

**MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN  
REGULAR SESSION MEETING  
October 12, 2009**

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**THE BLACK MOUNTAIN BOARD OF ALDERMEN** met in regular monthly session on Monday, October 12, 2009 at 6:00 p.m. in the meeting room of Town Hall, 160 Midland Avenue, Black Mountain, NC.

**I. CALL TO ORDER, PLEDGE OF ALLEGIANCE, PRAYER**

Mayor Bartlett called the meeting to order at 6:00 p.m. with the following members present:

Mayor Carl R. Bartlett  
Vice Mayor C. Michael Sobol  
Alderman Ruth D. Brandon  
Alderman Joan Brown  
Alderman Chuck McKeown  
Alderman Rosalie Phillips

The following staff members were also present:

Marcia D. Onieal, Town Manager  
Ron Sneed, Town Attorney  
Steve Jones, Fire Chief  
Jim Orr, Recreation and Parks Director  
Steve Padgett, Police Lieutenant  
Rick Shreve, Finance Director  
Elizabeth Teague, Planning Director  
Bob Watts, Public Works Director  
Pam Hoen, Customer Service Representative  
Anna V. Stearns, Administrative Assistant  
Darlene Whisenant, Administrative Assistant

Representing the media:

Jennifer Fitzgerald, Black Mountain News  
Mark Vanderhoff, Black Mountain News  
Gary Biggers, Black Mountain Video Productions

Mayor Bartlett led the Pledge of Allegiance. Rev. Mary Faith Carson, Retired Minister, Presbyterian Church USA, led the prayer.

Mayor Bartlett thanked everyone in attendance and expressed appreciation to all those who were attending for the first time and also the viewing audience. He said that the weekly

viewing times of monthly Board meetings are shown on Government Channel 2 at 8:00 p.m. on Friday, at 2:00 p.m. on Saturday, and at 8:00 p.m. on Sunday. The current meeting is shown weekly throughout the month. Citizens can also go to the Town website and click on “Town Board Video Stream” at any time and view the current Board meeting.

**II. COMMUNICATIONS FROM THE MAYOR – None at this time.**

**III. CITIZEN COMMENTS**

**John Allison**, 34 Western View Street, presented the petitions signed by residents of Sunset Drive who have asked that this neighborhood be left zoned for residential use and not changed to a mixed-use zone. The Planning Board has recommended that this request be honored.

**Robert Donloff**, 1 Western View Street, reminded the Board that not only will Sunset Drive be affected by the proposed zoning change, but surrounding neighborhoods, such as Western View Street will also be affected.

**Mary Leonard White**, 114 Fairway Drive, urged the Board of Aldermen to pass all of the motions before them tonight concerning the stormwater management plan and grants to make repairs to Lake Tomahawk and to the silt basins along Tomahawk Branch. She referred the Aldermen to a letter she previously distributed to the Board regarding this item. The lake should be dredged and the park facilities there should be well cared for. Dredging the lake will do no good if the Tomahawk Branch silt basins are not repaired. She encouraged the Board to take advantage of the available stimulus grants to complete these projects. She believes the cost of the loan payments at \$10,000 per year is nominal when compared to the entire \$9 million Town budget. She believes this expenditure is well justified in caring for this Town facility. She also encouraged the Board to consider the proposal to purchase the old Chevrolet dealership since this property lies within the floodplain. It is unlikely that this property will recognize its full potential again or generate significant sales tax revenue for the town, and it is likely to deteriorate over time. She believes it is a good opportunity for the Board to purchase this property and use it for floodwater retention.

**IV. COMMUNICATIONS FROM THE TOWN ATTORNEY – None**

**V. CONSENT AGENDA**

A. Adoption of the Minutes

*Motion #1: To adopt the minutes of September 10, 2009 (Agenda Workshop) and September 14, 2009 (Regular Session)*

*Motion #2: To amend the previously adopted minutes of August 6, 2009 (Agenda Workshop) as corrected (per request of Vice Mayor Sobol)*

