

MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REGULAR SESSION
August 9, 2004

THE BLACK MOUNTAIN BOARD OF ALDERMEN met in regular monthly session on Monday, August 9, 2004 at 6:00 p.m. in the meeting room of the Public Safety Building, 106 Montreat Road, Black Mountain, NC.

I. CALL TO ORDER, PLEDGE OF ALLEGIANCE, PRAYER

The meeting was called to order with the following members present:

Mayor Wm. Michael Begley
Vice Mayor Will Kennedy
Alderman Joan Brown
Alderman Phil Garrison
Alderman C. Michael Sobol
Alderman Mary Leonard White

The following staff members were present:

Anthony N. Caudle, Town Manager
Ron Nalley, Assistant Town Manager
Shirley Raines, Town Clerk
Ron Sneed, Town Attorney
David Ballard, Golf Pro/Manager
Gary Bartlett, Fire Chief
Bob Watts, Public Works Director
Allen Willet, Police Chief

Representing the media:

Dan Hesse, Valley Record
John P. Kennedy, Black Mountain News
Gary & Sally Biggers, Black Mountain Video Productions

Mayor Begley led the Pledge of Allegiance, followed by prayer, led by Rev. Richard Ploch, Pastor of Tabernacle United Methodist Church and Swannanoa United Methodist Church.

Mayor Begley thanked everyone in attendance and expressed appreciation to all those who were attending for the first time and also the viewing audience. The meeting was duly constituted and opened for the transaction of business. The following business was transacted.

II. ADOPTION OF THE AGENDA

The minutes of June 21 2004 – Budget Workshop, June 21, 2004 – Closed Session, June 28, 2004 – Budget Workshop, July 8, 2004 - Agenda Meeting, July 12, 2004 - Regular Session were approved.

The agenda was amended at the Agenda Meeting on August 5, 2004 with the following changes:

- Under III, Consent Agenda, add item “C”
- Under VIII, Old Business, add item “B”
- Under IX, New Business, item “B”, move to Consent Agenda

At this time, Mayor Begley amended the Agenda to go into Closed Session to discuss personnel and property acquisition.

With these changes the agenda was approved with a 5-0 vote on a motion by Vice Mayor Kennedy.

III. CONSENT AGENDA

With the adoption of the agenda for the August 9, 2004 Regular Session Meeting, the following actions were approved:

- A. Adoption of the Minutes
Motion: To adopt the minutes of Budget Workshop, June 21, 2004 – Closed Session, June 28, 2004 – Budget Workshop, July 8, 2004 - Agenda Meeting, July 12, 2004 - Regular Session
- B. Adoption of Budget Amendment #02
Motion: To adopt budget amendment #02 as submitted
- C. Amendment to the Black Mountain/Montreat Water Agreement
- D. Consideration of Dedication of a Street to be Named Julian Drive
Motion for Consideration: To approve the dedication of a street to be named Julian Drive, located in the vicinity of Blue Ridge Road and Wolf Creek Drive as recommended by the Planning Board

IV. COMMUNICATIONS FROM THE MAYOR

Mayor Begley read a proclamation declaring September 2004 as “Healthy North Carolina Month”. He also stated that on September 11, 2004 a Memorial Ceremony is scheduled at the Bi-Lo Shopping Center at 9:30 a.m. to remember the victims of 9-11. Mayor Begley noted that the Health Initiative Task Force is sponsoring a Black Mountain Health Fair to be set up at the Bi-Lo Shopping Center from 9:30 a.m.-2:00 p.m. on September 11.

V. COMMUNICATIONS FROM TOWN ATTORNEY

Ron Sneed, Town Attorney, reported that the Town had to pay property taxes on the Public Safety building for several years since the bank held title under the financing arrangement the Town had on the property. During part of that time, the county would not exempt the property from taxes because the Town did not hold “legal title”. He said there is a recent court of appeals ruling which arguably says that the property should have been tax exempt. Mr. Sneed said the amount of taxes paid is approximately \$26,500. *After discussion, Alderman Sobol made a motion that the Town Attorney pursue recovery of those taxes. The motion passed unanimously.*

VI. COMMUNICATIONS FROM THE TOWN MANAGER

A. Review of Consent Agenda

B. Projects Update

1. Blue Ridge Road Striping and Pedestrian Signal Phasing at Blue Ridge Road Intersection – DOT Response

– Mr. Caudle reported that Alderman Sobol had asked for revised striping along Blue Ridge Road to better accommodate pedestrians. Mr. Caudle said he had contacted the Department of Transportation (DOT) and was informed that the existing striping configuration along Blue Ridge Road provides for two full width travel lanes as well as a 2 ½’ paved shoulder on each side. DOT said this paved shoulder provides a uniform width in order to accommodate large vehicles. They said the paved area can also be used for bicycles or pedestrians, providing users are keenly aware of motorized vehicles using Blue Ridge Road. Mr. Caudle said that the DOT does not recommend any changes at this time.

