

MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REGULAR SESSION MEETING
August 10, 2009

THE BLACK MOUNTAIN BOARD OF ALDERMEN met in regular monthly session on Monday, August 10, 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 present:

Marcia D. Onieal, Town Manager
Ron Sneed, Town Attorney
Shirley Raines, Town Clerk
Pam Hoen, Customer Service Representative
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

Representing the media:

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

Mayor Bartlett led the Pledge of Allegiance, followed by prayer led by Rev. Randy Stone, Pastor, Meadowbrook Freewill Baptist Church, Black Mountain, NC.

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. Mayor Bartlett noted that beginning in the month of July, the Board of Aldermen Regular Session meeting will be held on the second Monday of each month with the Agenda meeting held the Thursday prior to the second Monday.

II. COMMUNICATIONS FROM THE MAYOR

A. Recognition

“Relay for Life” – Ashley Burbeau McElerath, Jennifer Tipton, Ann Holmes

Mayor Bartlett recognized Ashley Burbeau McElerath, Jennifer Tipton, and Ann Holmes for the tremendous job in organizing the “Relay for Life” golf tournament for the American Cancer Society, which was held in July. He presented the ladies with a “Mayor’s Big Dog Cap” award.

B. Buncombe County Board of Commissioners

Mayor Bartlett welcomed the Buncombe County Board of Commissioners to Black Mountain and the August meeting of the Board of Aldermen. Mayor Bartlett then asked Town Manager, Marcy Onieal, to give some highlights of municipal government in Black Mountain.

Ms. Onieal thanked the Commissioners for taking time to visit Black Mountain and appreciates the opportunity to open communications and to build relations between Black Mountain and Buncombe County.

Ms. Onieal gave a brief overview of the projects in Black Mountain. She said as in most communities, the town is struggling with the current economy in trying to maintain the level and quality of our essential services. Ms. Onieal said the town has been fortunate until recent years that the town’s efforts of improving service efficiency and the natural growth in our property base have kept the programs and services stable without the need to make significant or radical changes to fees and taxes; however, the growth has decreased significantly. The elected officials face difficult decisions in what services to cut and what to maintain. Staff has tried to take advantage of every funding opportunity, including grant funding, recent federal stimulus, etc. Ms. Onieal thanked the county for the much-needed renovation to the Black Mountain library. She stated the construction of the community pool and renovations to Lakeview Recreation Center are complete and have been well received. Ms. Onieal noted that this building represents a complete renovation of an existing building which now is the location for Town Hall and Planning and Zoning. The property on Montreat Road where the Town Hall was previously located is available for possible private or public redevelopment in downtown Black Mountain. She said with the help of stimulus money the town expects to address waste water and stormwater management through infrastructure improvement, comprehensive energy efficiency improvement, and alternative transportation, pedestrian access via new sidewalks and greenways connecting Mt. Mitchell and Swannanoa River, and Old Fort and Asheville.

Ms. Onieal said one of the most significant accomplishments of the past year is the comprehensive revision to the Land Use Code. This represents the work of several successive planning boards. She said the staff appreciates the work by Buncombe County for taking the lead on steep slope development from which we modeled the town's ordinance. One of the challenges in our community is how to promote economic development within the community and still maintain our small town atmosphere and character. She said there are several issues that are of mutual interest and she hopes there can be some dialog between Buncombe County and Black Mountain: They are: (1) Public transit - The town is grateful for participation by Buncombe County in the transit system. Public transportation in our community is critical, and there is a possibility of losing the transit service between Weaverville and Black Mountain if federal funding is not appropriated. (2) Waste reduction – costs continue to escalate. She said Black Mountain has absorbed \$200,000 in one year, which represents more than two cents on the tax rate. Hopefully, there can be new ways to improve services to the community for recycling and controlling cost. (3) Initiate discussion regarding the incorporation of Swannanoa and Woodfin annexation, particularly how those will affect financing in the area.

Mayor Bartlett then presented the Commissioners and County Manager a jar of Sourwood honey.