- B. Budget Amendment #2009-04  
*Motion:* To approve budget amendment #2009-04, carrying forward available project funding at June 30, 2009 for ongoing projects (Town Hall Renovation, Greenway Development, Backhoe Purchase)
- C. **CALL FOR PUBLIC HEARING** on the 2007 Revised Preliminary FIRMs and Proposed Flood Damage Prevention Ordinance  
*Motion:* To call for a public hearing on the 2007 Revised Preliminary FIRMs and proposed Flood Damage Prevention Ordinance on Monday, November 9, 2009 at 6:00 p.m., or as soon thereafter as possible, in the meeting room of the Town Hall located at 160 Midland Avenue.
- D. Adoption of Resolution to support and participate in a regional collaboration of county and city governments, to address regional fuel planning through the US Department of Energy’s Local Energy Assurance Planning (LEAP) Initiative  
*Motion:* To adopt LEAP resolution as presented.
- E. Adoption of Grant Project Ordinance for US Hwy 70 Corridor Sidewalk TIP Project # U-5178, providing for installation of sidewalk on the north side of US Hwy 70 from Blue Ridge Road to Grovestone Road  
*Motion:* To adopt grant project ordinance for TIP project #U-5178 as presented.
- F. Adoption of Grant Project Ordinance for Montreat Connector TIP Project #U-5179, providing for asphalt greenway along the west side of Flat Creek  
*Motion:* To adopt grant project ordinance for TIP project #U-5179 as presented.
- G. Adoption of Corporate Resolution and Certificate of Incumbency with SunTrust Bank for Purchasing Card Program  
*Motion:* To adopt corporate resolution and certificate of incumbency with SunTrust Bank for the purpose of planning and implementing a purchasing card program.
- H. Resolution (R-09-27) authorizing the Mayor to sign Amendment I to the wholesale water agreement between the City of Asheville and the Town of Black Mountain.  
*Motion:* To authorize the mayor to sign the Amendment to the wholesale water purchase agreement between the City of Asheville and the Town of Black Mountain

Mayor Bartlett said that the TIP funds providing for construction of a sidewalk along US Highway 70 has been designated for this street instead of other town roads, such as Montreat Road or NC Highway 9, because the stimulus grant must be used for a US Highway and cannot

be used for improvements to other roads. Alderman Brandon read a letter written by Howard Caricho and addressed to Alderman Sobol about the Town's choice to construct a sidewalk along US Highway 70 instead of along Montreat Road. Alderman Brandon asked for an update on the status of construction of Montreat Road sidewalks. Elizabeth Teague, Planning Director, said that the application for stimulus money to continue the Montreat Road sidewalk was turned down due to unacceptable drainage and right-of-way issues. The Public Works department will continue to try to identify funds available within the budget to continue sidewalk construction along Montreat Road.

Alderman Brandon asked for clarification about the amendment being made to the August 6, 2009 minutes. Marcia Onieal, Town Manager, explained that a correction has been made to the motion made by Alderman Brown at that Agenda meeting.

***On a motion by Alderman Brown, the consent agenda was unanimously approved.***

## **VI. NEW BUSINESS**

- A. Presentation and Adoption of Town Strategic Energy Management Plan and NCLM Green Challenge Resolution – Bake Garman/Terry Albrecht/Chris Dobbins, Waste Reduction Partners

Terry Albrecht spoke on behalf of Waste Reduction Partners, a division of The Land of Sky Regional Council. Waste Reduction Partners conducted energy audits at Town facilities in 2005 and 2007. These audits have been updated and used to draft the Strategic Energy Management Plan, which will be required in order for the Town to apply for Energy Efficiency Block Grant Funding. The plan outlines the cost per square foot for energy and water usage at each of the Town facilities. The plan identifies several improvements that could be made to town facilities and also identifies possible funding sources for some of these upgrades.

Alderman Sobol noted the need for insulation in the roof of the Carver Center to increase energy efficiency of that building. He asked if it would be in the purview of this plan to go above commercial insulation requirements. Mr. Albrecht said that in addition to looking at increased insulation, the window structure at the Carver Center must be updated in order to improve the energy efficiency of this structure.

***Alderman Brown made a motion to adopt the draft Strategic Energy Management Plan and the NCLM Green Challenge Resolution. The motion passed unanimously.***

- B. Presentation and Adoption of the Town Stormwater Master Plan & Update on Related Projects – J.P. Johns, McGill & Associates

A grant awarded in 2008 by the Cleanwater Management Trust Fund provided funding to establish the stormwater master plan for Black Mountain. The plan addresses stormwater quantity and quality issues. The plan has been used to apply for stimulus funds for various stormwater related projects within Black Mountain.

