

**Board of Aldermen
Regular Meeting
July 6, 2015
6:00 p.m.
Minutes**

Present: Mayor Dale Baldwin, Alderman Calvin Green, Alderman Tom Hartman, Alderman John Reeves, Alderman Stephen Shoemaker, *Alderman Brett Summey (absent)*, Town Manager Brantley Price, Town Clerk Wesley Barker, Finance Officer Heather Holdaway and Town Planner Matthew Levi were present. Several other Town employees, business owners and residents of the community also attended.

At 6:00 p.m. Mayor Baldwin called to order the meeting of the Board of Aldermen. Alderman Reeves then said the invocation and those in attendance stood for the Pledge of Allegiance.

Approval of the July 6, 2015 Agenda- Alderman Reeves made the motion to approve the agenda as presented. Alderman Hartman seconded with a vote of 4-0 in favor. Alderman Summey was absent from the meeting.

Public Hearing- The Mayor said there would be a public hearing on several items concerning proposed text amendments to the Town's Zoning Ordinance. He then read off the proposed text amendments recommended to the Board of Alderman by the Planning Board. He opened the public hearing at 6:02 p.m. Town Planner Matthew Levi stated each of the Aldermen were given the proposed text amendments as signed by the Planning Board. Also, these statements had been signed by the Town Clerk which meets the requirements by law.

The Mayor then introduced Town Attorney David Paletta who spoke to the Board and public on the proposed text amendments to the Zoning Ordinance. Mr. Paletta gave a background on zoning which essentially has 2 objectives- to protect property values and balance the competing interests of commercial uses and residential uses. It is not unusual for commercial and residential interests to be in conflict. Mr. Paletta then explained why he was asked to draft these proposed amendments. The Town has been getting complaints about the salvage yard for years. If there had not been complaints, the Town would not be proposing anything. There is no dispute per se between the Town and Mr. Blevins. Every member of the Board supports the economic interest of the Town and Mr. Blevins business is a part of the local economy. The purpose of these proposed amendments is to balance two legitimate interests- commercial and residential. Mr. Paletta said the proposed amendments could be summarized in 4 changes. A majority of the amendments proposed, standardize the height of fencing to 8 feet. Mr. Paletta said the next change is to change Section 508.11 to not allow salvage yards/junk yards in the M-1 Industrial District as they would not be a permitted use in this district. The third change is to Section 508.2 which would allow these salvage yards/junk yards as a conditional use, but the owner would be required to obtain a conditional use permit and abide by its requirements. In order to obtain a Conditional Use Permit, the property owner would have to comply with landscaping and fencing requirements. This would be the major new requirement. The final change is in Section 508.21 which would give a property owner a 3-year period to get a permit. The requirement of fencing/landscaping would take place 3 years after the adoption, if the Board adopts this. In these proposals, there are 2 basic public policies considerations by the Town. One is the owner of a business has the freedom to pursue his or her economic prosperity. The competing consideration is the owner of a business does not have the freedom to harm the values of the adjoining property.

Mr. Paletta then explained how this would affect Mr. Blevins' property. Mr. Paletta said the proposed amendments, if approved, would require Mr. Blevins to construct fencing and/or landscaping and give 3 years to make the changes as required. The current fencing does not meet the requirements that would be in effect if approved by the Board. Mr. Paletta said a 3-year period makes it less of an immediate burden on the property owner to comply due to costs. Mr. Paletta explained these requirements of the proposed zoning amendments are standard zoning techniques throughout North Carolina cities and towns and nothing is out of the ordinary.

Mr. Paletta then said the Town has 3 options. 1) They could do nothing and allow the complaints to continue against Mr. Blevins' property. 2) They could eliminate this business entirely, (but the Town is not proposing this), or, 3) allow the business to continue but require buffering, which is what's being proposed.

The Mayor then said anyone who wished to speak could come up to the podium, state their name and speak to the Board. Mr. Paletta stated the Board usually does not respond to questions during a Public Hearing, but he would be happy to answer any questions.