Mayor Bartlett then introduced David Gantt, Chair, Buncombe County Board of Commissioners. Chairman Gantt then introduced the commissioners: Vice Chair, Bill Stanley, Ray Bailey, Carol Peterson, Holly Jones. Staff present: County Manager, Wanda Greene, Jon Creighton, Assistant Manager, Mandy Stone, Assistant Manager, Mike Frue, Assistant County Attorney, and Assistant Clerk, Stacey Keith. Chairman Gantt thanked the Board and citizens for the opportunity to visit Black Mountain and offered support from the county. County Manager, Wanda Greene, then gave an overview of county-wide services and stimulus projects for 2009-10 budget year.

Chairman Gantt took several questions from the audience.

Mayor Bartlett thanked the commissioners and staff for taking the time to visit the town.

III. CITIZEN COMMENTS

Margaret Neville, 8 Silver Place, noted that it has been mentioned that a parcel of land has become available with the demolition of the old town offices and Williams Service Center. She said that a number of people believe this is a wonderful opportunity to establish a public park and green space on this property and welcomes the opportunity to be educated more about the pros and cons of procuring the property. Ms. Neville encourages the Board to remain open to the possibility that the property could be purchased with the help of the citizens of Black Mountain.

Gay Fox, 307 Tomahawk Avenue, said she supports Ms. Neville's suggestion that the Town purchase the old town hall property for a park. She said this is a chance for Black Mountain to have a park that would mean to Black Mountain what Central Park means to New

York. She said she knows the economic situation, but the Town needs to have vision. Ms. Fox said this is a once in a life-time opportunity and hopes the Board will work hard to make this happen.

Mary Sneed, McCoy Cove Road, said she has known David Turbyfill and his family for many years. David is honest, trustworthy and dependable and has given the town 35 years of his life. With all of the publicity, it is a disgrace to him, his family, and this community to have been put in this position and the fact that David is so close to retirement. Ms. Sneed said this town has always looked after its own and she said the Board needs to rethink this issue.

Bob Gunn, 109 Pleasant Drive, said he has just heard about obtaining the old town hall property for a park. He said this sounds like a fantastic opportunity but is concerned about the money. Mr. Gunn said he would like to respectfully challenge the Aldermen to think creatively about ways the park might be funded without a property tax increase. He suggested a campaign to solicit donations.

Mikkel Hansen, 112 Hilltop Road, said it is important to have the will to “think park” before thinking money. He said money will come eventually. Mr. Hansen stated it will take time, but it is important to preserve the piece of property.

Bob Orr, Vance Avenue, said he is here tonight to relay to the Board the shock of reading about David Turbyfill and the circumstances that after 34 years, a person who has been acceptable is now not acceptable, and was terminated. He said he has been in business for 30 years, and he has never encountered circumstances as outlandish as this is to an individual. He noted there is a legal standing that a person should be terminated for, i.e., stealing or other things. If that is the case, this would be an appropriate action. Mr. Orr said he does not know David personally, but he does know this town personally and does not like this. He said his recommendation to rectify this is to turn the time clock back and do it differently, especially with his retirement situation. He said he hopes his encouragement will cause the Board of Aldermen to understand there are some of us in the community that are very disturbed about this. He said he would never dismiss someone who had been that loyal, that long, at one job. Second, unless this is a matter of legal contention, that there is something David did wrong that he can be charged with in a criminal way, then he is very disappointed in the board that oversees this and recommends that these individuals be replaced. He said maybe there has been a lapse of judgment. He said he respects them, but when something is done of this magnitude, it is the responsibility of those in charge who oversee them to take action. It is too late now. So for the benefit of David but also for the benefit of Black Mountain, this mistake needs to be rectified.

