

MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REGULAR SESSION MEETING
December 14, 2009

THE BLACK MOUNTAIN BOARD OF ALDERMEN met in regular monthly session on Monday, December 14, 2009 at 6:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC.

1. 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 Rosalie Phillips (not participating, but in attendance in audience)
Alderman (-elect) Tim Rayburn (joined at 6:15 pm, after oath of office & installation)
Alderman (-elect) Carlos Showers (joined at 6:15 pm, after oath of office & installation)

The following staff members were present:

Marcia D. Onieal, Town Manager
Ron Sneed, Town Attorney
Pam Hoen, Customer Service Representative
Steve Jones, Fire Chief
Craig Bannerman, Deputy Fire Chief
Jim Orr, Recreation and Parks Director
Steve Padgett, Police Lieutenant
Rick Shreve, Finance Director
Elizabeth Teague, Planning Director
Rebecca Eberhardt, Zoning Administrator
Bob Watts, Public Works Director
Anna V. Stearns, Interim Clerk to the Board

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 an invocation, led by Rev. Cecil Jividen of the Black Mountain Pastoral Care and Counseling Center.

Mayor Bartlett thanked everyone in attendance and expressed appreciation to all those attending for the first time and to the viewing audience. He said that a re-broadcast of each regular Board meeting is shown throughout the month on Charter Cable's Buncombe County Government Channel 2 at 8:00 p.m. on Fridays, at 2:00 p.m. on Saturdays, and at 8:00 p.m. on Sundays. Meetings initially air the same week they occur and are shown weekly until the next regularly scheduled meeting. Citizens can also go to the Town website and click on "Town Board Video Stream" at any time and view the most recent regular meeting of the Board of Aldermen.

2. COMMUNICATIONS FROM THE MAYOR

Mayor Bartlett read the Proclamation honoring the life and service of Elizabeth Greenlee Harper, which was previously adopted by the Board, and presented it to Mrs. Harper's family.

3. ADOPTION OF MINUTES

Alderman Brown moved to adopt the minutes of November 5, 2009 Agenda Workshop and the November 9, 2009 Regular Session. The motion was adopted unanimously.

4. OATH OF OFFICE & INSTALLATION OF MAYOR/ALDERMEN

Steven D. Cogburn, Clerk of Superior Court of Buncombe County administered the Oaths of Office to Mayor Carl Bartlett, to Alderman Carlos Showers, and to Alderman Tim Rayburn, after which the Aldermen signed their oaths and were installed to their seats at the board table.

5. BOARD COMMENTS

Alderman Brandon expressed her concern about discourteous treatment of Town staff over the past year by her fellow Aldermen. She thanked Rosalie Phillips and Chuck McKeown for their service on the Board.

6. CITIZEN COMMENTS

Jean Briscoe, 1149 Montreat Road, spoke against the proposed zoning changes along Montreat Road. She believes that businesses should be encouraged to be located along US Highway 70.

7. PRESENTATIONS/REPORTS

- A. Report by Asheville Transit on Transit Master Plan and Changes to Route 28 – Mariate Echeverry, Transportation Planning Manager, City of Asheville

Mariate Echeverry delivered a power point presentation to the Board detailing the history of the Black Mountain bus service and the changes that have been implemented as of November 1, 2009, in order to continue the service. NCDOT has agreed to continue funding of this route for

an additional eight months, provided that certain changes are made. The number of trips per day has increased from 5 to 7, while the number of stops along the route has been decreased. Fares have been increased modestly and the number of connections with Greyhound Bus routes has been increased. Because Warren Wilson College has pulled its contribution to this service, the route follows US Highway 70 rather than going along Old US Highway 70. The City of Asheville will be exploring all available options for continuing funding for this route, including soliciting partnerships with the private sector. The City of Asheville's Transit Master Plan recommends combining Route 29 which serves Warren Wilson, with Route 28 in the future. Ridership between Asheville and Black Mountain in November, 2009 was 2,700 riders compared to 4,000 that had been riding on average prior to the changes.

Alderman Brown expressed her frustration with the changes being made and the reduction in service to Black Mountain residents. She is not sure that the Town's contribution of \$18,500 is being put to its best use for all residents. She is disappointed that the Town spent money to construct bus shelters that may no longer be used.

