyway, has been maintained by the Town of Waynesville under its Powell Bill road listing. Wells Events Center has requested the street naming so that they can be issued an address for the Events Center. Ms. Teague noted that it is difficult to assign an address to a building that fronts an unnamed right-of-way. Haywood County procedure requires the following information for 911 addressing: *“The 9-1-1 Addressing Office provides a comprehensive and uniform system of road addresses for all residences and businesses throughout the county to facilitate provision of adequate public safety and emergency response services. It is further designed to benefit the United States Postal Service, local business owners, and individual citizens by minimizing difficulty in locating properties and buildings. Route and Box number addresses have been replaced with numerical street addresses. The numerical street addresses will be assigned according to the distance a structure is located along a certain road.”*

Ms. Teague added that if this road is named, the entirety of the road can be added to the Powell Bill map which could allow for additional funding from the state. She noted that the naming of the road did not change the traffic pattern and that the town could install a street sign with “one way or local traffic only” indication.

Town Attorney Woody Griffin called the hearing to order at 6:35 p.m. and reminded those in attendance that anyone who wished to speak should raise their hand, be recognized and approach the podium providing their name and address for the record and limiting comments to three minutes.

Attorney Griffin called the hearing to order at 6:35 p.m.

Wells Greeley, 280 Rolling Drive, Waynesville began by thanking the Board for their consideration. He noted that the Wells Events Center had been in operation for two years and that they have enjoyed favorable success and helped to improve Waynesville and Haywood County.

Angie Leatherwood, Events Coordinator, representing Wells Event Center, provided information and statistics about the successes of the center including a 140% increase in the events from July 2015 to present with over 250 events held since opening. She noted that additional staff had been added to accommodate the growth. Due to this increase, it is important to have a separate address than the funeral home.

Mayor Brown noted that Jonathan Key, owner of the Mountaineer, has called and expressed some concerns about traffic; as he was unable to be at the meeting, Mayor Brown requested to continue the public hearing until the next meeting. He also requested that Mr. Greeley and Mr. Key speak to see if a compromise could be reached. Mr. Greeley indicated that he was amenable to such conversation.

Attorney Griffin recessed the hearing at 6:41 p.m.

Alderman Caldwell made a motion, seconded by Mayor Brown to continue the public hearing on this matter until Tuesday, July 12 at 6:30 p.m. or as soon there after as possible. The motion carried unanimously.

C. NEW BUSINESS

4. Street Closure Request – 12th Annual Boundary Street Block Party – Monday, July 4, 2016

Mayor Brown noted that a request was received from Abbie Wilkins regarding the closure of Boundary Street from Walnut Street to North Main Street on Monday, July 4th from Noon until 9:00 p.m. There will be music and activities for children. This is the 12th Annual gathering to try and build community spirit and relationships on Boundary Street.

Alderman Feichter made a motion, seconded by Alderman Roberson to approve the street closure of Boundary Street from Walnut Street to North Main Street on Monday, July 4, 2016 for the 12th annual Boundary Street Block Party beginning at Noon until 9:00 p.m., as presented. The motion carried unanimously.

5. Request Approval of Contract with CM-RED, LLC for spillway repairs at the Waynesville Water Treatment property

Interim Town Manager Mike Morgan requested approval of a contract with CM-RED, LLC for repairs to the spillway at the Waynesville Water Treatment property. He noted that the cost for such was in the budget. Public Services Director David Foster added that these repairs are a requirement to maintain the water permits with the state, and that while there is no concern about failing, there could be additional infrastructure issues if this is not repaired sooner rather than later. Mr. Foster noted that the total cost of the contract was \$368,211.33. He indicated that the repairs could be completed between 60 and 90 days.

Mayor Brown inquired whether the repairs would interfere in water treatment plant operations. Mr. Foster responded that there should be no interference especially given the dry conditions of late.

Alderman Caldwell made a motion, seconded by Alderman Freeman to authorize the Mayor and/or Town Manager to execute the contract with CM-RED, LLC for spillway repairs at the Waynesville Water Treatment property located at 341 Rocky Branch Road, as presented. The motion carried unanimously.

6. Request Approval of Public Works Building Improvements Project Ordinance (O-03-16)

Manager Morgan noted that the renovation of the public services facility was the last building improvement from the needs study conducted in 2002. The Board approved the design work to be completed during the 2015/2016 fiscal year. This was completed and the bid process is currently underway. Manager Morgan explained that the initial bid was advertised June 21 with only two respondents. Under NC General Statutes, the project had to be advertised again. The bid process ends on July 6 when bids are opened at 3:00 p.m.

