



Town of Franklin Board of Aldermen

Agenda

February 2, 2015

7:00 p.m.

1. Call to Order- Mayor Bob Scott
2. Pledge of Allegiance- Vice Mayor Verlin Curtis
3. Adoption of February 2, 2015 Proposed Agenda
4. Approval of the January 5 and January 24, 2015 Board Minutes
5. Public Session
6. New Business
 - A.) Proclamation for Hunger Awareness Month- Margaret Freeman
 - B.) Presentation of Sufficiency Notification for 44 Lowery Lane- Town Clerk Chad Simons and Land Use Administrator Justin Setser
 - C.) Board Authorization for the Advertisement of Real Property Tax Liens for Current Year 2014- Tax Collector Jessie Wilkins
 - D.) Budget Amendments- Town Manager Summer Woodard
 - E.) Replacement of Town Bridge- Town Manager Summer Woodard
 - F.) Town of Franklin Travel Policy- Town Manager Summer Woodard
 - G.) Update on State Revolving Loan Fund for Town of Franklin Water Plant Upgrade and Expansion- Town Manager Summer Woodard
 - H.) Forward Re-Zoning Petition for three (3) parcels on Siler Road to the Town Planning Board- Land Use Administrator Justin Setser
7. Legal
 - A.) License Agreement for Bowery Restaurant- Town Attorney John Henning Jr and Town Manager Summer Woodard
8. Set Continuation Meeting for February 16, 2015 at 5:30 p.m.

February 2, 2015 meeting,

The regular meeting of the Town of Franklin Board of Aldermen was held on Monday February 2, 2015 at 7 p.m. in the Town Hall Board Room. Mayor Robert S. Scott presided. Aldermen Patti Abel, Verlin Curtis, Joyce Handley, Farrell Jamison, Billy Mashburn and Barbara McRae were present.

The Pledge of Allegiance was done.

Adoption of February 2, 2015 Proposed Agenda

Mayor Scott – The first item of business would be to adopt the proposed agenda. I would like to add one item to the agenda. It probably would come after Item H., and that would be a discussion about a request we have received about a banner.

Motion was made by McRae, seconded by Abel to add a discussion about a banner request to the February 2, 2015 meeting Agenda. Motion failed. Vote: 2 to 4. Voting Yes: Aldermen Abel and McRae. Voting No: Aldermen Curtis, Handley, Jamison and Mashburn.

Approval of the January 5 and January 24, 2015 Board Minutes

Motion was made by Jamison, seconded by Handley to approve the January 5 and January 24, 2015 Board Minutes as presented. Motion carried. Vote: 6 to 0.

Public Session

No person spoke during the public session period.

New Business: Proclamation for Hunger Awareness Month

Mayor Scott read the Proclamation to designate the Month of February as Hunger Awareness Month.

Motion was made by Handley, seconded by Curtis to approve the Proclamation to designate February as Hunger Awareness Month. Motion carried. Vote: 6 to 0. A copy of the Proclamation is attached.

New Business: Presentation of Sufficiency Notification for 44 Lowery Lane

Chad Simons – Town Clerk – Essentially, when you get a petition for annexation it has to meet certain requirements dictated by the State. I worked closely with Mr. Henning, the Town Attorney, and Mr. Justin Setser, our Land-Use Administrator, and we were going through the criteria. And it's not a matter of my opinion. It's either a yes or a no. The parcel that requested to be annexed is actually in a subdivision. In order for me to certify it, all of the subdivision has to be included in that. And it was not. Therefore, I couldn't certify it. Mr. Henning, can you go into more detail?

John Henning Jr. – Town Attorney – I'm as surprised as I can be about this. I did not see this being an issue with this request. It's not something that I think of. I don't know Alderman Mashburn, would you think of that area being a subdivision?

February 2, 2015 meeting continued,

Alderman Mashburn – I guess I knew it was, but I didn't think about it because it was such an old subdivision.

John Henning Jr – That's exactly where I was. The problem is, it's platted as a subdivision. State law is very black and white about this annexation standard. I expected to find some sort of exception for a subdivision platted in 1958, and hasn't really operated as a subdivision since that time. What Mr. Simons referred to in the statute refers to the definition of subdivision in another section of GS 160-A, and it doesn't say anything about the age of it, or whether or not it's acted as a subdivision. It just says subdivision. The deed for this property discusses this subdivision, and there are lots in it. I spent a good amount of time trying to find an exception, and I just couldn't find it. Unless the Board has any direction for me to continue to do that, I don't think it can meet the standards that the clerk has to certify to unless every owner of properties within that subdivision signs onto it. So there is really no action the Board has to take on this.

Alderman Jamison – That was about the time the motel was built down there. Do you think that was a subdivision that was put in there during the time of that?

John Henning Jr. – Town Attorney – Possibly, that particular parcel is just one more of the area that we are talking about.