Mr. Caudle reported that a request was also made that DOT consider installing a pedestrian signal phasing at the intersection of Blue Ridge Road and US 70. He said that DOT informed us that they only install pedestrian signal phasing where a significant number of pedestrians cross the road and where pedestrian facilities such as sidewalks exist. Mr. Caudle said since there is currently no sidewalk and pedestrian activity is light, DOT does not recommend pedestrian signal phasing at this time. However, if sidewalks are installed, DOT would reconsider our request.

2. Update on Construction of Urban Trail Segments Adjacent to Blue Ridge Road Bridge

– Mr. Caudle reported that the Greenways Committee is beginning work on the Urban Trail Segment along Blue Ridge Road on the Montreat College property. We are in process of securing approval from Montreat College, and they have asked that the Town provide a presentation to the Montreat College Board on Thursday, August 12, 2004 showing our proposed improvements.

3. Replacement of Air Conditioning Units in Public Safety Building

– Mr. Caudle reported that the air conditioning units in the Public Safety Building had to be replaced at a cost of \$5,639.

4. Water Improvements Project – Mr. Caudle noted that construction on the north side water tank has begun. He said final clean-up work is being finished on the south side tank.

5. Local Transportation Plan – Mr. Caudle stated that the transportation plan has been held up at the Planning Board. He said as soon as all comments have been received, the plan will go back to Planning.

6. Paving of Hamlet Street – Mr. Caudle reported the cost to pave Hamlet Street would be approximately \$3,000-4,000. *After discussion, Vice Mayor Kennedy made a motion to proceed with the paving of Hamlet Street. The motion passed with a vote of 5-0.*

7. Dump Truck Bid Process – Mr. Caudle reported that bids have been received for the purchase of a dump truck. He said after review of the bids, Mr. Watts, Public Works Director, recommends awarding the bid to West Carolina Freightliner, Inc., who presented the lowest bid of \$46,745.00.

VII. COMMITTEE/BOARD REPORTS

A. Alderman Brown reported on the following:

- Sourwood Festival is scheduled for August 13 & 14, 2004.
- Bus Ridership for July: Route #28, Asheville Transit – 1,259
 Mountain Mobility – 319
- Martin Luther King Breakfast is scheduled for January 22, 2005 at Lifeway Conference Center, Ridgecrest, NC.
- The Owen Teen Center Committee is sponsoring a golf tournament on September 18, 2004 at 1:00 p.m. at Black Mountain Golf Course to raise money for the Teen Center.

B. Alderman White reported on the following:

- The Beautification Committee will host a Garden Party at the well lot on Sutton Avenue on September 10, 2004 at 4:30 p.m. The public is invited.
- “Operation Cleanup” will take place on Saturday, September 25, 2004. Dumpsters will be located in the lot beside First Charter Bank. All items except herbicides and old tires will be accepted. This is sponsored by the Beautification Committee.

VIII. OLD BUSINESS

A. Review of Street Paving Policy

Alderman Brown made a motion to amend the Street Paving Policy to clarify the responsibility of a developer when improving and/or paving any previously platted right-of-way that is proposed to be used as a method of ingress or egress for a new development. The motion passed with a vote of 5-0. The new wording to be added to the Statement of Policy will read as follows: “For the purpose of the section, the term developer shall be defined as the owner of a parcel of property which is subject to regulation under the Town’s subdivision, Planned Unit Development, or Unified Housing Development” ordinances.

B. Proposed Revisions to the Comprehensive Plan

Mr. Caudle reported that prior to the Agenda meeting, a request was received from Alderman Brown to provide some wording that would initiate action on behalf of the Board of Aldermen for adoption of the Comprehensive Plan. He said that most specifically there was concern about the language that has been of such debate and concern on the part of most everyone with regard to the proposed improved interstate access to I-40. At Alderman Brown's direction, staff prepared some language that was presented to the Board of Aldermen at the Agenda meeting. He said there was discussion which resulted in proposed language which staff then included in the Comprehensive Plan. Staff amended the draft plan which was submitted by the Comprehensive Plan Steering Committee to reflect changes that the Board had made in regard to the "Our Next Generation" Youth Center and the skate bike park proposals that reflect the ongoing activities. Mr. Caudle said if those activities changed, we would then revisit the issue and determine whether other action was appropriate or necessary by the Town. We included language regarding the thoroughfare plan and the greenways initiative and also included a copy of the greenways plan. Mr. Caudle noted that the Board has a copy of the revised Comprehensive Plan including revisions as noted and with the proposed language as directed. *Alderman Brown made a motion to accept the Comprehensive Plan in its revised form as modified by the Board of Aldermen.* Alderman Brown said many hours were spent in developing the Comprehensive Plan. She said in order to move forward and get the Plan adopted, she felt the language regarding the interstate access to I-40 needed to be revised to show that other locations would be considered. Alderman Brown then read the new proposed language.

