

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: September 13, 2010

SUBJECT: Board & Commission Appointments – Acknowledgement of Error in Appointments to Zoning Board of Adjustment

AGENDA INFORMATION

Agenda Location: New Business
Item Number: 6-A (3)
Department: Board of Aldermen
Contact: Darlene Whisenant, Town Clerk
Presenter: Marcy Onieal, Town Manager

BRIEF SUMMARY: The Town’s Boards and Commissions Manual (rev. 03/08/09) calls for membership succession on the Zoning Board of Adjustment as follows:

“ . . . Any vacancy in the membership shall be filled by the alternate member with the most seniority, who shall serve the remainder of the unexpired term. The Board of Aldermen shall then appoint a person to fill the vacancy created by the removal of the alternate. . . “

In June and July, 2010, the Board of Aldermen (BoA) made appointments to the Zoning Board of Adjustment (ZBA) in apparent conflict with these guidelines. On June 16, 2010, the BoA appointed three individuals (Browning, Lamm, Loutzenheiser), each to three-year terms, replacing three outgoing members (Tatham, Bobbitt, Wilson) who had just completed full three-year terms. The BoA also reappointed Terry McCall (whose term as an alternate was expiring) to another three-year term as alternate. As of June, 2010, one alternate position, vacant since 2008, remained vacant but was subsequently filled on July 12, 2010 by appointment of Michael Salomonides.

Immediately following the June 16th BoA meeting, the Town received the resignation of ZBA member Doug Brock, leaving a one-year unexpired term to be filled. According to current adopted policy, the alternate with most seniority (in this case, Jerry Atkins) should have automatically filled the vacancy for the remainder of the unexpired term (through 6/2011) without further action by the BoA. Instead of that happening, however, on July 12, 2010, the BoA appointed another individual (Dawn Wilson) to the unexpired term.

ZBA members (both full and alternate) are supposed to serve three-year staggered terms, with an equal number of members in each class. The fact that the terms of current ZBA appointees have become unequally distributed across classes suggests this is not the first time the Town has failed to follow its own adopted procedure for ZBA appointments.

Neither the Town’s Code of Ordinances, nor the Boards and Commissions Manual, includes provision for, or the legal requirement/remedy to, correct procedural errors in appointments to Boards and Commissions.

MOTION FOR CONSIDERATION: At Board's discretion.

FUNDING SOURCE: N/A

ATTACHMENTS: 1) ZBA membership roster; 2) Applications on File for potential appointment to Planning Board.

MANAGER'S COMMENTS AND RECOMMENDATIONS: The Board of Aldermen exercises exclusive authority for both appointments to ZBA membership, as well as establishment of procedure under which the ZBA operates. In order to "correct" what has been publicly characterized by one citizen as violation of its own procedure, the Board must determine for itself which value – appointing authority or procedural authority – holds a higher value, while considering the following options. The BoA could:

- 1) Admit procedural error, do nothing, and let current appointments stand for the remainder of the existing terms, ensuring that all future appointments and succession are handled according to current adopted procedure;
- 2) Admit procedural error, dismiss Dawn Wilson from ZBA, and allow Jerry Atkins to assume the unexpired term of Doug Brock through 6/2011 (which will then necessitate an appointment by BoA to fill the unexpired term of Jerry Atkins as alternate with term ending 6/2011);
- 3) Amend the Boards and Commissions manual to reflect what in fact has been past practice in making appointments to the ZBA (appointing full members *and* alternates without regard for balanced distribution of terms or the succession procedure currently in place)
- 4) Vacate *all* June appointments to ZBA, adopt new policy clarifying terms of office and succession procedure, and again appoint individuals of the Board's choice to all vacant ZBA positions (full and alternate), providing for equal class distribution in the process
- 5) Proceed with some variation or combination of the above options

In any case, I recommend the board seek the advice of the Town Attorney with regard to legal precedent, regardless of which option is pursued. I would also remind the board that Dawn Wilson resigned from the Housing Commission in order to accommodate the Board's desire to re-appoint an experienced ZBA member to the Board at a time when 4 of 5 experienced members had either rotated off or resigned. If you choose to pursue Option 2 above, then you may wish to consider re-appointment of Dawn Wilson to the position she vacated on the Housing Commission, which remains unfilled.