Alderman Jamison – And most of that subdivision is across the highway, right?

John Henning Jr. – Town Attorney – It's on both sides. As it was platted in 1958, they left a 100 foot wide easement through some of the parcels, and I don't know if plans for Highway 441 were already in place. It looks like that was in the works.

Alderman Jamison – So what can they do, for the people doing the petition? What would be there steps?

John Henning Jr. – If they were to get all of the owners in that subdivision to join in the petition for annexation, the Town could consider it again. If we had another petition to explore the sufficiency, we would then have to look at another standard that states that the total satellite annexed areas cannot exceed ten (10) percent of Town land area. It would take the owners of all that property to overcome this problem. If that happens, we can look at it at that time.

Miles Gregory – Representing Mr. Henry Te – I'm here tonight to represent Mr. Henry Te. He has made the request for this property to be annexed. I've been in the real estate business for over forty (40) years, and you know that I'm probably familiar with that property down there. The old highway, the Old Georgia Road, the subdivision went to that road when it was subdivided in 1958. Since that time, part of that subdivision was sold off. That's where the Mexican Restaurant is now, and it's where the old steakhouse was. When they built the new road in the late 60's and early 70's, that property was purchased at that time. They didn't envision the new road going in where it is now. There hasn't been any activity, to my knowledge, in that subdivision for twenty-five (25) or thirty (30) years. I see no problem myself with the Town annexing it. There are no restrictions in the deed to prohibit this property from having a change in use. We can do some more research if you would like.

February 2, 2015 meeting continued,

John Henning Jr. – I'm sympathetic to what Mr. Gregory has said. I fully expected to find something as an exception. But I didn't find it. Unless the Board directs me to spend more time researching it, I can't do it. I would need the Board's direction to do that. Like Mr. Simons has said, the statute is clear. I wish there was something else I could tell you.

Alderman Mashburn – I don't think Mr. Henning should conduct more research. Mr. Te's attorneys should probably look at it. I don't know what else to tell you.

Miles Gregory – I can have Mr. Te's attorneys look into it and bring it back to you at the next meeting?

Alderman Mashburn – That would be fine. I'm not sure they will be able to find anything other than what we've found.

Alderman Jamison – How do you get out of a subdivision?

John Henning Jr. – Town Attorney – I suppose if all the owners came together and agreed that there is no subdivision, and recorded something along those lines, then maybe.

Alderman Mashburn – But you're back to square one. You have to get everyone to agree to something.

John Henning Jr. – Town Attorney – Yes. But the agreement would be different. They wouldn't be agreeing to get annexed in.

Miles Gregory – One other point. The property that you annexed not long ago was part of this subdivision.

John Henning Jr. – Town Attorney – He's quite right. The Crystal Falls development and the old steakhouse across the street are in the subdivision as platted. I don't have any answers for you about that. I don't know whether that was considered when that was annexed. It's been before me.

Mayor Scott – What's the pleasure of the Board?

Alderman Handley – I'm more than willing to hear it again. Have Mr. Te go back with his attorney and look at it.

Miles Gregory – We will be happy to do that, to research and to get you some more information. Would it be okay if we presented this to you at the next meeting?

John Henning Jr. – The first step is to have the Town Clerk certify it. So if you find anything differently, let us know. I don't know if another presentation would do anything.

New Business: Board Authorization for the Advertisement of Real Property

Jessie Wilkins – Tax Collector – I have submitted this report to the Board of Aldermen for any unpaid property taxes for tax year 2014. As of January 30, the amount is \$153,715.71. I'm seeking Board approval to advertise any unpaid 2014 real property tax as of 5 p.m. on February 27, 2015. With Board approval we can advertise them in the March 6th 2015 edition of the Franklin Press.

February 2, 2015 meeting continued,

Alderman Jamison – What is the cost of advertising when people pay penalties on interest and stuff?

Jessie Wilkins – Tax Collector – We take the total amount of taxpayers and it is averaged and shared equally among however many taxpayers. So we do it equally.

Alderman Jamison - That's sufficient. Thank you.

New Business: Budget Amendments

Summer Woodard – Town Manager – I actually have three (3) budget amendments before you tonight. The first one is to transfer from General Fund miscellaneous revenue \$21,284.00 into two expense accounts. One is insurance paying for vehicle repairs and capital equipment. The justification for that is to appropriate insurance claims revenue for repair of a police vehicle, and the balance from that would be to pay for the existing lease agreement in the Police Department. That's the first one. The second budget amendment we have is General Fund, in your revenue account, to transfer \$3,500 in rent into your expenditure account, which is your building maintenance. The purpose for this justification is to appropriate revenues for the purposes of building maintenance costs. The third amendment we have is to take \$4,500 in retained earnings from the water and sewer fund and transferring that into expense account into the miscellaneous account. The justification for that is appropriation of water and sewer retained earnings.