After discussion, Alderman Sobol made a motion to amend Alderman Brown's motion to delete the second and third paragraphs on the hand-out sheet. The Board agreed by consensus to add the word "access" to the main heading and delete "Like the Blue Ridge Road Interchange" in the last paragraph.

Alderman Garrison said he would like to see the sentence "all potential alternatives in pursuit of finding the most appropriate interstate access solution that will meet the needs of the community" in the third paragraph added to the introductory paragraph. Vice Mayor Kennedy also would like to see this wording included in the amended motion. *After discussion, Vice Mayor Kennedy made a motion to amend the amended motion which includes deleting the two referenced paragraphs and add the sentence beginning "all potential alternatives" to the first paragraph. The motion passed with a vote of 5-0.*

IX. NEW BUSINESS

A. Appeal of an Order to Take Corrective Action under the Flood Damage Prevention Ordinance

Mayor Begley opened the hearing and read a brief summary of the appeal of an Order to take Corrective Action under the Flood Damage Prevention Ordinance involving buildings located at 1148 Montreat Road, which are built in the floodway of Flat Creek. Mayor Begley explained the procedure that would be followed during the hearing. Mayor Begley then swore in the following people who would be testifying during the hearing: Martha Metcalf, Ralph Yoder, Ulysses Wagoner, and Dan Cordell, Floodplain Administrator.

Dan Cordell, Floodplain Administrator for the Town of Black Mountain, 18 Chestnut Lodge Road, gave a brief summary of the events and action taken with the following timeline.

December 2003: Mr. Cordell said he noticed some structures that appeared to be in the floodway area and construction underway on property located at 1148 Montreat Road. He talked with Mr. Yoder.

January 8, 2004: Issued a Stop Work Order on the job site.

January 14, 2004: Sent a certified letter to Ms. Martha Metcalf, owner of the property, to contact Mr. Cordell's office within 10 days of receiving the letter.

January 22, 2004: Mr. Cordell met with Ms. Metcalf to explain and discuss the options available. The options were: (1) Remove the structures entirely; (2) Apply for proper permits to possibly move the structures out of the floodway area into the floodplain complying with the Town's Floodplain Ordinance, and (3) Obtain Engineer's certification for a "No Rise" certification with supporting data.

February 2, 2004: Mr. Cordell sent another letter to Ms. Metcalf, stating that he had not received notification of intent to remedy the violation and set a hearing date at that time.

February 25, 2004: The hearing was held and the minutes of that hearing were included as evidence.

March 5, 2004: Send Order to Take Corrective Action, giving 60 days, which would be May 19, 2004, to remove structures.

May 12, 2004: Ms. Metcalf requested extension due to illness. Mr. Cordell told her that he and the Planning Director would grant an additional 30 days if she would give us a notarized statement of the agreement.

The following day (**May 13, 2004**) Ms. Metcalf came to Mr. Cordell's office with Mr. Yoder and informed him that they had decided to appeal the decision. The Planning Director reminded Ms. Metcalf that the appeal must be received no later than May 19, 2004.

May 14, 2004: Received the appeal from Ms. Metcalf.

Mr. Cordell then entered the following exhibits as evidence:

Exhibit "A" includes:

Stop Work Order

Two certified letters to Ms. Metcalf dated 1-14-04 & 2-02-04

Two photos of structures and creek

Copy of Minutes of Hearing with Ms. Metcalf of February 25, 2004 (3 pages)

Order to Take Corrective Action with return postal receipt dated 3-19-04 (2 pages)

Statement from Ms. Metcalf appealing Dan Cordell's decision dated 5-14-04 and date stamped as being received on 5-18-04

Affidavit signed by Neal Bartlett, dated 6-24-04

Exhibit "B": Aerial Map

Exhibit "C": Map

Exhibit "D": Floodway Map

Mr. Cordell referred to the Town's ordinance, Title XV, Chapter 151 (Flood Damage Prevention) and distinguished between floodplain and floodway.

Floodplain - allowed to have construction, has to comply with the Town's flood ordinances;

Floodway – prohibit any structures to be located in the floodway and located within areas of special flood hazard established in section 151.08, area designated as floodways. Since the

floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has erosion potential, the following provisions shall apply:

“1. Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided, demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.” Mr. Cordell explained that if an engineer can do a "No Rise" certificate with supporting documentation stating that these structures would not have an increase in the overall floodway as far as endangerment to another piece of property, if it is documented and certified, the structures would be permitted to stay. This is one of three options made available to Ms. Metcalf.