IV. COMMUNICATIONS FROM THE TOWN ATTORNEY - None

V. CONSENT AGENDA

A. Adoption of the Minutes

Motion: To adopt the minutes of July 9, 2009 – Agenda Session, July 13, 2009 - Regular Session, July 13, 2009 - Closed Session

B. Budget Amendment #02

Motion: To approve budget amendment #02 as submitted allocating \$2,160 received from the Black Mountain Tennis Association to be designated for the tennis court resurfacing project

C. **CALL FOR PUBLIC HEARING** on the Proposed Updates to Land Use Codes

Motion: To call for a public hearing on zoning map and text amendments as presented in the revised Land Use Code (Title XV of the Town Code of Ordinances), to be held on Monday, September 14, 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

The agenda was amended at the Agenda Meeting on August 6, 2009 with the following changes:

Under V, Consent Agenda, added item “C”, “Call for Public Hearing on the Proposed Updates to Land Use Codes”;

Under VII, New Business, added item “A”, “Proposal to Remove ABC Board Members”.

With these changes the agenda was approved unanimously on a motion by Alderman Brown.

VI. OLD BUSINESS

A. PUBLIC HEARING Authorizing Application for Financing Approval from the State of North Carolina Local Government Commission for the Construction of Sewer Lines

Alderman Brown made a motion to hold a public hearing as required for filing of an application to the State of North Carolina Local Government Commission for approval to enter into a twenty (20) year financing agreement for approximately \$1,400,000 for the construction of sewer lines. The motion passed unanimously.

Mary Sneed, McCoy Cove Road, asked if the sewer is extended up McCoy Cove Road, would residents have to tap onto the sewer if they did not want to. Vice Mayor Sobol stated that if anyone is within 300 feet of a sewer line, you are supposed to connect to the sewer. He said, however, there has not been one case in the years that he has been on the MSD Board or in years prior, that MSD has ever forced people to tap on to the sewer if they chose not to.

B. Resolution Authorizing the Filing of An Application for Approval of a Financing Agreement Authorized by NC General Statute 160A-20 for the Construction of Sewer Lines

Alderman Brown made a motion to adopt the Resolution authorizing the filing of an application for approval of a financing agreement authorized by NC General Statute 160A-20 for construction of sewer lines as submitted. The motion passed unanimously.

C. Presentation by Brown and Caldwell on the Swannanoa Flood Risk Management Project

Marshall Taylor with Brown and Caldwell Environmental Engineers gave a powerpoint presentation on the Swannanoa Flood Risk Management Project.

D. Letter of Final Determination from the State Floodplain Mapping Program

Elizabeth Teague, Planning Director, stated that in the Board of Aldermen agenda packet is a copy of the letter of final determination that the Town received from the North Carolina Floodplain Mapping Program. Ms. Teague stated that this letter explains that all the towns and municipalities within Buncombe County, as well as Buncombe County, have six months to adopt the floodplain maps and an updated model ordinance that the State Floodplain Mapping Program has provided. Ms. Teague said this will be on the Planning Board agenda in August. She said the model ordinance the state has provided is available on the North Carolina Floodplain Mapping website and the Planning Board will be reviewing the model ordinance over the next couple of months and will bring the revised ordinance back to the Board of Aldermen for consideration at that time. Ms. Teague explained that the penalty for not adopting a new ordinance and the new maps is the town would be removed from the North Carolina National Flood Insurance Program. Mayor Bartlett asked if the Camp Branch area is the only area with current concerns or if there are other areas of concern. Ms. Teague stated several protests were issued throughout the watershed and mapping area. Mayor Bartlett asked Ms. Teague to provide the Board of Aldermen with the areas of concerns.

E. PUBLIC HEARING on Proposed Updates to Land Use Codes (no action at this time)

Mayor Bartlett stated he wanted to thank the members who served on the Planning Board and developed this plan. Mayor Bartlett said whether people agree or disagree with the plan, a lot of work and thought was put into the plan.

Mayor Bartlett opened the public hearing.

Ames Tryon, Planning Board Chair, stated this is a draft document that consolidates, reformats, and amends the current land use regulations of Black Mountain. Mr. Tryon said because this is a comprehensive rewrite of the current codes, there is not a one-to-one correspondence between old regulations and proposed amendments; however, a reference sheet has been provided to allow readers to compare existing and proposed text.