The project ordinance was developed by Town Engineer, Preston Gregg and Finance Director Eddie Caldwell. The total project cost is \$1.665 million and financing should be \$1.3 million. Manager Morgan noted the following dates related to the project:

- June 28 – Council Adopts Resolution To Give Approval to Proceed
- July 5 – Request Proposals From Bank – 21 RFPs to be sent out including all in Haywood County
- July 31 – Public Notice of Hearing
- August 5 – Receive Bank Proposals
- August 9 – Public Hearing to Discuss Financing
 - Council Adopts Resolution Accepting Financing Proposal
- August 15 – Submittal of Formal Application to LGC
- September 13 – LGC Monthly Meeting
- Mid September – Loan Closing

Manager Morgan added that the anticipated completion is nine (9) months for the project and if there is anything that can be done utilizing internal staff rather than contracted staff, it will be done. Mayor Brown called attention to the funding breakdown noting that some of the funding comes from transfers from other funds and the majority through financing.

Alderman Freeman made a motion, seconded by Alderman Caldwell to approve the Public Works Building Improvements Project Ordinance (O-03-16), as presented. The motion carried unanimously.

Manager Morgan explained that since the board had approved the Public Works Building Improvements Project Ordinance, another document was required in order to move forward with obtaining financing. The Resolution Authorizing Filing of an Application for Approval of financing agreement authorized by North Carolina General Statutes 160A-20. Attorney Griffin noted that the Board had had to make the following findings of fact prior to any approval and Manager Morgan read the five bullet points:

- 1. The proposed contract is for the purpose of financing \$1,300,000, the estimated cost of the project less \$250,000 Town equity contribution.*
- 2. The proposed contract is preferable to a bond issue because: 1) the total costs of the financing are not sufficient to warrant the expenses involved in a General Obligation Bond issue; 2) the proposed project is too expensive to be funded through current revenues and/or fund balance, thus the installment contract method of financing proves to be the best alternative for Waynesville; and 3) the desired term of financing is fifteen or twenty years, thereby making bonds a less desirable alternative.*
- 3. The sum to fall due under the contract will be adequate and not excessive for the proposed purpose and the rate of interest will be approximately the same or lower than that of a general obligation bond issue, when considering total costs involved in a referendum, legal expenses, insurance etc.*
- 4. Waynesville's debt management procedures and policies are acceptable. The Town adheres to its Budget Ordinance, has a history of timely debt obligation payments, and maintains an acceptable level of unappropriated fund balance. The Town Manager and Finance*

Director constantly monitor the Town's fiscal structure and periodically report the financial condition to the Town Aldermen.

5. Waynesville is not in default in meeting its debt service obligations.

Mayor Brown explained that this financing is more favorable than issuing a General Obligation Bond and due to the excellent financial stewardship; the Town has always been able to utilize business financing at lower interest rates and better stability.

Alderman Feichter made a motion, seconded by Alderman Roberson to approve the Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement Authorized by North Carolina General Statutes 160A-20, as presented. The motion carried unanimously.

D. CALL FOR PUBLIC HEARING

7. Call for Public Hearing to solicit input from the residents and property owners as to the needs of the Municipal Service District (MSD)

Manager Morgan provided a presentation related to MSD legislative changes that went into effect on October 15, 2015. There are certain requirements that were added to ensure the proper use of MSD funding. He noted that under the General Contracting Authority of municipalities that once a unit levies an MSD tax, it must *“provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.”* Further, a municipality has a broad authority to *“provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof.”*

Manager Morgan continued by noting that part of the requirement is to solicit input from residents and property owners. One way is via public hearing or community meetings. There is also a requirement to use a bid process to select the entity that will be providing the contracted services. Manager Morgan briefly covered the scope of work required such as administering the Town's downtown program; business and economic development; obtaining additional funding options; oversight of downtown promotions and carrying out any other activities that may be determined during the contract negotiations between the city/town and the private/non-profit agency. Manager Morgan noted that some municipalities choose to do this in-house as a department of the town; however, Waynesville has chosen to utilize the DWA for the past 30 years.

Manager Morgan noted that there is a reporting requirement for the entity chosen to report the needs of the MSD. He added that the DWA already does this and provides timely

updates to the board. One of the significant changes from the 2015 legislation is the fact that open ended management contracts have been eliminated. The bidding process must be used to solidify such management; however, a contract may be for one year or for up to five years.