Mr. Cordell referred to Section 151.44, E, "Violations to be corrected. When the local administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall each immediately remedy the violations of law in the property he owns.”

Mr. Cordell submitted pictures of structures in Floodway as evidence. Mayor Begley labeled the pictures **Exhibit "E", 1-14**. The Board reviewed the pictures.

Vice Mayor Kennedy referred to the minutes of the hearing and said three dates were mentioned. Mr. Cordell said Ms. Metcalf asked for an extension and was granted a 30-day extension to the 60 days. At this time, Ms. Metcalf appealed the process.

Mayor Begley asked if the appellant had questions of Mr. Cordell.

Ms. Metcalf said she lives at 1148 Montreat Road, and said the buildings were built in March 2001 with her permission. They belong to her brother in law, Ralph Yoder. Ms. Metcalf asked her brother in law to state her case.

Ralph Yoder, 1150 Montreat Road, said Mr. Cordell saw construction and claims he talked with him in December 2003. The first time he spoke to me was on January 13 and the first time I saw him was on January 14, 2004 when he came on my property down to the buildings. I noticed he was putting something on the tree. I asked him (Dan Cordell) what he was doing. Mr. Cordell said it is according to who I am talking to. Dan told him (Mr. Yoder) that he had an appointment with him. Mr. Yoder said he did not. I spoke with you and we were talking about getting together and discussing this situation. He said he had noticed him building for two years. I told him that was not true. Dan asked what was he doing with all the lumber. I told him it was none of his business. but I was going to build a privacy fence and my truck broke down. If he has been watching me build for two years, why didn't he stop me and tell me I did not have a permit. He said these are temporary buildings – carports – he asked me if I could remove them within 48 hours if I had to. I said yes. Mr. Cordell came back and inspected the buildings and said they were permanent. He asked who gave him the right to put them up? He said he checked and you can put up a temporary building as long as it is removable without a permit because we are in a flood zone anyway. I tried to get a permit in 1986 when I talked with Mr. Atkins about putting another garage at my house and he said you have three buildings on one parcel and it is not big enough; you would have to take one off the deed. So I forgot about that.

After speaking with the former inspector, he said to go ahead and put the buildings up and make sure you do not pour the concrete over three inches thick if you are going to put a footing down. So I had Mr. Wagner pour the concrete, he talked with Neal Bartlett (former Building Inspector). As far as getting an engineer to give a No Rise Certificate, people down the creek had already had that done and they had to go one mile up and one mile down the creek. He did not think he needed to get an engineer since the other people already had the information. There are two buildings that come under the grandfather clause, up above these two buildings. He pointed these out on the map. When he met with Mr. Cordell, he said that he had talked with Neal Bartlett and he remembered someone calling to put some gravel in his yard to park the cars. So he has talked with someone even though he claims he has not spoken to anyone. Mr. Wagner can relate to that and talk about the concrete. Mr. Yoder said Mr. Cordell has been watching the building for two and one half years. The only thing that has been done is some concrete poured. I do not see where he came up that we have been building. When he came on the property, he had no identification, no town vehicle, and did not introduce himself. He said there should be a better procedure.

Mayor Begley asked if there was anyone wishing to ask any further questions of Mr. Cordell. If not, we will move to the appellant's case.

Ullyses Wagner, 102 Hillcrest Street, said he was told it was his responsibility to get Mr. Neal Bartlett to the hearing. Mayor Begley said if Mr. Bartlett is not here, whoever needed to use his testimony would need to have him here.

Mr. Wagner referenced the stop work order. He said Mr. Cordell had already made up his mind when he put the work order up. Mr. Wagner said he wrote the date in the concrete when he poured it. Mayor Begley asked what the date was. Mr. Wagner said 2001.

Mr. Wagner asked Mr. Cordell when did he see the work was going on? Mr. Cordell said he had driven by several times and saw work going on. On page three of three, exhibit "A", minutes from hearing dated February 25, 2004, Mr. Cordell referenced "a photo of the structures and the creek and inquired about the recent work done on the property as shown in the photo. Mr. Yoder examined the photo and indicated that there had been some minor work done by Mr. Wagner within the last six months." Mr. Cordell explained that when he sees a violation, standard procedure is to issue a stop work order. That stops everything until it is straightened out. Mr. Wagner said Mr. Cordell said he saw work going on for 2 ½ years. If you were working in a bank, and saw someone trying to break in, you wouldn't wait until someone broke in before you stopped them.