Shalamar Blevins spoke to the Board asking about the Conditional Use Permit. She asked how long does this permit last and if it had to be renewed? Mr. Paletta responded by saying once this permit is granted it is an ongoing permit with no annual renewal. The property owner would have to comply to the screening and buffering (i.e. landscaping) requirements in Article X. Ms. Blevins then asked if someone already has a Conditional Use Permit and more complaints come in after the permit is granted, is the property owner grandfathered in? Mr. Paletta answered by saying essentially yes they would be as the Conditional Use Permit is already in place. Ms. Blevins said this issue has been taken to the State Supreme Court a few years ago and it was ruled in Mr. Blevins' favor that he was in the right and now we are here again with the same issue. Mr. Paletta said he felt zoning was a much better way to handle this issue and no litigation costs are associated with this as the case a few years ago didn't really solve the underlying issue. The Supreme Court said under the issues presented 6-7 years ago that Mr. Blevins was in the right. The NC Supreme Court has also said that a North Carolina local government can eliminate a salvage yard with a 3-year amortization period, but the Town is not pursuing this.

John Kilby, attorney for Mr. Blevins, spoke to the Board. Observations he wanted to make include the Supreme Court ruling that a city can use an amortization period to eliminate a salvage yard. Mr. Kilby thanked Town Attorney Paletta bringing this case to his attention prior to the Public Hearing. Mr. Kilby gave a background on this court case where a Town passed an ordinance which would amortize a business out of existence over a three year period. This property owner renewed a lease knowing an ordinance had been passed. He admitted and agreed he would be able to eliminate his inventory in that 3 year period. Mr. Kilby then read from the Court case which explained restrictions that cities or counties could impose on non-conforming uses. The Joyner case- was a criminal case in which the owner was charged with violating an ordinance by continuing to operate salvage yard after it was deemed illegal to do so. The Court said restrictions on the continuation of non-conforming use will be enforced if reasonably designed to avoid loss to property owner and that the perspective loss is relatively slight. Mr. Kilby argued that government restrictions may not be enforced they would cause serious loss to property owners and valuable businesses built up over many years. Mr. Blevins has been in business 30 years, been in Town of West Jefferson for 20 years, employs 4 persons, pays city and county taxes. Mr. Kilby then expressed his concerns in light of the wording of the proposed amendment concerning the amortization period. Mr. Kilby read an excerpt from the proposed text amendments section 508.2 (ii)(e) which states: "after the end of the three year amortization period, allowing salvage yards and junk yards to operate in the M-1 district with a conditional use permit is a fair compromise when the interests of all

businesses, property owners and residents of West Jefferson are taken into consideration.” Mr. Kilby said the makeup of the Board members could be different three years from now and the Town could then at that time say it wasn’t applicable and the ordinances could be changed to meet other requirements. This could potentially result in an issue for a property owner, especially after spending thousands of dollars for potentially no reason. Mr. Kilby said he felt Mr. Blevins’ businesses was a much needed facility in the Town and County and serves a significantly needed purpose. Mr. Kilby said he would like to formally request the Town to allow Mr. Blevins to continue operating his business with no restrictions.

Tinnie Blevins spoke next to the Board. She then read a statement to the Board in support of Mr. Blevins’ business highlighting his passion for recycling and its importance. Ms. Blevins said Mark does recycling to help, not just low income people, but to help people all over Ashe County get a little ahead and to get by each month. Ms. Blevins said at least things are in one spot and not all over the County. She said this is not a beautiful location and he has been aware of this issue but he has to prioritize his financial well-being due to court costs the Town has brought against him. As a result he has had no funds to buy/install a fence. Ms. Blevins continued to say for over 30 years, Mark and Debbie have struggled to operate a business, raise kids and grandkids while helping others. She said this is neighbors helping neighbors. Ms. Blevins urged the Board to not place a burden on Mark’s business.