An inventory of stormwater facilities in the downtown area, along Tomahawk branch, and around the train trestle project was conducted and the system was found to be in good condition. The current inventory of illicit discharges is not in a GIS compatible format and will need to be updated to provide required information to the State.

The plan identifies ten possible capital improvement projects. One of those possible projects involves improvements to stormwater management along Tomahawk Branch. This would include stream restoration, sedimentation basin upgrades, dam improvements, and a stormwater quality feature at the tennis courts below the lake. Two projects along Tomahawk Branch through the golf course were chosen to receive stimulus grant funds because they do not require new easements and because costs were reasonable given matching and repayment expectations.

FEMA has announced that stimulus money will be available for flood plain improvement projects. Black Mountain has applied for a grant to purchase the former Chevrolet dealership property which is largely located within the flood plain. The grant would award the Town 75% of the appraised value of the property. A Letter of Intent was submitted to FEMA to identify parcels within the flood plain that could be purchased. There is no financial obligation on the part of the Town at this time. The State has requested that a resolution of support for the FEMA buy-out program be adopted no later than October 28<sup>th</sup> in order to continue to be considered for project funds.

The Town has budgeted for the current year's debt service payment on the Tomahawk Branch grant loan. It is possible to reduce the scope of the project to a total cost of \$212,000, reducing the annual payment by half. This reduced scope of work would address the lower portions of Tomahawk Branch.

Jim Orr, Recreation and Parks Director, said that golf course personnel are disappointed that the project does not involve restoration of the entire stream bank. The staff is supportive of the project so long as the construction phase of the project does not interfere with play on the course.

Alderman Brown called for the vote on motions 1, 2, 3 and 4 as stated. Alderman Brandon asked if the Chevrolet dealership property is for sale. Mr. Polk, the owner of the property, said that the property has not been for sale, but he is willing to sell the property to the Town for 75% of the appraised value so that the Town will not be required to pay the additional 25% contemplated by the FEMA grant.

***Alderman Brown made the following motions:***

- ***To adopt resolution authorizing staff to execute stimulus project grant agreement and initiate purchase order with McGill & Associates based on their proposed Scope of Work for Tomahawk Branch Improvements***
- ***To direct staff to pursue a no-rise study for a greenway bridge under the railroad trestle at Sutton & Ridgeway Avenues***

- *To adopt resolution of support for FEMA buy-out proposal for specified propert(ies) located in floodway.*
- *To adopt the Stormwater Master Plan*

*The motions passed unanimously.*

- C. Grant of encroachment on air-rights above a public right-of-way (request of Cheshire Village, LLC)

A request was received from Tom Grella, attorney for Cheshire Village, LLC, for the grant of an easement for an encroachment into the public right-of-way because an existing commercial structure is being converted to condominiums. The second floor patio overhangs the brick walkway by 1.4 feet.

*Alderman Brown moved to convey to Cheshire Village LLC, the right to the use of the airspace above East Market Street for the building that overhangs in to that space by 1.4 feet. The motion passed unanimously.*

## **VII. OLD BUSINESS**

- A. **PUBLIC HEARING** on the proposed Development Agreement and Master Plan for the Roberts Farm property

The Board chose to defer this presentation until additional details of the development agreement have been finalized. The Mayor welcomed comments from anyone who had planned to speak as part of the public hearing to do so.

**Tom Majko**, Byrd Road, asked how the development will be addressing stormwater concerns. He has been told that there will be more housing in this development than in the surrounding 5-mile radius. He also believes that the development poses fire hazards for the neighborhood.

*Alderman Sobol moved to call for a second public hearing. The motion passed unanimously.*

- B. **CONTINUATION OF PUBLIC HEARING** (*continued from September 14, 2009*) on proposed updates to Land Use Codes and consideration of adoption with an effective date of January 1, 2010

*Alderman Phillips moved to open public hearing on zoning map and text amendments as presented in the revised Land Use Code (Title XV of the Town Code of Ordinances). The motion passed unanimously.*

Mrs. Teague reported that the Planning Board has reviewed the proposed zoning of the Sunset Drive neighborhood of NMU-8 and, after discussion, agreed with the property owners that this neighborhood would benefit from maintaining its residential character.