Alderman Brown referred to the colored photos. Those are not grandfathered. Was there a building permit issued to put those buildings up? Mr. Cordell replied no. Alderman Brown said they are on a concrete slab, they have masonry foundation, sides are not bolted to the floor. How much time is allowed to remove those in case of a flood? Mr. Cordell said after further research, they are not allowed at all. FEMA has guidelines for certain type of structures, i.e., manufactured office, something that can be moved immediately on flood notification, it cannot have a permanent foundation. Alderman Brown asked what was the starting date on those buildings? Mr. Cordell asked the ones in violation? Alderman Brown said yes. Mr. Cordell said he cannot answer that. Neal Bartlett said they were not under construction when he left.

Alderman Garrison asked why are those permanent structures? Mr. Cordell said these structures are permanent structures (foundation, electricity, footings, drainage troughs, equipment, fully wired); that does not fall in the category of temporary. Alderman Garrison said the way he interprets the ordinance, they are in non-compliance with the ordinance and they were built some time after our ordinance went into effect. Mr. Cordell said yes. Whether they were built in 2001 or 2003, at the time you learned they were in the floodway and non-compliant, it was your duty to take the necessary efforts to have them removed from the floodway. Mr. Cordell said yes our ordinance for floodplain was adopted in 1991. Alderman Garrison asked if Mr. Cordell had received any evidence for a no rise certificate? Mr. Cordell replied no.

Vice Mayor Kennedy said in the minutes from the hearing (February 25, 2004) "Mr. Cordell inquired if the structures could be moved in 48 hours if there was a flood predicted." Vice Mayor Kennedy referred to the minutes - "Mr. Wagner said that the buildings were not permanent and could be removed within 48 hours of a flood." Mr. Cordell said he did ask that question but it was not really an option. Vice Mayor Kennedy asked if that is not a legal requirement. Mr. Cordell said no. FEMA does have some guidelines on temporary structures which in my opinion this does not fall within that realm. FEMA does have a time frame. Vice Mayor Kennedy asked does it become temporary when it can be removed period or is the 48 hours irrelevant? Mr. Cordell said in 48 hours it had to be gone. I have a document from FEMA that was faxed to Jerry Wood showing examples of temporary structures. Mayor Begley asked if the ordinance addresses the question of time period for removal? Mr. Cordell said no it is just a call. Mayor Begley asked what part of our ordinance is relevant? Mr. Cordell referred to Section 151.44; it states that violations are to be corrected immediately. Mr. Cordell said we have been trying to work with the owner as much as possible. Mayor Begley asked where in the ordinance does it provide for removal of temporary structures? Mr. Cordell referred to Section 151.44 (E). Mayor Begley said this states immediate remedy of the violation which you say is the existence of the buildings there. Mr. Cordell replied yes.

Alderman White asked if Mr. Cordell had talked about 48 hours to Mr. Yoder before? Did he understand if it could be removed within 48 hours, it was temporary? Mr. Cordell said a statement was made in the hearing that the structures were of a temporary status. Mr. Cordell said he was trying to establish what was meant by temporary. When Mr. Cordell said 48 hours, could they be removed, this was not an applicable time by ordinance; it was a question during the hearing. Alderman White said we have a statement from Neal Bartlett saying he did not give permission for a building. Do we have any evidence to the contrary that there was a conversation with Mr. Bartlett? Mr. Cordell said he had talked with Mr. Bartlett and he had not allowed the buildings to be constructed. Before the hearing, I recommended that Ms. Metcalf contact Mr. Bartlett and asked that he be at the hearing to testify. They did not contact Mr. Bartlett. I contacted Mr. Bartlett, and at that time he said he did not give permission for the structures to be built. He said he could not be at the hearing but he would give a signed affidavit.

Alderman Brown asked if copies of building permits are kept on file? Mr. Cordell said yes, but none were found issued by Neal Bartlett for these buildings to be constructed at 1148 Montreat Road.

Vice Mayor Kennedy referred to page 17 of 18 of the Flood Damage Prevention Ordinance, item F-3, and asked if the result of the hearing with Ms. Metcalf was to give her the

choice to alter, vacate, or demolish said buildings? Mr. Cordell said yes the recommendations were on the order to remove them totally within 60 days. Mr. Cordell said he had talked with Ms. Metcalf and gave her all the options: (1) to remove, (2) apply for permit to build in the floodplain, or (3) to get the engineer's certification. Vice Mayor Kennedy asked what would happen to the two houses that are grandfathered if there is a flood? Vice Mayor Kennedy said what leads to this is the fear that those would make the flood worse. Is that a correct interpretation? Mr. Cordell said that is an interpretation, and he declines to comment as that would require an engineering degree. He said when buildings are grandfathered, it is intended that eventually no structures would be there, not allowing anything to be put in their place.

Mayor Begley asked if Mr. Yoder had any further comments.