Mrs. Onieal said that the primary source of funding for this route has come through a federal grant which has the specific purpose of providing rural areas with intercity connections to Greyhound bus service. During a recent audit, it was discovered that the route does not meet the requirements to receive the grant. This is the reason for the changes that are being made. Asheville Transit and the Town of Black Mountain will continue to search for alternative sources of funding that will allow them to again provide a higher level of service to the residents of the town.

Alderman Sobol asked for a more accurate breakdown of the budget provided. He also proposed that the Town explore a partnership with Black Mountain Cab Company to provide local transportation service.

8. CONSENT AGENDA

A. Budget Amendment #2009-06

Motion: To approve budget amendment #2009-06 as presented, allocating donation, grant and distribution proceeds in the following areas: 1) Senior Center grant project; 2) Recreation Department – tennis court resurfacing; 3) pass-through funding from Community Foundation for the Black Mountain Welcome Table; and 4) BCAT funding for training and equipment.

B. Budget Amendment #2009-07

Motion: To approve budget amendment #2009-07 as presented, allocating \$20,000 from retained earnings in Water Fund to be used as match for safety analysis of the Dunsmore and Lake Tomahawk Dams and development of Emergency Action Plans for each structure.

C. NCHWTF FIT Initiative Project Ordinance Amendment

Motion: To approve project ordinance amendment as presented, transferring \$1,165 from salaries to supplies/materials (\$925) and training (\$240) for year three of the project.

- D. ARRA Construction Contracts for the US70 Sidewalk (U-5178) and the Flat Creek Greenway (U-5179)

Motion: To approve resolutions authorizing the town manager to execute ARRA construction contracts with lowest qualified bidders, upon approval by NCDOT of Projects U-5178 and U-5179.

The agenda was approved unanimously on a motion by Alderman Brown.

9. NEW BUSINESS

Added Item from Agenda Workshop: 2010 Schedule of Agenda Workshops and Regular Meetings of the Board of Aldermen (per request of Alderman Brown)

Alderman Brown said she feels that the Alderman have adequate opportunity to review the agenda packet when it is delivered a week before the regular meeting without the necessity for an additional meeting on the Thursday prior to the regular meeting. She also feels that this is a strain on staff. She proposed trying the system of having the agenda meeting immediately prior to the regular meeting for at least 3-6 months.

Alderman Sobol does not believe that it is necessary for staff to attend the agenda meetings since they could be available through electronic means. He prefers to maintain the meeting schedule with the agenda meetings held on the Thursday prior to the regular meeting.

Alderman Rayburn said that he would prefer having the agenda meeting immediately prior to the regular meeting, provided that the Board is given packets at least one week ahead of time and that no items are added to the agenda within the week prior to the meeting, except in emergency.

Mayor Bartlett said that he is concerned about the amount of work to be considered by the Board. He believes that having the time available between the agenda session and the regular session is vital to encouraging ample consideration and discourse among the Board.

Alderman Brown moved to have the agenda meeting scheduled at 5:00 p.m. and the regular session at 6:00 p.m. for a period of 6 months beginning with the January, 2010 meeting. The motion passed unanimously.

- A. Request by Fire Department to apply for ARRA/SAFER funding for additional personnel – Steve Jones, Fire Chief; Craig Bannerman, Deputy Chief.

The only stimulus funding available to the fire department is a grant intended to add personnel. Steve Jones, Fire Chief, suggests that the town apply for the grant to hire nine new fire fighters. The addition of personnel through this grant would improve the Town's fire insurance rating. The grant is structured such that the funds will be used to pay the full salary and benefits for the additional personnel for the first two years. This would mean that the Town must pay the full \$565,000 for salary and benefits in year three. The National Fire Protection Agency (NFPA) 17/10, which are the minimum recommended staffing requirements, says that 13 staff members

should respond to a structure fire within 8 minutes 90% of the time. The NC Department of Insurance recommends that the Town staff 4 people per fire engine at all times, or 16 people per shift in order to maintain its fire rating. Black Mountain serves two districts, the Town of Black Mountain and the East Buncombe Fire District. The Town currently staffs 5 people per shift without accounting for sick or vacation time, with one of these fire fighters at the White Pine Drive substation. This fire fighter must sometimes initially respond to calls on his own without the additional support of the main station. There are about 18 times per month when the fire department must respond to multiple calls at the same time. Some additional staffing is done with the help of volunteer fire fighters, but the reliability of having sufficient volunteers available has dropped in recent years, both in Black Mountain and nationally.