Lee McMillan was next to address the Board. Mr. McMillan said he owns the Tobacco Warehouse which is beside Mark’s business. Mr. McMillan said he had a proposal for Mark and said he had found some land for sale on Doggett Road. Mr. McMillan said he feels the Town should be responsible for Mark with the regulations proposed and take over the hazardous waste location on Doggett Road and let Mark to run this and purchase the land for sale for Mark’s use. Mr. McMillan said he feels Mark could make more money this way.

David Hoosier, Town resident, then spoke to the Board stating Mark’s business does make an economic impact to West Jefferson. Mr. Hoosier said if the Town doesn’t want Mark to have this business they should support him in some way. Mr. Hoosier said Mark provides a vital service to the Town and County and he felt there is a difference between a salvage yard and junk yard. Mr. Hoosier felt Mark operates a green business and this is what our nation is moving towards and Mark is already doing this. Mr. Hoosier asked what would happen if Mark isn’t in business and who people will take their recyclables to. Mr. Hoosier asked the Board to take everything in to consideration. He also asked why the Town couldn’t help him with grants, etc. Mr. Hoosier said he feels the Town caters to other businesses and not others. A round of applause followed.

Tod Hale, business & property owner, spoke to the Board and said Mark wasn’t the one complaining about his property. Mr. Hale then asked why should Mark be the one building a fence? Why doesn’t those around him build a fence of their own? A round of applause followed.

Jason Lewis, West Jefferson resident & truck driver for Rainbow Recycling, addressed the Board saying he hauls 20,000-30,000 pounds a week of scrap out of this county which is over 1 million pounds of scrap per year leaving this county.

Mark Blevins, business owner of Rainbow Recycling, was next to address the Board. Mark said he had his bookkeeper prepare some information and stated through May 31, 2015, he had bought \$87,000 worth of merchandise which has went into the local economy, mostly to West Jefferson. Mr. Blevins then said from January 1 through December 31, 2014, \$245,000 was paid out to the local economy. Mr. Blevins then said if the Board was trying to shut him down they could kiss his ass. A round of applause followed.

David Hoosier spoke again to the Board stating that \$245,000 was paid out into the local economy and very few businesses in Ashe County could say they have done this.

Dave Jarrett spoke to the Board stating if Mark moves his business to another location, would he be subject to more restrictions down the road and attacked again to more rules. Feels he should be grandfathered in. Attorney David Paletta said a property owner did not have to wait the entire 3 year period to apply for the Conditional Use Permit, they could at any time. Mr. Jarrett said he should be able to stay where he's at and not be required to do anything. A round of applause followed.

George Yates, friend of Mark Blevins, stated Mark has been there a long time and a fence is not going to solve the problem because a lot of Mark's property is visible from different area. Mr. Yates challenges the Town and Arts Council to come up with an art project or beautification idea for this property to help Mark out. The Town prides itself in beautification, so this is a perfect project to enter into. If Mark does build a fence and beautifies his property, it will only raise the value of his property and his taxes will increase, so why would he want to do that. A round of applause followed.

With no further comment, the Mayor closed the public hearing at 7:02 p.m.

Regular Session began at 7:06 p.m.

Approval of Minutes- June 1, 2015 Regular Meeting- With no comments, Alderman Hartman made the motion to approve the minutes as written. Alderman Reeves seconded with a vote of 4-0 in favor.

Consideration of Library Event Request on Saturday, July 25- Peggy Bailey with the Ashe County Library spoke to the Board about an upcoming special event on Saturday, July 25. Peggy said this is a carnival-type reward for children's reading throughout the summer. Peggy said there would be inflatables, educational aspects from ASU, and this year, a miniature horse that goes along with a book. This miniature horse would not be for riding. Peggy said a staff member would take care of the cleanup of the pony. Alderman Shoemaker made the motion to approve this event request. Alderman Reeves seconded with a vote of 4-0 in favor. The Board thanked Peggy for coming.