Mr. Yoder referred to getting a "No Rise" certificate; that is basically telling me if I get that certification, I can leave the buildings. Then he says I cannot have the buildings. Mayor Begley asked Mr. Cordell where is the language in the ordinance? Mr. Cordell referenced D-1 on page 11. Mr. Yoder said if an engineer says it would cause a no rise situation, you can have the buildings. He said on Flat Creek Road, they moved the property line over; they did have an engineer and had to go up the creek one mile and down the creek one mile. Why do I have to hire an engineer when it has already been done? He is telling me I can have the buildings if we get the engineer to say that. I do not understand what kind of engineer would say that, because anything can cause a flood.

Vice Mayor Kennedy referred to page 11 of 18, D-1, of ordinance, "The following provisions shall apply: (1) Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge." This sounds as if the certification is your responsibility and not the Town's. Mr. Yoder said he understands – he does not understand why an engineer would say it definitely. Nobody knows when it will flood. Mr. Yoder said if he was going to put up a permanent structure, he would not put it on someone else's property, unless he had a lease for a long time. He said his sister in law, who lives in one of the houses that is grandfathered, called to see if a permit was required to put up a privacy fence and was told she did not. This did not make sense to him. There are too many rules and not enough explanation. The buildings are legal if an engineer says okay.

Alderman Brown said the structures are referred to as carports. Were you aware when you put up the carports that the Town requires building permits? Mr. Yoder said Mr. Bartlett had told him he did not have to have one if the structure is temporary and removable. Alderman Brown said at this point, they are not temporary. He said if they are not, and Martha sold tomorrow, he was in trouble. Alderman Garrison said you probably did not intend to have them permanent, but what you think is permanent and what the inspector thinks is permanent is different. Mr. Yoder said you can move them on a rollback. Mayor Begley said at what point in a heavy rain would you anticipate starting to move them? He said the temporariness is only there because you have to get a structure out quickly. Alderman Garrison said that is irrelevant.

Mr. Wagner said he objects that Mr. Cordell stated that Mr. Wagner did not try to get Mr. Bartlett to attend the hearing. Mr. Wagner said he went to Mr. Bartlett's house five times and he

would not even open the door. Mr. Wagner told Neal that I was enclosing some garages and he said he didn't talk to anybody and if he didn't, he said it would be okay to put some gravel in a driveway for a car, and you don't need anybody for that; you don't need to inspect. So undoubtedly he talked with me. Mr. Bartlett said how deep are they? Mr. Wagner said 2-3 inches. Mr. Bartlett said go ahead and pour them. That's not the only occasion when Mr. Bartlett was the inspector that he gave me that type of permission, not being there, no inspection or nothing else. Vice Mayor Kennedy asked if Mr. Wagner had any dates or any written evidence. Mr. Wagner said no he didn't think he needed them at the time. Vice Mayor Kennedy asked if he could remember, was it before Mr. Bartlett ceased being a member of the staff? When he told me to do several jobs? It was when he was the inspector himself. I can remember on the street where Dr. Valencia lived, the Frizzell guy lived there, I remember he put fill dirt in there and I know it was soft cause you could push a metal rod in it. And he knew about it, and he told them he could pour it and I called him at his house and he told me to go ahead and pour it. Cause I've known Mr. Bartlett for thirty years. And over on #9 he was a construction builder himself at that time and we put the first building which was a gas station on #9. That's been a while back. I've known him since then.

Mayor Begley asked for any other testimony on behalf of the appellant or any cross examination.

Mayor Begley asked for the Town's argument.

Mr. Cordell said he cannot speak for the previous Floodplain Manager. Mr. Cordell said when he came to Black Mountain, he read the ordinance thoroughly, knew what it entailed, and implemented the Town's ordinance properly and carefully, as discreetly and tactfully as possible.

Mayor Begley asked Mr. Yoder to give the appellant's argument.

Mr. Yoder said as far as the argument goes, when Mr. Cordell came on my property then on to Martha's, if he had introduced himself, but the way he came across, I had no more respect for him. When I asked him what do you think you are doing? Mr. Cordell said it is just according to who I am speaking to. He had no identification, his vehicle is not marked. Mr. Yoder said he would not have put the buildings up with the intention of them staying permanent. This is just a hobby of mine. Mr. Yoder said if Ms. Metcalf were to sell her property, he can move the buildings. He said he can move them within 48 hours.

Mayor Begley said unless there is an objection, the evidence from both sides is now concluded. Mayor Begley advised the Board that the evidence is now before them that is to be considered. Mayor Begley stated that the options of the Board is to approve, overrule or modify.

Alderman Garrison stated that the Board is to consider the facts and evidence:

1. Two buildings were built.
2. They were built in the floodway. There is no evidence to the contrary.
3. They are in violation of the ordinance.
4. FEMA ordinance says nothing can be erected in the floodway.