Manager Morgan concluded his presentation by noting the following timeline of events related to the selection of the MSD administrator:

- Call for a Public Hearing – June 28, 2016
- Solicitation for Bids – June 28, 2016
- Public Notices – July 1 and 8, 2016
- Public Hearing – July 12, 2016
- Bids due – July 14, 2016
- Contracts Awarded – July 26, 2016

Mayor Brown inquired if all board members understood what was going on and the need to follow this process. All confirmed. He continued noting that the purpose was to make MSDs more visible and transparent. The legislature is requiring the bid process. Mayor Brown did note that this would mean other entities such as the Tourism Development Authority or Chamber of Commerce could bid on such service provision. The Board can negotiate and can accept a bid if only one is received.

Alderman Feichter questioned if the contract could be renewed without undertaking the bid process. He noted that the DWA has been doing a great job and noted their mission statement. Discussion was held and the legislation reviewed. The bid process must be utilized for contract award.

Mayor Brown noted that he saw the positive aspect of having a request for proposal. Alderman Feichter countered noting that if the legislature is forcing us to do this, we have to do it; but in regards to our MSD, they are a jewel and this is a colossal waste of time. Mayor Brown acknowledged Alderman Feichter's concerns, but noted that this is a better process to open up MSD administration state-wide.

Buffy Phillips, Executive Director, Downtown Waynesville Association commented that she appreciated the accolades from Alderman Feichter and the Board and is proud to be celebrating 30 years of DWA working with the Town. She noted that she and others have been working on this since it went into effect in October 2015. Ms. Phillips spent time in Raleigh and visited with legislators trying to get this legislation reversed or changed. She highlighted that the MSD in Waynesville is different from other municipalities in that residents are not included and are not taxed - just commercial, not residential. Ms. Phillips added that she understood the process and challenged anyone else to come in and bid and try to mirror what the DWA has been doing for 30 years.

Alderman Roberson made a motion, seconded by Alderman Freeman to call for a public hearing to be held on Tuesday, July 12, 2016 at 6:30 p.m. or as soon thereafter as possible, in the Town Hall Board Room located at 9 South Main Street, Waynesville to solicit input from residents and property owners as to the needs of the Municipal Service District (MSD), as presented. The motion carried unanimously.

Manager Morgan explained that due to the bid process not concluding until late July and the need for administration during the period beginning July 1 until contract award, it is necessary to extend the current agreement with the Downtown Waynesville Association until such time.

Alderman Caldwell made a motion, seconded by Aldermen Roberson to extend the current "Service Agreement between the Town of Waynesville and the Downtown Waynesville Association, Inc." until July 31, 2016 or until such time a new contract or provider has been approved using the Municipal Service District bid process in accordance with North Carolina General Statutes. The motion carried unanimously.

Manager Morgan noted that there was one additional requirement and that was to have the board's approval to advertise and solicit proposals to administer the downtown MSD for the Town.

Alderman Caldwell made a motion, seconded by Alderman Freeman to authorize the Town Manager to solicit and accept proposals to administer the downtown Municipal Service District (MSD) for the Town of Waynesville. Alderman Roberson and Mayor Brown concurred with the motion; Alderman Feichter dissented. The motion carried by majority 4 to 1.

E. CONTINUED BUSINESS

8. Consideration of a zoning text amendment of Chapter 4.6 of the Town Code regarding mobile food vendors as temporary uses

Mayor Brown noted that discussion of mobile food vendors as temporary uses was an agenda item at a previous meeting and voting was tabled due to the fact that he was unable to attend the meeting. Mayor Brown asked if the board felt it was appropriate to continue discussion.

Alderman Caldwell made a motion, seconded by Alderman Roberson to bring this issue back before the board for further discussion. The motion carried unanimously.

Mayor Brown reminded the audience that this was Board discussion only and asked if there were any questions for Ms. Teague. He added that the information presented at the meeting in May was included in the Board packet and that he hoped members had spent time reviewing.

Alderman Roberson inquired what part of the town would be affected by the changes to the ordinance. Ms. Teague noted that such changes would affect the entire town, not just a particular zoning district.

Alderman Feichter alluded to the process for obtaining a permit noting that the mobile food vendor makes the application and receives. Ms. Teague confirmed. Alderman Feichter asked if there had been thought given to having the property owner apply for the permit rather than the mobile food vendor. Ms. Teague answered that this had not been discussed. Alderman Feichter referenced Asheville's permitting process and the property owner being the applicant.