Mike Baldwin, 300 New Bern Avenue, stated a lot of time has been spent on revision of the Land Use Code. He said he has followed the process and attended meetings over the last nine or ten months and feels the process has been friendly and open. Mr. Baldwin listed a few items he followed closely and agrees with the proposed revisions: rules allowing amateur radio operators and ham radio operators to operate their equipment effectively with the proper antenna; the minimum housing code; affordable housing; stormwater run-off and erosion control. Mr.

Baldwin thanked the Board of Aldermen for the joint meeting with the Planning Board and recognized the Planning Board in their efforts in following through with this process.

Nancy McKay, 205 New Bern Avenue, asked for a change in the procedure used in consideration of the conditional use permits. She asked that prior to the Planning Board considering any conditional use permit that town staff should provide the following: notice to all property owners within 200 feet of the site's property lines a minimum of thirty days prior to the Planning Board meetings; notice should be posted on the property that is requesting the conditional use permit thirty days prior to the Planning Board meeting; notice of the time and place of the Planning Board meeting be published in a newspaper of general circulation in town weekly for two consecutive weeks with the first publication not being less than thirty days prior to the Planning Board meeting. Ms. McKay stated that these procedures would basically be the same that the Zoning Board of Adjustment has to follow after the Planning Board gives their recommendation. She said that regarding the controversy of the Monte Vista, homeowners within 200 feet of that site were not made aware of the conditional use permit request prior to the Planning Board meeting. She said that the Monte Vista is not suitable for 60 children to be housed in a boarding school that is basically on 2.3 acres. Ms. McKay indicated this goes against what the North Carolina Board of Education recommends and it goes against a study of 286 boarding schools in the country that only two of these schools are on less than three acres. She stated these children need more room to recreate and live.

Joe Tyson, 309 North Dougherty Street, said he looked at the Land Use Code draft today on the website and it is approximately 355 pages. He asked how many public hearings will be held before a decision is made on this and will copies of the draft and zoning maps be available for purchase at Town Hall. Mr. Tyson also asked that the cost to purchase the draft document be put on the website. He requested that the Board of Aldermen review this document thoroughly before adoption as there are many technical details that need to be studied. Mr. Tyson congratulated the Planning Board for all of their work during this process.

Buzz Yeatman, 1120 Montreat Road, Planning Board Vice Chair, said this is a very important document, and encourages citizen input regarding all the changes.

Mayor Bartlett closed the public hearing.

VII. NEW BUSINESS

A. Proposal to Remove ABC Board Members

Alderman Brown stated that the Town of Black Mountain ABC Board appointed by the Board of Aldermen has failed to carry out the responsibilities of the Black Mountain ABC Board as set forth in the Town of Black Mountain Boards/Commissions Manual, Black Mountain ABC Board Personnel Manual, and NC General Statutes, Article 7, Section 18B-700. (1) Failure to follow proper form for minutes as set forth in Town of Black Mountain Boards/Commissions Manual, pages 6-8 and NCGS 160A-72 and NCGS 143-318.10e; (2) Failure to adhere to employee dismissal procedure as outlined in ABC Board Personnel Manual, Section 9, page 6 and NCGS Article 7, Section 18B-700. *Alderman Brown made a motion to remove Black*

Mountain ABC Board members due to failure to conduct Black Mountain ABC Board business by following Town of Black Mountain Boards/Commissions Manual, Black Mountain ABC Board Personnel Manual, and NC General Statutes, thus compromising the credibility of Black Mountain ABC store employees, the ABC store, and the Black Mountain Board of Aldermen.

Town Attorney, Ron Sneed, said a number of people tonight spoke asking this board to undo the termination of the ABC Board employees. He said he has informed the Board how the ABC Board functions. This town by law, by statute, appoints the ABC Board members; that does not make them a committee of the town like the Planning Board, Board of Adjustment, etc. The statutes say that once people are appointed, the local ABC Board is an agency of this state. The Board of Aldermen fired no one. The ABC Board has the right to hire and fire. The ABC Board's decision to terminate those employees will need to be resolved by that board and the employees.