Mayor Scott – Any questions from the Board. Being none, do I hear a motion?

Motion was made by Mashburn, seconded by Curtis to approve the budget amendments as presented. Motion carried. Vote: 6 to 0. A copy of the budget amendments are attached.

New Business: Replacement of Town Bridge

Summer Woodard – Town Manager – I received an email from a gentleman at the State. The Board voted to approve \$36,000 to the addition and betterment of Town Bridge at the March 18, 2014 meeting. The addition, plus the betterment includes a ten (10) foot multi-use pass on the upstream of the bridge that would be separated from vehicle travel lanes by concrete rail. The North Carolina Department of Transportation has informed us that the vertical concrete barriers cannot be incorporated in its proposed location because it's located on a joint between the two bridge components. However, the concrete barrier can be incorporated if it's shifted three (3) inches to the right, which slightly reduces it to a nine by nine path instead of ten (10). I wanted to inform the Board tonight to see if it is the will of the Board to continue with the \$36,000 allotment. I would ask you to consider it. Following up with that, I requested an updated schedule of the project. What they outlined is this. February 2015 they are going to begin acquiring easements. In March 2015 they will accept bids for the Bridge. The start date is May 2016. The downside is that it will take eighteen (18) months to two (2) years to complete. I have attached for the Board and the media a copy of the proposed route of traffic.

Mayor Scott – Any comments or questions?

Motion was made by McRae, seconded by Handley to modify the bridge allotment to include the three (3) inch shift of the concrete barriers. Motion carried. Vote: 6 to 0.

February 2, 2015 meeting continued,

New Business: Town of Franklin Travel Policy

Summer Woodard – Town Manager – What you have before you is just two word phrase changes. The wording would change the fact that the meal cost will be reimbursed at a maximum of \$35.000 a day for overnight travel expenses. Only day trips will require receipts to be submitted on a per diem basis. The state recommends \$6.00 for breakfast, \$12.00 for lunch, and \$17.00 for dinner. However, the Town will not reimburse the employee for the cost of the meals that are included as part of a registration fee.

Motion was made by Handley, seconded by Curtis to approve changes to the Town of Franklin’s Travel Policy as presented. Motion carried. Vote: 6 to 0. A copy of the policy is attached.

New Business: Update on State Revolving Loan Fund for Town of Franklin Water Plant Upgrade and Expansion

Summer Woodard – Town Manager – What you have before you in your packets is information from a letter we received last Friday. It’s an official notification that the total loan amount for the water plant upgrade and expansion is \$3,578,750.00 at zero percent interest. Also below, the letter has the milestones. The first milestone is the engineering and submittal report which is not due until May. I will bring more information to you as we get deeper into this project.

New Business: Forward Re-Zoning Petition for three (3) parcels on Siler Road to the Town Planning Board

Justin Setser – Land-Use Administrator – In your packets you will see an application for re-zoning. I have been looking at this area for some time on Siler Road. And what I’m presenting is three (3) parcels on Siler Road currently zoned Residential (R-1) and (MICR) Medical, Institutional, Cultural and Residential. This is very similar to neighborhood mix-use. And we would re-zone these to Commercial C-2 and Commercial C-2 Special Use. The three parcels total 61.4 acres, and you also have a map of the parcels in your packet.

Alderman McRae – Which part are we talking about?

Justin Setser – Land-Use Administrator – Mr. Setser illustrates the potential rezoning of the three parcels on a map.

Mayor Scott – Has any of those properties ever been considered for Industrial Use?

Justin Setser- Land-Use Administrator – Not that I’m aware of.

Alderman Jamison – I don’t think so. That’s on the other side of the river.

Motion was made by Handley, seconded by Abel to forward re-zoning petition for three (3) parcels on Siler Road to the Town of Franklin Planning Board. Motion carried. Vote: 6 to 0.

February 2, 2015 meeting continued,

Legal: License Agreement for Bowery Restaurant

John Henning Jr – Town Attorney – Mr. Mayor, it's my understanding that the soon to open Bowery Restaurant during the construction process added a sidewalk that connects to the East side of the building and onto Town property. I'm certain that no permission was given for that. I know it didn't come before the Board. Sidewalks in particular are an area of concern for liability purposes. As you all know, the Town gets no governmental immunity for accidents that happen on sidewalks. So we need to be careful about where sidewalks are constructed and when they are not constructed under the Town's supervision. There needs to be some clear demarcation about who is responsible for what. So, this is at least an attempt at an agreement by which the Town would give permission for an easement, which is usually forever and forever. But this is permissive use of that portion of Town property for an emergency exit. I will be happy to answer any questions.

Mayor Scott – Any questions of the Board.

Alderman Handley – The sidewalk is going to be used for emergency uses only? As far as we know, the door and sidewalk are for emergency use only?