The additional staff would cost the town about \$35,000 in the first year for uniforms, gear, radios, physicals and incidentals to employment. In year 3, it would cost the town about \$560,000 in salaries and benefits, and \$11,000 for the department to cover the increased need for gear, training, and equipment replacement and maintenance.

Alderman Brown asked if the necessary property tax increase to accommodate this level staffing might be roughly offset by the reduction in fire hazard insurance premiums. Mr. Jones said that for every 1 point improvement on the insurance rating, which is currently a 4, the insurance premium will reduce about 8% for commercial properties, but that the additional staffing will have no impact on residential rates.

Approximately forty-two percent of the increased cost could be funded by increased tax rates in the East Buncombe Fire District. At current property valuations and not accounting for any potential growth, the Town would generate an additional \$68,372 from an increase of \$0.01/\$100 value in the fire district, and \$93,150 from an increase of \$0.01/\$100 value in the Town limits.

Alderman Sobol suggested coming up with funding to pay something to volunteer fire fighters or part-time help. Chief Jones said that there are worker's compensation insurance issues with paying volunteers and part-time employees that make this solution impractical.

Alderman Showers asked how much benefit the department would see with an increase of 6 positions instead of 9. Mr. Jones said that this would allow him to staff 5 per shift with an additional fire fighter to staff the substation.

Alderman Rayburn said that he and his predecessor as fire chief had each brought the issue of understaffing in the Black Mountain Department before the Board of Alderman on separate occasions and the Board elected each time to take no action. He said that all employees of the department are completely overworked, and that this represents a serious safety issue.

Alderman Showers moved to authorize staff to prepare and submit a federal stimulus SAFER grant application in the amount of approximately \$744,000 for the purpose of hiring 6 full time firefighters. The motion carried by a vote of 4-1 with Alderman Sobol voting in opposition.

Mr. Jones completed his presentation by saying that M&R Honda and the Law Loan program awarded the Town a Kawasaki all-terrain vehicle for mountainous terrain rescues. This will be available to the Town at no charge until July 2010.

- B. Declaration of 0.286 acre parcel (portion of PIN #0700-81-6130) at corner of Laurel Avenue and Ninth Street surplus, with intent to dispose by sale, subject to upset bid:

The .286 acre parcel at the corner of Laurel Avenue and 9th Street has been subdivided from golf course property, at the request of the Board, so that it can be made available for sale as a residential lot.

Alderman Brown moved to adopt the resolution declaring the identified parcel surplus, and to authorize the town manager and town attorney to proceed with disposition according to terms as presented. The motion passed unanimously.

- C. Board Procedure (deleted from agenda during preceding agenda workshop)

- D. Board Appointments

Alderman Brandon moved to nominate Joan Brown as Mayor pro tem. Tim Rayburn moved to accept the appointment by acclamation. The motion carried unanimously.

Alderman Sobol moved to reappoint Ron Sneed to the position of Town Attorney. Alderman Brown asked if the Board does not typically bid that job. Mr. Sneed said that this position has been put to bid only 2 times since he has been employed, and the last bid process yielded no bidders. Alderman Brown would like to see the Town bid this position for other local attorneys. Alderman Brandon asked that Alderman Sobol amend his motion. Alderman Sobol denied this request. Mayor Sobol called for the vote. ***The motion was defeated by a vote of 2-3 with Aldermen Brandon, Brown and Showers voting against.***

Alderman Brandon moved to request that the Town Manager accept proposals from attorneys within Buncombe County for information for hourly rates, annual rates and information about their experience in municipal government through February, 2009. Mr. Rayburn asked Ms. Brandon to amend her motion to state that these requests should be made to attorneys only in Black Mountain rather than throughout the county. Ms. Brandon declined to make this change. ***The motion carried by a vote of 3-2, with Aldermen Sobol and Rayburn voting in opposition.***

Alderman Brown moved to nominate Bob Watts to the Metropolitan Sewerage District (MSD) Board. Alderman Sobol moved to nominate Richard Hudson to the MSD Board. Bob Watts was appointed to the MSD Board, having received 4 affirmative votes (Aldermen Brandon, Brown, Rayburn and Showers in favor).