Consideration of Zoning Ordinance Text Amendments- Attorney David Paletta stated the majority of these amendments is to make the height requirements of fencing consistent as there was some inconsistencies when he reviewed the ordinance. He stated the Board might want to focus on the big issue which would be whether or not to make salvage/junk yards a conditional use and not permitted. Alderman Shoemaker stated he felt the Planning Board had done their part and the Town needs to do theirs. Alderman Hartman stated the Town does not want to shut him down and feels the Town can sit down and work with Mark. The Board then voted on each proposed text amendment:

- a) **Proposed text amendment to Section 503.2 Conditional Uses of the Residential Agriculture Zoning District (R-A).** Alderman Hartman made the motion to approve this proposed text amendment. Alderman Shoemaker seconded with a vote of 4-0 in favor.
- b) **Proposed text amendments to Sections 508.1, 508.11, 508.2, 508.21 and 508.4 of the Industrial Zoning District (M-1).** Alderman Hartman made the motion to approve these proposed text amendments. Alderman Reeves seconded with a vote of 4-0 in favor.
- c) **Proposed text amendment to Section 511.41 Manufactured (Mobile) Home Parks of the Manufactured (Mobile) Home Zoning District.** Alderman Shoemaker made the motion to approve the proposed text amendment. Alderman Hartman seconded with a vote of 4-0 in favor.

- d) **Proposed text amendments to Sections 800 and 801.04 of Article VIII, Conditional Uses.** Alderman Hartman made the motion to approve the proposed text amendments. Alderman Reeves seconded with a vote of 4-0 in favor.
- e) **Proposed text amendment to Section 900.3, Continuation of Nonconforming Uses.** Alderman Reeves made the motion to approve the proposed text amendment. Alderman Hartman seconded with a vote of 4-0 in favor.
- f) **Proposed text amendments to Sections 1004.3 and 1004.4, located in Article X, Landscaping Screening and Buffering for Development.** Alderman Shoemaker made the motion to approve the proposed text amendments. Alderman Reeves seconded with a vote of 4-0 in favor.

Consideration of statement that shows consistency/no consistency with the Town's Land Use Plan-

With no discussion, Alderman Hartman made the motion to approve the statement that shows consistency with the Town's Land Use Plan of the 6 amendments of the Zoning Ordinance text amendments approved. Alderman Reeves seconded with a vote of 4-0 in favor.

Consideration of CDBG contracts- HCCOG- Burkett Ave. water/sewer improvements-

Brantley said CDBG funding has been awarded to the Town for the Graybeal and Burkett Avenue projects. Each of the plans and procedures must be approved in order for the grant process to move forward. The Mayor then said this contract would be for planning assistance and engineering services for the project. Alderman Green made the motion to approve the CDBG contracts. Alderman Shoemaker seconded with a vote of 4-0 in favor.

Consideration of CDBG contracts- Municipal Engineering- Burkett Ave. water/sewer improvements-

With no discussion, Alderman Green made the motion to approve the CDBG contract with Municipal Engineering. Alderman Shoemaker seconded with a vote of 4-0 in favor.

Consideration of CDBG Fair Housing Plan- The Mayor said this is federally mandated plans that must be adopted for the CDBG funding. With no discussion, Alderman Shoemaker made the motion to approve the CDBG Fair Housing Plan, seconded by Alderman Hartman. The vote of 4-0 in favor.

Consideration of CDBG Fair Housing Resolution- With no discussion, Alderman Reeves made the motion to approve the CDBG Fair Housing Resolution. Alderman Shoemaker seconded with a vote of 4-0 in favor.

Consideration of Fair Housing Complaint Procedure- With no discussion, Alderman Reeves made the motion to approve the Fair Housing Complaint Procedure. Alderman Shoemaker seconded with a vote of 4-0 in favor.

Consideration of CDBG Excessive Force Plan- With no discussion, Alderman Green made the motion to approve the CDBG Excessive Force Plan. Alderman Hartman seconded with a vote of 4-0 in favor.