**Joe Tyson**, 309 Dougherty Street. Mr. Tyson asked the Board to consider the following possible revisions to the proposed ordinance:

- The Meadowbrook Development along Blue Ridge Road will be zoned SR-2. He suggests TR-4 because the property is of the same character as remaining portions of Blue Ridge Road.
- Strike the phrase “and ... no more than three habitable stories.” from Page 4-9, 4.4.2(a).
- Strike the requirement that dumpsters be screened from public rights of way on Page 4-11 paragraph (e).
- Retail uses over 2,500 square feet and sit-down restaurants should be allowed as special uses in the OI district.
- Retail use over 60,000 square feet is now a special use in the CBD, and should be included as a special use in all districts which allow uses permitted in the CBD by right. Mrs. Teague suggested adding language to the PUD section of the ordinance specifying that commercial uses over 60,000 square feet in other districts must be part of a PUD. Alderman Sobol stated his belief that Black Mountain should not allow large commercial big box stores and his feeling that allowing these large uses is not favorable in the ordinance.
- Principal use of warehouses, as opposed to accessory use only which is currently allowed, should be allowed by right in the industrial districts.
- Strike Paragraph I from the Special Use Permits Requirements for the CBD. The Town should not regulate architectural appearance because it interferes with property rights and creativity. Mrs. Teague said that Tyson’s store was the model for developing this requirement and this paragraph was added at the suggestion of an architect who served on the Planning Board.

Mrs. Teague said that clerical corrections can be made without requiring additional Planning Board review, but changes to policy issues will need to go back to the Planning Board. Attorney Sneed said that a list of 4 or 5 policy issues could be adopted by the Board of Aldermen tonight without having to go back to the Planning Board for additional Review.

Alderman Brown asked that the Planning Board review Mr. Tyson’s comments and make appropriate changes to the ordinance and suggested that the Board take a position on the Sunset zoning issue.

***Alderman Brown moved that Sunset neighborhood remain zoned for residential use. The motion passed unanimously.***

**Lisa Milton**, 406 West State Street, spoke again about properties she owns along Blue Ridge Road, where proposed zoning would greatly decrease the available density. It will be important to encourage development in flat low-lying areas rather than along the ridgelines. More dense zoning also encourages affordable housing. Property owners along Blue Ridge Road would prefer that these properties be zoned UR-8.

Mrs. Teague said that the existing ordinance allows up to 5 houses per acre in the R-10 district. Increased density was allowed under the existing ordinance under conditional use processes. The proposed TR-4 zone allows up to 4 units per acre and has an inclusionary housing bonus allowing up to 8 planned unit development houses if the project goes through the conditional use process. The Planning Board will consider the request for this increased density along Blue Ridge Road. The new ordinance allows duplexes to be built on the same size lot as a single-family home. This means that 8 duplex units could be constructed per acre in TR-4 even before qualifying for density bonuses.

*Alderman McKeown moved to continue the public hearing to the November meeting. The motion passed unanimously.*

## **VIII. COMMUNICATIONS FROM THE TOWN MANAGER**

### **A. Manager's Quarterly Report**

The Asheville transit service to Black Mountain was set to be discontinued as of October 31<sup>st</sup>. This service will be continued until the end of this fiscal year with an additional contribution of \$5,000 from the Town. Route changes will be voted on by the City of Asheville tomorrow. NC DOT informed Asheville that intercity funding for the Black Mountain and Weaverville routes would be discontinued because they fail to comply with federal requirements that they connect with Greyhound bus routes. The new route will run along I-240 and I-40 to exit 55 in Swannanoa to serve Warren Wilson College, then along US 70 and Old US 70. The number of stops will increase to 6 per day and will integrate with the Greyhound schedule. The entire route time is increased. Adult fare will increase to \$1.50. Saturday and Sunday service will be added.

Mayor Bartlett raised his concern about Veterans who are currently riding the route to get to the VA Hospital and will no longer be able to use this bus route.

Alderman Sobol would like the Board to consider funding the purchase of a smaller bus to be used in a private/public partnership to allow a local private company to run the bus route from Black Mountain to Asheville.