5. There is no evidence of a No Rise Certificate being issued and the appellant has not presented a No Rise Certificate.

Alderman Garrison said there are a lot of side issues here, i.e., that Mr. Cordell has not introduced himself, and if he did not, that can be corrected. This is not relevant to the facts. Whether they are temporary or not is not relevant. Whether they can be removed in 45 days is not relevant. He said he did not want to make anyone tear anything down, but he has no evidence and has to look at the facts. There is not a No Rise Certificate or any evidence by a surveyor that the floodway does not pass through the footprint of those buildings. Short of that, I have nothing not to affirm what the Building Inspector did.

Alderman White said she is disturbed that it seems that it may be that Mr. Yoder was given incorrect information by a previous town employee but there is no proof of that.

Alderman Brown feels that Mr. Cordell has followed all the rules and regulations and as Alderman Garrison pointed out, he listed them in the order as I would have and feels we have to support Mr. Cordell's recommendation.

Vice Mayor Kennedy said he has listened to the facts and looking at the pictures, it suggests very strongly that the buildings should not be in the floodway and agrees with the recommendation of Mr. Cordell.

Alderman Sobol noted that the Town has entered into a contract with McGill Associates to get a No Rise Certificate for a bridge we hope to build on the Swannanoa River. A structure can be placed within a floodway provided you get a No Rise Certificate. Alderman Sobol said his position is that this is one of the options that Mr. Cordell has given the appellant through the ordinance. If the appellant can find out who has the No Rise Certificate, the Engineering Firm may be able to use that to confirm what the appellant feels is okay and that is that the buildings will not cause any rise in the flood waters. Alderman Sobol will support the recommendation of Mr. Cordell because it does include some relief if the appellant chooses to follow it.

Town Attorney, Ron Sneed, advised that the Board is not dealing with the recommendation of the Floodplain Administrator, they are dealing with the order that he has issued. The Board's choice is to find that it was properly issued and uphold the order, to overturn the order because it is incorrect, or to modify the order.

Alderman Sobol asked if giving Mr. Yoder a chance to secure a No Rise Certification is an option. Mr. Sneed said the only modification would be to open up the opportunity by extending their time to remove the buildings. Their initial 60 days is up. That is the only modification I see. I do not think you can go back and start the negotiation process over that Mr. Cordell has been through. You can probably give them a window of opportunity by giving them a new deadline depending on what the Board does tonight. Alderman Garrison asked if we could give them 30 days to remove the buildings or provide a No Rise Certificate? Mayor Begley said the order was to remove the buildings. He asked if we could modify the order? Alderman Garrison said he does not see any limitations; it says you can affirm, modify, or deny so if we modify and give them 30 days in which to remove the buildings. Mayor Begley noted that the attorney said we are past the point where the ordinance allows that certification. Without getting

the certification, the order was to remove the buildings. Mayor Begley said he would like the option of doing what Alderman Garrison is wanting to do. Alderman Garrison said the appellant had the option of getting the No Rise Certificate within the 60 days before the order was issued or to get the No Rise before this hearing tonight which has been continued once already. The appellant has had plenty of time to get the certificate. To give 30 more days is redundant when he has had 60 days from the stop order. Mayor Begley asked Mr. Sneed if we amend the order, do we have to find that it was not properly issued. Mr. Sneed said the Board has some flexibility, possibly if there is some inequity, but I don't hear anyone saying there is anything improper or that the Board is going to find no violation. His concern is to modify the order in some fashion that is backing it up and starting this process over again. This Board enters an order and from that he has a set amount of time to appeal to the Superior Court. That gives him a window of opportunity to get the No Rise Certificate, and this Board could from the date of the order say that within 30 days, we will take the next step and have them removed.

Alderman Garrison said if this is appealed to Superior Court, could the appellant present a No Rise at that time? Or is it just a review like the Board of Adjustment? Mr. Sneed said it would be a review of what this panel found in this hearing. Mr. Sneed said just because we are not offering the appellant time to get a No Rise Certificate does not mean it cannot be done. Mayor Begley said if the order were approved tonight and there is this time frame you are talking about, if the property owner were able to get a No Rise Certification, the Town could dismiss. Mr. Sneed said yes, you would be in compliance. Mayor Begley said that would require the action to be still continuing with an appeal to Superior Court. If it is filed, it cannot be dismissed. Mr. Sneed said with Mr. Cordell's option, the Board cannot make the appellant get a No Rise Certificate. The Board cannot make him get a surveyor to show that the floodplain maps are wrong, and cannot order him to remove the buildings and we get a court to enforce that. This Board has to decide whether Mr. Cordell made the correct decision or not or if there is some error showing information that in fact that it was not in the floodway but in the floodplain. We might modify the order and say because he doesn't have to remove it immediately but he has so much time with the new information to get his proper permits to build in the floodplain. We do not have that kind of facts. If he goes down and pulls those buildings back, 20' whatever it takes, and gets a building permit to build in the floodplain, anything he does to bring the buildings in compliance, we don't have to worry about vacating the order if he comes in with a No Rise Certificate or moves the buildings back. Mayor Begley said if he removes them from the floodway, he could get permission to leave them in the floodplain. Mr. Sneed said yes with the proper permits. Mr. Sneed said Mr. Cordell cannot make the appellant do any of these things. He only has the power under the ordinance to make you remove the problem. Alderman Sobol said the Board needs to go ahead and vote up or down on Mr. Cordell's procedures. He said then the appellant can proceed. *With no further discussion, Alderman Garrison made a motion to affirm the order of Mr. Cordell. The motion passed with a vote of 5-0.*