Alderman Brown moved to nominate Carlos Showers to represent the Board of Alderman with the Black Mountain-Swannanoa Chamber of Commerce Executive Board. The motion passed unanimously.

Alderman Brandon moved to reappoint Carl Bartlett as the representative to the Land of Sky FBRMPO Board of Directors and Transportation Advisory Committee. The motion passed unanimously. Alderman Brandon moved to nominate Tim Rayburn as the alternate for this position. The motion passed unanimously.

10. OLD BUSINESS - None

11. PUBLIC HEARINGS

A. CONTINUATION OF PUBLIC HEARING (continued from September 14, 2009, October 12, 2009, and November 9, 2009) on proposed updates to Land Use Codes and consideration of adoption with an effective date 90 days from date of approval.

Ms. Teague reviewed the changes that have been made to the Town zoning map as a result of citizen comments received since August, 2009, including:

- The newly zoned Roberts Farm Development
- Montreat Road
- Flat Creek Road and Avena Road
- Sunset Avenue

She noted that the Board could strike the use “Restaurants” from the permitted uses table for NMU-8, which would alleviate many of the concerns raised by citizens about the changes for Montreat Road. The Planning Board was in favor of making restaurants, laundromats, neighborhood fueling facilities and convenience stores conditional uses rather than permitted uses in the NMU-8 district.

Bobby Ammons, 403 Montreat Road, said that he and his wife are both very opposed to the rezoning of Montreat Road. He feels that the Town has not done enough to inform the public about the changes being proposed and it makes him believe that the Town is trying to pass these changes without the input of the public. He believes that the Aldermen have been irresponsible in the way they have conducted this matter and in the way they have spent town funds recently. He believes that the Town could have handled the stormwater issues along the golf course without spending \$300,000.

Elizabeth Teague said that notification of this large-scale rezoning was done through a half-page ad in the local newspaper and by sending letters to property owners who do not live in Black Mountain in accordance with the requirements of the state statutes. A notice was also provided in the water bills. Two sequential advertisements were run in the Black Mountain News before the initial public hearing, and then two additional advertisements were run.

Alderman Sobol said that he believes the Town could have sent first class letters to each resident affected by a change for the same cost as the advertisements run in the Black Mountain News. Mrs. Teague said that there were over 3,000 affected lots, making individual notifications cost prohibitive.

Mike Baldwin, 300 New Bern Avenue, thanked Elizabeth Teague for taking his phone call this afternoon and providing a prompt answer. He also thanked the Planning Board for their work on this draft. He has been attending the Planning Board meetings for about a year and believes that the Planning Board has been very receptive to citizen comments. He believes that the mixed-use district is not appropriate for Montreat Road because the road cannot be widened and it is the only access to the Town of Montreat and Montreat College. It is also the primary access for many homes on North Fork Road. This re-zoning will encourage retail sprawl, which is not desirable. He added that if the existing commercial districts were not currently in existence, the Town would not vote to allow them in these areas, but would rather vote to maintain this area as a neighborhood corridor. The increased traffic would reduce the safety and walkability of the Town.

Belinda Box, 107 Third Street, would like to better understand the conditional use process and how this might still allow uses that the residents believe are unacceptable. She does not believe that the Town should attempt this with the thought in mind that they can go back to being residential later. The prospect of a commercial use returning to a residential use is not likely to happen. She is concerned about noise and light pollution from business. She also spoke about the increased traffic volume and changes to the traffic pattern which will adversely affect the safety along this corridor.

Jean Briscoe, 1149 Montreat Road, said that she agrees fully with the previous speakers. She believes that the Town failed in informing its citizens about the proposed changes. She believes that it would have been affordable for the Town to notify her directly. She is also upset that out of town owners were notified directly when she was not.

John Garrett, 300 Montreat Road, reminded the Board that his informal traffic survey conducted last month showed about 6,000 vehicles per day on Montreat Road. There are many curves and short site distances along the road that would make this more dangerous. He was told by the Planning Board that the Board does not consider traffic implications when considering zoning changes. He asked that the Board please not vote to rezone Montreat Road.