Environmental assessments for the downtown property purchase have been completed, soil samples were found to be clean and DEHNR has provided a No Further Action Letter. Financing approval has been obtained through the LGC and closing should occur this week.

### **B. Departmental Reports**

**Finance** - Rick Shreve, Finance Manager reviewed the new report format which compares the first three months of this fiscal year with first three months of the previous fiscal year.

**Public Works** - Robert Watts, Public Works Director, reported that water loss for the previous month is down 18-20%. Easements are being designed for the sidewalk along Montreat Road up to Cotton Avenue, and easements along the next 4-5 properties may be completed this year.

**Recreation and Parks** - Jim Orr, Recreation and Parks Director, reported that the new pool generated over \$21,000 in revenue this summer season, compared to only \$8,000 in revenue last year. A new disc golf course has been constructed at the Clevenger property through a grant provided through Buncombe County Parks and Recreation. The Town has obtained a USDA grant to resurface the tennis courts at Lake Tomahawk. Senior Nutrition at Lake Tomahawk has received additional funding through the Council on Aging allowing the program to provide meals 5 days per week again.

**Planning and Development** – Elizabeth Teague, Planning Director, reported that the department raised over \$30,000 in building permit fees and privilege licenses in the first quarter and \$2,190 in sign permit fees. Fewer permits have been issued this year compared to last year.

**Police Department** – Steve Padgett, Police Lieutenant, presented the first quarter report, comparing arrests, calls and service responses for July, August, and September. Drug related arrests have decreased over the previous three months, but DWI arrests have increased. He also reported that the department has seen a dramatic increase in bear related calls this year. The department had received 69 bear related calls as of the last board meeting, and another 20-25 in the last month. Typically bears go back into the wild naturally as berries and seeds mature, but that has not happened this year.

**Fire Department** – Fire Chief Jones, reviewed the October 2009 report. Seven hundred people attended the fire department's open house this month. The Volunteer Fire Fighters' Association is still selling reflective house signs as a fundraiser. The Fire Department is hosting a benefit golf tournament with proceeds being delivered to the Volunteer Fire Fighters' Association. The tournament is being held on October 30<sup>th</sup> at the Black Mountain Golf Course.

#### **IX. COMMITTEE/BOARD REPORTS - None**

**Ruth Brandon**, related the passing of E. E. Hudgins, former police chief and Town Manager.

**Alderman Sobol** spoke about the coming election concerning the incorporation of Swannanoa. He clarified that Black Mountain has no interest in annexing the Swannanoa community.

#### **X. CITIZEN COMMENTS – None**

**James Splotzal**, Church of the Incarnation on Vance Avenue, spoke about a stormwater issue at the church's property. Runoff is gathering in the basement during heavy rain events. Public Works installed a curbing at the entrance to the parking area in 2007, which worked nicely to prevent this flooding of the basement. The new curbing was removed after protests of the neighbors. The structure has now withstood several thousand dollars worth of damage.

Mayor Bartlett asked that Public Works determine what it will cost to remedy this problem and bring those details back to the Board.

**John Allison**, 34 Western View Street, thanked the Board for considering the construction of new sidewalks. He asked if stimulus money might be available to construct bike lanes along North Fork Road, Blue Ridge Road or NC Highway 9.

**Phillip Assesi**, 15 Hi-Vu Drive, said that greenway projects should be built to encourage people to get out to walk and bike. He asked if bike lanes would be available for walking. He suggested that the new ordinance require that large developments design stormwater facilities to have zero runoff.

**Bake Garman**, Waste Reduction Partners, complemented the department heads that he has worked with during the energy audit.

## **XI. CLOSED SESSION**

*Alderman Sobol made a motion to go into closed session to: 1) consult with attorney on litigation matters as permitted in NCGS 143-318.11 (a) 3; 2) discuss property acquisition as permitted in NCGS 143-318.11 (a) 5; 3) discuss personnel matters as permitted in NCGS 143-318.11 (a) 6. The motion passed unanimously.*

## **XII. ADJOURNMENT**

*With no further business, Alderman McKeown made a motion to adjourn at 9:38 p.m. The motion passed unanimously.*

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Carl R. Bartlett, Mayor

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Marcia D. Onieal, Town Manager

ATTEST

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Rosa Hilbert, Deputy Clerk

Prepared by:

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Anna V. Stearns, Administrative Asst.