Mr. Sneed said as counsel to this board, the Board of Aldermen cannot act on the termination. The general statutes provide that this board can do two things with the ABC Board: (1) When a member comes up for reappointment, the Board of Aldermen can appoint someone else and (2) the Board of Aldermen can remove board members for cause. When an appointed body, person or public employee who has an expectation of continuation in his job is terminated and the law requires they be terminated for cause, he has certain constitutional rights. My job is to see that the Board of Aldermen follows the proper steps. He said that protected privilege or right of an individual, the appointed person to the board, has the anticipation of serving his appointed term and can only be removed for cause and has a right to notice, a right to a hearing before an impartial panel. This Board, in considering this motion, if it is considered, has to consider the facts, the evidence presented to them, the evidence presented on behalf of the ABC Board member or members and make a determination based on the fact, but due process requires notice, right to be heard by an impartial panel. He said the only thing that would make this panel impartial is if somebody sat here and said one of the dismissed board members is their cousin or there was a financial interest that would benefit from the ABC Board member staying or not staying or third, they come to this hearing with such a bias they cannot listen to the facts both ways. Mr. Sneed said based on what Alderman Brown has presented that in a court of law, this would be considered an allegation. The ABC Board's attorney, Mr. Jones, is here. He will have a statement as to whether or not he has appropriate notice to prepare, he has the right to present any defense, and this board will try and weigh the evidence before you if you have this hearing tonight.

Alderman Brown said this was not intended to turn into court. She hoped that the ABC Board, as was requested, would meet with this board in closed session to talk about the issue having due process, but also give the gentlemen their time for due process. Alderman Brown said she feels the ABC Board has not followed proper procedure.

Alderman Brown said the ABC Board minutes have not followed form.

Mr. Sneed said Alderman Brown's motion is to remove them and they are entitled to notice and a hearing.

Alderman Brown referred to point two; the ABC Board did not follow procedure for dismissal.

Mr. Sneed stated that the counsel for the ABC Board needs to be heard.

Scott Jones, attorney representing the ABC Board, said a notice of opportunity to be heard is required by law and we have neither. Mr. Jones said he found out late Friday that this might be an agenda item and there was not time to prepare. The ABC Board has dismissed two employees; the causes are not a matter of public record. The board has consulted with the state ABC Board, and this is a personnel matter. Mr. Jones said he hopes that the Board of Aldermen will let the legal process be followed.

Alderman Brown asked Mr. Jones if he was hired just to deal with this issue or is he the counsel over the years? Mr. Jones said he has been retained to represent the ABC Board on this matter. He said he has not been the lawyer long-term for the ABC Board.

Alderman Brandon asked who pays the fees for this issue. Mr. Jones said his client is the Black Mountain ABC Board; it would be the Black Mountain ABC Board.

Alderman Brandon noted that any outgoing expenses will cut down on the percentage this town gets. Mr. Jones said at this point there has been no outgoing expenses, but there will be.

Alderman Brown said she would like to add to the motion that considering the removal of the ABC Board as it stands, that she requests to have the opportunity to meet in closed session with the ABC Board along with the Board of Aldermen and also with the gentlemen who were fired.

Mr. Sneed stated he continues to recommend against that action for this Board.

Mr. Jones said he is not sure that is possible under the closed meeting statutes.

Mr. Sneed said the ABC personnel are not employed by the town so it would not be a personnel matter for the two boards meeting together.

Alderman Brown said the Board of Aldermen appoints the ABC Board. It is the only Board appointed that is paid money to serve, and yet the Board of Aldermen has no say whatsoever in what goes on. Mr. Sneed said that is a matter for the legislature.

Alderman Brown stated that something needs to be done regarding this issue. She said she would like to have this discussed at some point. She asked does the Board just put up with improper minutes?

Mr. Jones said until this afternoon he did not know anything about the minutes. He said he has certainly heard about the issues raised regarding the dismissal of these two employees. There is a proper legal process. The two gentlemen do have a lawyer. Mr. Jones noted he has communicated with him and is waiting for a call back.

Mr. Sneed said if Alderman Brown wants to proceed with the motion, the proper procedure is, now that they have been given notice, is to set a meeting date to allow them time to prepare and then have a hearing on that motion.

Alderman Brown said she would like to hear from other Board members.