Ms. Teague explained that the permit depended on the type of vendor, if a specific property wanted to host mobile food vending as a mobile food vending site, they can do so. For example: Highland Brewing, Pisgah Brewing Company and the Wedge all have permission from city to invite mobile food vendors in. In this case, the property owner is the permit holder. Ms. Teague explained that having the property holder as the permit requester would not change the opinion of the Development Services Staff.

Alderman Feichter also voiced concern with the impermanence of these mobile food units; they could leave in the middle of the night. Which he argued would seem that there would be some benefit to having the property owner request the permit as opposed to the food truck owner. Ms. Teague noted that either way it is handled, the question that the ordinance is trying to answer is, is the use appropriate for the use in the time allowed? She continued by stating that because of the nature of mobile food vendors, it made sense to have them hold the permit with written documentation of the property owner.

Alderman Feichter inquired if the amended ordinance was passed, what would the town's recourse be should a permitted food truck be problematic. Ms. Teague answered that it would be similar to any non-compliance issue. The town has a procedure in place that begins with a notice of non-compliance that the town issues with follow up with the business owner. Alderman Feichter commented that this is why the property owner may be a better applicant for the permit as they would be responsible for what happens on their property such as non-compliance.

Alderman Freeman clarified that the Planning Board unanimously approved the revisions to the ordinance at their April 18th meeting. Ms. Teague confirmed.

Alderman Roberson asked what the options would be if the exemption if section D3 were removed. Ms. Teague responded that if Section D3 were removed from the ordinance, the mobile food truck could still be permitted for up to 180 days noting that special events do not count toward the days. Ms. Teague indicated that Development Services could work with a vendor to have a schedule – help to extend 180 days as long as possible.

Alderman Feichter noted that the Planning Board approached their decision not specifically for Mad Anthony's but for other stakeholders may have similar concerns. He called attention to the space requirement between food trucks and restaurants and that they would be there by invitation.

Ms. Teague noted that the issue is that from a building code standpoint, there are specific guidelines for development and businesses need to comply with the rules. This particular clause feels like a side step, if mobile, then the truck does not have to comply with permanent structure rules, but if the owners (the Young's) do not want to move it, it becomes permanent. Part of the question is when does it become a permanent structure? Ms. Teague added that a mobile food unit does not meet building code specifications. If mobile food trailer is used to side-step the ordinance, then it sets a precedent. Ms. Teague added that this is a difficult decision for the Board to review – you have a good business and want to see Mad Anthony's work well, but this exception could set a precedent which puts the Town in a difficult position from building code and safety stand point.

Mayor Brown interjected and asked, assuming that the section is left in, how would Mad Anthony's comply with the building code standard. Ms. Teague explained that if the food truck is permitted to stay under the exception, they would do something similar to an RV hook up to feed the unit separate to the building. Mayor Brown inquired, as the structure sits now, is it in compliance with the state of NC building code. Ms. Teague answered no; however, the Department of Insurance (DOI) has indicated that if the unit is permanently set, the Town and owners would have to find a path to compliance.

Ms. Glenna Young requested to address the Board, Mayor Brown noted that the public hearing had been concluded at the meeting on May 24, 2016. The request was denied and the board continued their discussion.

Discussion continued surrounding possibilities related to permanent or temporary classification and whether or not an exception should be granted and the impact from such exemption. Mayor Brown summarized the issue by noting that the problem that is faced currently is that with this exception in the ordinance; it is allowing a non-conforming structure to remain and opens the door to others in the future. He added that food trucks in Waynesville are a good thing and as an economic matter the market will determine success.

Mayor Brown asked if section D3 is removed, in what position Mad Anthony's would be left. Ms. Teague explained that could permit for 180 days and offer some administrative pathways such as moving it around to other locations on site or establishing a schedule for operating within the 180 day permitted cycle. If it is going to be a mobile food unit – it should be treated as a temporary unit.

Mayor Brown made a motion, seconded by Alderman Caldwell to eliminate section D item 3 from the proposed text amendment to Chapter 4.6. Alderman Roberson voted to approve; Aldermen Feichter and Freeman dissented. The motion carried 3 to 2 in favor of the deletion of section D3 from the ordinance.

Alderman Feichter took the opportunity to acknowledge the due diligence and care with which the Planning Board studied the issue and crafted an amendment that was cognizant of the regulations of the Town and applauded them for trying something new. He added that he campaigned on a vow to make economic development a priority, but he believed that in this specific situation, and for the future, these are the kinds of situations where we can do something concrete to support our economy. Alderman Feichter also thanked Ms. Teague and the Development Services staff for their work and research and thank you to the Young's.