Alderman Jamison – Yeah, I talked to the Fire Marshal on it. They have to have the emergency exit because they only have the front entrance. The area behind would require them to go through the kitchen area. That would be undesirable. But if you have an emergency exit, it has to be wheel chair accessible. So the sidewalk had to be there. I think the issue is they didn't get permission to do so from the Town of Franklin, if I'm correct.

Alderman Curtis – It looks like a taking of town property. If that were reversed, we would be in real trouble here on the Board: to take property, without some form of compensation. It looks like that's exactly what happened here. That the property was taken from the Town without any authority.

Brett Murphy – Bowery Restaurant Manager – So when I first began the process of working on this restaurant, I thought I had taken all of the proper precautions and steps to get my plans approved by the Town of Franklin and by the county. Those plans included that sidewalk and that emergency egress. So I did not realize I needed to make a formal request. The exit is purely an emergency exit, and is not our main entrance. It's required by the county because we are not allowed to route people through our kitchen. So after meeting with the parties that are involved to get it approved, I thought I was set and I would not have started the project had I not thought I had approval. So at this point I'm just really seeking an agreement to let me have the sidewalk there. I'm certainly not trying to impede on anyone's property, or the Town's property. I just need it there so I can run my business.

John Henning Jr. – Town Attorney – I would suggest to you Mr. Mayor that I understand that in the addition to concerns about use by the public of that doorway and emergency exit, there has been at least one incident where town staff had trouble accessing their parking lot because it was being used as a delivery point. I didn't consider that. I have said that it can be used only in the case of an emergency, but I think it probably needs to be worded strongly. But there are three options at this moment. One is don't agree with anything and consider it trespassing, and instruct me to have it removed. That will be expensive and time consuming. Also any neighboring use of a property on Main Street is out of options for egress. Whoever occupies that building for commercial use will have to have an emergency exit.

February 2, 2015 meeting continued,

Alderman Mashburn – I'm thinking right now we should take it under advisement and see how all this stuff washes out.

John Henning Jr. – Town Attorney – Let me just suggest to you, that getting it under some sort of agreement is important. Another part would be to give an easement, which would be forever and ever.

Alderman Mashburn – No, absolutely not.

John Henning Jr. – Right. You don't know whether or not the use of Town property will require you to have something else done to that property. So this is the middle option. And it has the advantage of saying that whoever is using it will identify the Town and take legal responsibility and ensure the Town will not be responsible for accidents or any other legal incidents. I think it does need to be revised anyway to take into consideration other uses and make them explicit. I agree.

Alderman Jamison – Before we agree to anything, I would like to see that area cleaned up. There is mud out there now. It's kind of a mess. That was in the easement agreement for the gas line.

John Henning Jr. – That's true. That is in the easement for Toccoa Gas, and they did agree to it.

Brett Murphy – Bowery Restaurant Owner – I'd just like to say that part of getting this all approved through the Town, I agree. I would really like to landscape that area for the Town and make it a nice area. I really thought it was like a dead zone for the Town. We have purchased plants and shrubberies to do that over there. Certainly I'll be cleaning it up. Even though it's not our main exit. We will have a sign on the door to make sure people know it's an emergency exit only, but we still want it to look nice. I was just instructed to halt all projects.

Alderman Handley – Should we have something in place before next month? What if something happens?

Summer Woodard – Town Manager – Please keep in mind you do have your continuation meeting on February 16, or you can wait to have something at the regular meeting on March 2.

John Henning Jr. – Town Attorney – I don't see any reason why we can't have something put together by the February 16th meeting, to have a polished licensing agreement.

Alderman Jamison – And that won't prevent you from opening up will it?

Brett Murphy – Bowery Restaurant Owner – They will not close me down as long as the sidewalk is there. If the sidewalk is gone I'm done.

Alderman Jamison – We understand that. We want the business to be successful.

February 2, 2015 meeting continued,

Announcements

Mayor Scott – So let's go around the table. Anything from the Board before we get out of here in record timing?

Alderman Handley – With winter here, we are still looking actively at doing some positive things with the sidewalks outside. We know a lot of the stores downtown are wanting things fixed, and we are wanting to do something to prioritize.

Alderman Jamison – Looking at some of the sidewalks and the conditions of some of those, I would like to see our maintenance department, while they are kind of in an offseason, go out and remove some of the debris, grass and dirt.

Brittney Raby – Macon County News – Didn't you add something to the agenda? A banner?

Mayor Scott – No. The vote was four (4) to two (2) not to allow it on the agenda.

Motion was made by Curtis, seconded by Abel to set continuation meeting for Monday, February 16, 2015 at 5:30 p.m. Motion carried. Vote: 6 to 0.

Chad B. Simons, Town Clerk

Robert S. Scott, Mayor