Mr. Jones suggested that the Board of Aldermen let the process play out and the Board will then have the information with which they can make a decision. Between now and letting that process play out, there is a question of whether the Board of Aldermen would be able to have the sufficient evidence.

Vice Mayor Sobol said with regard to the minutes, the Board has always had access to the minutes and no one has said the minutes do not meet the criteria. This is an issue that can be discussed. The second issue of the employee dismissal procedure, as Mr. Jones said, is a legal matter. The Board does not have any idea what has happened so far. If in due time, once that issue is settled, then the Board can revisit that to see if there are any violations. Vice Mayor Sobol suggested that the Board let the process go forward with the ABC Board and the attorneys and let them work it out.

Alderman Brandon commended Alderman Brown for her compassion for another human being, especially someone who has been in poor health and in critical need of insurance and a job. She said she appreciates Alderman Brown's interest in making sure that a board, whose members have been appointed in good faith by the Board of Aldermen, under the oath of office, clearly states that they will respect the provisions of the charter and the ordinances of the Town of Black Mountain. She regrets that the Board of Aldermen, the appointing authority, has never felt the need to review the ABC Board's operating procedures; otherwise, the Board of Aldermen would have been aware of the weak areas, especially the area of dismissal of employees. She asked if the personnel files of these employees reflect dissatisfaction from the ABC Board and was the reason for the long-term employee's dismissal so serious that it could not be tolerated until his retirement? Alderman Brandon recommended that the Board of Aldermen review the current ABC store policy manual and make suggestions for revisions, especially in the area of employee dismissal and recommend certain changes and submit to the state ABC Commission. She understands that the state ABC Commission recommends that the local board's personnel procedures and policy manual be similar to or identical to the Town of Black Mountain or the appointing authority. Alderman Brandon said she was told by the state auditor that the dismissed employees had been given several verbal warnings. She said she wonders why the warnings were not put in writing so the employees could sign and acknowledge so they could improve. Alderman Brandon hopes this will soon be resolved as it has left a black mark on our town.

Mr. Sneed said if Alderman Brown wants to continue, under the law, the ABC Board has to have adequate time to receive notice of what the motion is so as to prepare to come back and respond to the motion. He said there is inadequate notice. If Alderman Brown wants to proceed, the Board needs to set another meeting or set the hearing at the next regular Board meeting at which time the proof of the allegations are set out by Alderman Brown and the ABC Board has had time to respond to specifics. This is not about whether these employees get reinstated or whether they were properly or improperly fired; the motion is to remove the ABC Board for

failure to keep minutes in proper form and failure to adhere to employee dismissal procedure. He said the second part is under pending litigation and there are personnel matters the ABC Board should not be speaking of with Board members themselves. The second part is hard for them to address without violating the rules.

Alderman Brown said if the motion stands as is but with an addition to come back within a month's time, would that be agreeable? Mr. Sneed said the motion can be withdrawn for tonight and be brought back at the next month's meeting.

Mayor Bartlett asked Alderman Brown if that is acceptable to her.

Alderman Brown said she is not representing this Board; she is representing the citizens and wants the public to know that things like this happen, and it cannot happen to good people without just cause.

Mayor Bartlett said he wants to make sure the motion is adequate. Alderman Brown said she would leave the motion as is with the understanding that it will be brought up next month.

Mr. Sneed said this will take care of the notice and the time for the ABC Board to prepare.

Mayor Bartlett asked if the two points are the minutes and personnel issue? Alderman Brown said yes.

Vice Mayor Sobol said he cannot support the second part because that deals with the litigation. The Board of Aldermen cannot discuss whether the procedure is correct or incorrect until the whole issue is resolved with the ABC Board, their attorney, and the dismissed employees and their attorneys.

Alderman Brown said that is what they are going to come back with at next month's meeting.

Mr. Sneed said to keep in mind that is getting into personnel matters that cannot be discussed and pending litigation that should not be discussed. He said he does not think Mr. Jones has addressed that second half specifically.

Mr. Jones said as far as discussing the minutes, he has no problem with that. He said he does not want to be dealing with personnel issues until it is resolved.