Mayor Begley noted that Vice Mayor Kennedy brought to his attention that when we took the action earlier we unanimously approved the amendment to the amendment but did not act further on the Comprehensive Plan. Mayor Begley said the amended amendment as amended is on the floor for further discussion. *Mayor Begley said we are voting on the amendment to Alderman Brown's original motion with the changes that we unanimously agreed to. The motion passed unanimously.* On the floor is the original motion as amended. Vice Mayor Kennedy said he thinks the change makes a difference but said he wanted to call attention to the interpretation

that he thinks is legitimate with this. The crucial sentence that we moved from paragraph two back to the initial paragraph would make it read like this: Those projects are the proposed study of I-40 interchange access and all potential alternatives in pursuit of finding the most appropriate interstate solutions that would meet the needs of the community. Vice Mayor Kennedy thinks this gets back to the original hope that we wanted a study of all alternatives including no build, no access at all which is one of the options they will have, but includes Exit 64, Blue Ridge Road, Lytle Cove, and there may be other potential alternatives that we may look at the traffic patterns in light of the present situation, and there may be another one on the west end of town. He said he wanted to make sure that we are aware of that interpretation. Vice Mayor Kennedy intends to vote for the whole proposal as amended. Mayor Begley asked for a vote on the Comprehensive Plan as amended. *The motion passed with a vote of 5-0.*

X. CITIZEN COMMENTS – (at 8:00 p.m. if all preceding items on the agenda have not been finished by then)

Belinda Box, 107 3rd Street, said she had heard that the Board is considering closing the Black Mountain pool. She said her children use the pool as do many other children in the valley. The Owen pool is not convenient for a lot of people in Black Mountain. She hopes the Town will repair the pool because her family, as well as many others in the valley, use the pool during the summer. Mr. Caudle said the Recreation and Parks Department is getting costs for repairing the pool and those figures should be available soon.

John Allison, 34 Western View Street, appreciates the Board changing the wording in the Comprehensive Plan regarding the I-40 interchange. He requests that the Board notify DOT that we want further studies on the site of the exit. Mr. Allison said he hopes that the new pool will be a year-round pool so that the kids can start swim teams again and also allow the Owen High School and Middle School to use the facility for practice.

Gay Fox, 307 Tomahawk Avenue, asks that the Board not destroy the present pool until there is a replacement. She agrees it should be a year-round pool.

Ron Collins, 400 Blue Ridge Road, thanked the Board for changing the wording in the Comprehensive Plan and wants the Board to send the revised document to the MPO.

Harry Hamil, 15 John Myra Avenue, said the Comprehensive Plan was not on the agenda and the revised agenda was not published. He reminded the Board that the public was not informed of the new agenda.

IX. NEW BUSINESS (cont.)

B. CALL FOR PUBLIC HEARING - Solid Waste Assisted Bagged Leaf Collections Program and White Goods Disposal Fee

Mayor Begley noted that the wording in the motion for consideration should read “to establish the Assisted Bagged Leaf Collections Program”. *With this change, Alderman Brown made a motion to Call for a Public Hearing on September 13, 2004 at 6:00 p.m. or as soon thereafter as possible in the Public Safety Building to consider adoption of an Ordinance to amend Title V, and establish Section 50.15 and Section 50.18 of the Code of Ordinances of the*

Town of Black Mountain to charge a fee of five dollars (\$5.00) for the collection of each white good and to establish the Assisted Bagged Leaf Collections Program. The motion passed with a vote of 5-0.

XI. CLOSED SESSION - *With no further business, Alderman Garrison made a motion to go into closed session at 9:15 p.m. to discuss personnel and property acquisition. The motion passed with a vote of 5-0.*

XII. ADJOURNMENT - *On a motion by Alderman Garrison the Board returned to open session at 9:46 p.m. With no further business, Alderman Garrison made a motion to adjourn the meeting at 9:47 p.m. The motion passed unanimously.*

Wm. Michael Begley, Mayor

ATTEST

Anthony N. Caudle, Town Manager

Shirley J. Raines, Town Clerk