Alderman Roberson commented that Ms. Teague and staff have made a real effort to assist the Young's by being flexible. Having these exceptions opens up the codes and is another chink out and reduces the effectiveness of the Land Development Standards.

Alderman Feichter agreed that there had to be regulations, but it is important to understand that Mad Anthony's utilized a food truck due to the fact that a commercial kitchen would be cost prohibitive in a historic structure.

Alderman Roberson questioned if someone brought in a permanent structure, then it would have to meet the building codes such as wind load, utility hard connections, and have a foundation. Ms. Teague answered that the Board of Adjustment criteria for a variance specifically states that just because it is costly is not a reason to grant a variance. Alderman Feichter added that this was part of the larger argument and should warrant consideration.

Alderman Freeman echoed Alderman Feichter's sentiment noting that in no single sentence is Mad Anthony's specifically identified. She continued by commenting that the Town has to be flexible and use existing structures in the town. Alderman Freeman also wished to piggy back on the compliments to the Planning Board and the amendment supported by them 100%.

Alderman Roberson made a motion, seconded by Alderman Caldwell to amend Chapter 4.6 Temporary Uses to address Mobile Vending Units as amended to exclude section D.3 as voted upon earlier in the meeting. The motion carried unanimously.

Mayor Brown made a motion, seconded by Alderman Feichter to find that the Text Amendment is consistent with the 2020 Land Development Plan as amended. The motion carried unanimously.

9. Manager's Report - Interim Town Manager Mike Morgan

Manager Morgan had nothing further to report.

10. Attorney's Report - Town Attorney Woody Griffin

Town Attorney Woody Griffin had nothing to report.

F. COMMUNICATION FROM THE MAYOR AND BOARD

11. Request Approval of Mutual Agreement and Memorandum of Agreement for the West Next Generation Network (West NGN)

Alderman Feichter has been representing Waynesville on West Next Generation Network (West NGN) Steering Committee. He explained that this is a cooperative effort between Waynesville, City of Asheville, Biltmore Forest, Fletcher, Hendersonville, Laurel Park and UNC-Asheville to speed the deployment of ultra high speed broadband service.

Alderman Feichter explained the two proposed agreements noting that the Mutual Agreement was detailing the work of the Steering Committee and the overall goals of this initiative. The second agreement, the Memorandum of Agreement (MOA) is to allow Land of Sky to provide technical and other assistance with the implementation of the project. The town will be responsible for a portion of the costs for services included in the MOA. Alderman Feichter noted that the cost to the Town was \$4,877.

Alderman Feichter explained that the purpose of the initiative was to bring more fiber internet service to Western North Carolina resulting in increased capacity at a reduced price. He added that this is phase one of a multi-phase project and subsequent phases will draw upon the efforts of the project. The proposed timing of implementation is within 60 to 90 days of receipt of all signed agreements with RFPs issued and vendor selection completed by January 2017.

Alderman Feichter made a motion, seconded by Alderman Caldwell to authorize the Mayor and/or Town Manager to execute the Mutual Agreement and Memorandum of Agreement with the Land of Sky Regional Council for the West Next Generation Network, as presented. The motion carried unanimously.

G. CALL ON THE AUDIENCE

Angie Schwab, Executive Director, Folkmoot USA addressed the Board to request approval of the ABC permit that shows the location of the proposed beer garden for the Folkmoot celebration on July 30, 2016. She noted that the location was to make the beer makers more visible to the public and within close proximity to entertainment.

Attorney Griffin asked if the NCDOT had been approached by Folkmoot to ensure that there were no concerns as this is a state road where the proposed beer garden would be set. Ms. Schwab noted that Ms. Phillips with the DWA had received permission for the closure of the street via the NCDOT. Ms. Teague offered to follow up with her contact at the NCDOT to ensure that all were aware of the proposed beer garden and to assist with addressing any concerns from the NCDOT.

Alderman Caldwell made a motion, seconded by Alderman Roberson to approve the application for a one-time use permit and to approve the ABC permit for a beer garden to be located on Main Street adjacent to the Town Hall and Municipal Buildings from 10:00 a.m. until 5:00 p.m. on Saturday, July 30, 2016. The motion carried unanimously.

H. ADJOURN

There being no further business to discuss, Alderman Caldwell made a motion, seconded by Alderman Feichter to adjourn the meeting at 8:44 p.m. The motion carried unanimously.

ATTEST

Gavin A. Brown, Mayor

Michael J. Morgan, Interim Town Manager

Amanda W. Owens, Town Clerk