Mayor Bartlett asked for a vote on the motion.

Alderman Brown said the motion is as written with an addendum that it would be discussed next month which would give them time to state their case to us, their side and the other side.

Vice Mayor Sobol asked would the Board also discuss the personnel issue? Alderman Brown said yes. Vice Mayor Sobol said the personnel issue cannot be discussed.

Alderman McKeown said the privacy act is very serious. He feels this situation is too close to everyone to make a judgment and feels the legal process should be followed.

With no further discussion, the motion was made to remove the ABC Board members for failure to keep minutes in proper form and for failure to adhere to employee dismissal procedure. After a statement from the town attorney as to the notice requirements, the motion was amended to provide for a hearing and decision on that motion at the next regular meeting of the Board. The motion passed with a vote of 3-2 with Vice Mayor Sobol and Alderman McKeown opposed.

VIII. COMMUNICATIONS FROM THE TOWN MANAGER

Ms. Onieal, Town Manager, reminded the Board of Aldermen of the Closed Session meeting on Tuesday, August 11, 2009 at 9:00 a.m. to discuss her performance and the annual work plan review.

Ms. Onieal noted that this month is the ten-year anniversary of Shirley Raines' employment with the Town of Black Mountain as Town Clerk. She said that Shirley has announced her retirement effective August 31st.

IX. COMMITTEE/BOARD REPORTS - None

X. CITIZEN COMMENTS

Bob Orr, 25 Vance Avenue, said he compliments the Board of Aldermen and feels the right decision has been made regarding the ABC Board issue.

Mary Leonard White, 113 Fairway Drive, said she is in favor of purchasing the old Town Hall property for a Town Square and park. Ms. White stated the economic distress makes it hard for the town to buy this property but said it also gives the Board an opportunity as Lake Tomahawk was built during the Depression. She said this is an economic investment for the town. There is a lot of research showing that parks and green spaces support economic development, which brings money into a town and appearance and tourism is important to Black Mountain. Ms. White distributed information from the American Planning Association to the Board. She also presented some suggested plans for the property. Ms. White stated she feels the people in Black Mountain are in favor of turning the property into a park and hopes the Board of Aldermen will explore grant funding and other ways to purchase this property.

Willie Headley, North Fork Road, stated that she is speaking as a seventh generation family in Black Mountain. She said this is the only opportunity to create a beautiful park in the middle of the town. Ms. Headley asked that the Board of Aldermen seriously consider purchasing this property.

Carlos Showers, 102 Beech Tree Drive, said he is glad the town was able to move Town Hall to this building and is glad the condominiums and great tower were not built on the other property. He said he was impressed to see the property utilized for parking during the Sourwood Festival. Mr. Showers echoed his support to purchase the property for parking and a park.

Mr. Showers stated he would like to commend Alderman Brown for her stance tonight. He said he is a 30-year state employee and is very familiar with the State Personnel Act and the process for removal from a state position. Mr. Showers stated he really questioned what was heard tonight by the town’s attorney, Mr. Sneed and Attorney Jones. He said that certain guidelines have to be taken and you cannot release someone from duty just because verbal warnings have been given. Mr. Showers asked who is paying for the legal representation of the ABC Board. He stated he has served on boards that are appointed by this board and the only difference with the ABC Board is that the members are paid. Mr. Showers questions why any personnel issue of a body that is appointed by the Board of Aldermen and represents the town citizens of Black Mountain was not brought before the Board of Aldermen. He said this issue needs serious review by the Board.

Mayor Bartlett stated the Board of Aldermen cannot comment on land purchase but is very aware of the property that has been discussed tonight.

XI. CLOSED SESSION – *Vice Mayor Sobol made a motion to go into Closed Session at 8:45 p.m. to discuss property acquisition as permitted in NCGS 143-318.11(a)(5). The motion passed unanimously.*

XII. ADJOURNMENT

With no further business, Alderman McKeown made a motion to adjourn at 9:40 p.m. The motion passed unanimously.

Carl R. Bartlett, Mayor

ATTEST

Marcia D. Onieal, Town Manager