Consideration of CDBG Local Job Initiative Section 3 Plan- With no discussion, Alderman Reeves made the motion to approve the CDBG Local Job Initiative Section 3 Plan. Alderman Hartman seconded with a vote of 4-0 in favor.

Consideration of USDA application and engineering services for well dewatering & for

O'Reilly/Hometown Furniture water/sewer hookup- Brantley said this is a resolution to apply for USDA funding for the well dewatering-O'Reilly project and to select Municipal Engineering as the project engineer. Brantley also said since this project has been discussed in an open meeting without Municipal Engineering present, the Town may select them for the project and not go through the application project for an engineer. With no discussion, Alderman Green made the motion to approve this application and select Municipal Engineering services. Alderman Shoemaker seconded with a vote of 4-0 in favor.

Consideration of ARC Grant revised resolution in amount of \$155,000 for well dewatering & for

O'Reilly/Hometown Furniture water/sewer hookup- Brantley explained this is a revised resolution for the well-dewatering project for adding an additional project to extend water/sewer service to the O'Reilly/Hometown Furniture building. The addition of the O'Reilly/Hometown Furniture project added \$175,000 to the total cost of the project making the total cost \$775,000. This will require the Town to match \$155,000 instead of the \$120,000 as in the prior resolution adopted May 4, 2015. Brantley said USDA recommended adding to our original project stating the more the cost of the project the better chance of receiving grant funding. Alderman Green made the motion to approve the resolution, seconded by Alderman Hartman. The vote of 4-0 in favor.

Consideration of amendment to Town Code of Ordinances- Removal of Privilege Licenses-

The General Assembly passed House Bill 1050, Part XII, to repeal the Business License Fees which eliminates municipalities from collecting these fees effective July 1, 2015. A revised Business Registry amendment has been drafted to replace the Privilege License section, Chapter 110 in the Town's Code of Ordinances. With no discussion, Alderman Shoemaker made the motion to approve the amendments as presented and to rename Chapter 110, Business Registry in the Code of Ordinances. Alderman Reeves seconded with a vote of 4-0 in favor.

Review of public restroom project-

Brantley gave the Board an update on the public restroom project. The Aldermen each had sketches to review for the restroom project drawn up by Kevin Nichols. Brantley stated these sketches were mirrored after the public restrooms that Mt. Airy has. If the Board is in agreement with these sketches, Brantley said he would have Kevin Nichols complete the blueprints so we can then get pricing on construction. The Board was in consensus to move forward. One suggestion made was to use concrete in front of the restrooms with small grassy areas in between.

Discussion of Planning Board member appointment-

The Mayor stated John Reeves and Joan Watson's terms will expire on July 31st, but both are willing to be reappointed for another 3 year term to the Planning Board. Alderman Shoemaker made the motion to reappoint John and Joan for another 3 year term to the Planning Board. Alderman Hartman seconded with a vote of 3-0 in favor. John Reeves abstained from voting.

Review of Centennial magazine-

Brantley said each Board member has a copy of the recently printed West Jefferson at One Hundred centennial magazine. Brantley said this was TDA funded and it featured West Jefferson as it is today, in its centennial.

Review of paving projects for Fiscal Year 2015-16-Brantley said he and Eric had composed 2 options that listed paving projects for the Town which were both under the paving budget for FY 15-16 of \$117,000. He asked the Board to review these options and see which one they would rather choose. After some discussion the Aldermen were in consensus to proceed with option 1 at a cost of \$108,207. These streets include:

Long Street- (a) Jefferson Ave. to Graybeal Ave.

(b) Graybeal Ave. to Ridgecrest (patch only)

Oak Street- Ford St. to Mountain Ave.

Sixth Avenue- (a) Wilco to old Sears building

(b) Old Sears building to Badgers

State Street- Parker Tie to Jefferson Avenue

East First Street- 3rd St. to 6th St.