Alderman Brown moved to close the public hearing. The motion passed unanimously.

Alderman Brown moved to adopt the Statement of Consistency in concurrence with the Planning Board.

Alderman Brandon asked if the Planning Board made commercial uses conditional rather than permitted. Ms. Teague clarified that laundromats, restaurants, neighborhood fueling facilities and convenience stores would be conditional rather than permitted. Ms. Teague read the permitted uses for the NMU-8 district for the Board's information. She also reviewed the approval process for conditional use applications.

Alderman Brown withdrew her previous motion.

Alderman Sobol moved to adopt the Land Use Codes with the following changes: return Montreat Road to its present zoning without NMU designation or mixed uses allowed, replace

the restrictions for buildings in downtown so that they must be stepped; and remove retail uses over 60,000 square feet from the permitted uses table for the Highway Business District and the Industrial Districts.

Ms. Teague asked for clarification whether the motion intended to allow the existing commercial uses to be zoned for NMU-8, while allowing the rest of Montreat Road to be zoned for residential use. Mr. Sobol said that this is his intention in his motion. Mrs. Teague said that the current owner of the Country Food Store had requested that the adjacent lot that he owns be zoned the same as the Country Food Store parcel. Mr. Sobol agreed that this change be included in his motion.

The motion was defeated by a vote of 2-3, with Aldermen Brandon, Brown and Showers voting against.

Alderman Brown moved to adopt the revised Land Use Code as presented, except eliminating the proposed changes to Montreat Road zoning, in concurrence with Alderman Sobol's motion on that issue only. The motion passed by a vote of 3-2 with Alderman Sobol and Alderman Rayburn voting against. Mr. Sneed informed the Board that this item will have to come up for a revote at the next meeting, as changes to the Town's Code of Ordinances require a supermajority (at least four votes in favor) on a first reading.

Alderman Showers moved to adopt the attached Statement of Consistency in concurrence with the Planning Board. The motion passed by a vote of 3-2 with Alderman Sobol and Alderman Rayburn voting against.

12. COMMUNICATIONS FROM THE TOWN MANAGER

- A. Meeting date/content for Board/Staff Retreat.
Staff will poll the Board for topics and available dates in February.
- B. Report of payments to vendors in which elected officials have ownership interest
The Board no longer includes elected officials with any ownership interest in vendors with which the Town does business, therefore the regularly monthly report of such activity will be discontinued until such time as any elected Town official acquires such an interest.
- C. Status of Monte Vista/CRC Conditional Use Order
There is no specific update to be given at this time, although a challenge to the conditional use order is expected to be filed in Superior Court by the opposition by December 16, which is the 30-day deadline.
- D. Status of Sewer Extension Project
The sewer extension project is still awaiting final approval from the State, but the Town's engineer recently provided the town manager a consolidated set of construction plans, so that members of the public can see precisely where the new sewer line will be located and which properties will be directly affected.

E. Roberts Farm sidewalk plan

The Board was given a diagram of possible pedestrian connections suggested by staff and Ms. Teague reviewed the benefits and difficulties of several options.

F. FEMA Buyout Program – Chevy Dealership

This ARRA stimulus grant application, previously approved by the Board, was reviewed, but declined by FEMA, as a non-competitive grant request on the basis of cost-benefit analysis and program priority.

G. FIRM Notifications

All Black Mountain property owners affected by changes to the Flood Insurance Rate Maps (FIRMs) were sent notifications informing them of the opportunity to purchase flood insurance before December 31, 2009 at “grandfathered” rates, which in virtually all cases would be lower than the new rates, which will be based on the newly adjusted maps.

13. COMMITTEE/BOARD REPORTS

Alderman Brandon thanked the Planning Board for their hours of service, noting that she believes this has been the most conscientious and hardest working Board ever in service to Black Mountain.

14. ADJOURNMENT

With no further business, Alderman Sobol made a motion to adjourn at 9:17 p.m. The motion passed unanimously.

Carl R. Bartlett, Mayor

Marcia D. Onieal, Town Manager

ATTEST

Rosa Hilbert, Deputy Town Clerk

Prepared by:

Anna V. Stearns, Clerical Assistant