North Fifth Avenue- curb to curb

West Ashe Street- Jefferson Ave. to Backstreet

Hice Avenue at Elk Creek Lumber (patch only)

School Avenue- Repair in front of Arts Council- edge to sidewalk

Police Report- Chief Rose gave the police report for the month of June. During the month, 229 calls were dispatched through the communications center, 16 auto collisions were investigated, and 5 people were arrested which include charges of: DWI, Larceny, Assault and Drug related crimes. Also, 1 persons were arrested/charged for drug violations. The Chief said Christmas in July went well with only a few issues. He then said he knew the Board would be discussing the status of the Detective position. He stated this is an important position to have as they would be busy with cases. Also, this position would be the ABC officer for the Town and a part-time detective couldn't do this and be a road officer. Chief then said there was very little opportunity for police officers to advance in the department and due to the pay scale, many do not want to work here because West Jefferson is on the lower end of the pay scale. He said currently the department is stretched thin and some officers had even canceled their vacation on their own accord to help out. The Board thanked Chief for his report.

Water/Wastewater Report- Charles Call gave a report on the water/wastewater plants. Charles said everything is going well, with only a few issues at the filter plant and 300,000 gallons of sludge were hauled off last month. The Board thanked Charles for his report.

Maintenance Report- Eric Miller gave a report on the Maintenance Department. Eric said 41 one calls had been reported for the month of June. 2 water leaks and 1 sewer line issue had been reported. He then said 5 street signs had been damaged last month. Also, the fire department was getting ready for the state inspection in September and the maintenance department had been working on hydrants getting ready for the inspection. The Board thanked Eric for his report.

Town Managers Report- Brantley Price reported to the Board stating \$1,016,000 of 2014 Town taxes had been collected which was 98% of the levy. Brantley said the ARC Grant for the new well site and belt press project at the WWTP was submitted on June 29th. Two separate demos of dewatering equipment would be on August 3rd and 17th. The funds for the streetscape project at Jefferson Avenue and Second Street had been approved and pre-bid meetings and bid opening will be held soon. Discussion then took place on whether to use permeable pavers on half of the alleyway instead of all pavers or all pavement. After some discussion, the Board came to a consensus to pave the alleyway behind Town Hall and any monies left over from this project could be used for sidewalks. The Board thanked Brantley for his report.

Public Comment- The Mayor opened public comment at 8:15 p.m. Mike Sawyer, Town resident, spoke to the Board on fireworks and lawful uses. Mike said there had been an issue in his neighborhood with the use of fireworks with no thought as to who it affects. He spoke of young kids, PTSD veterans, elderly, autistic people and pets who could be affected by these. He also recommended that the police use cell phones, not the radios, so people setting these fireworks off don't know when the police have been dispatched. Mike then spoke on the reductions in the police department. Mike spoke on the improvements in the police department since he and his wife moved here. Mike says the Town needs to maintain this police force with the same amount of officers not to downsize. He suggested to go along with the Chief's suggestions.

George Yates then addressed the Board. He stated he had known most of the Aldermen all his life and asked the Board to consider Mark's business and commended the Board on what they have done for the Town over the years. He asked no one to fight because everyone is family.

Robert Ray, local artist, then presented a portrait to the Town which depicted the West Jefferson Land Company in the formation of the Town. Robert said he would have this portrait framed and wanted to give it to the Town for its Centennial. With no other comments, the Mayor closed public comment at 8:30 p.m.

Aldermen Comments- The Board thanked everyone for coming to the meeting.

Closed Session- Personnel- The Mayor said the Board would be entering into closed session to discuss personnel. Alderman Green made the motion to go into closed session, seconded by Alderman Reeves. The vote of 4-0 in favor.

The Board came out of closed session at 9:00 p.m. With nothing further, Alderman Shoemaker made the motion to adjourn the meeting, seconded by Alderman Hartman. The vote of 4-0 in favor.

Dale Baldwin, Mayor

Wesley M. Barker, Town Clerk