

MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REGULAR SESSION
August 14, 2006

THE BLACK MOUNTAIN BOARD OF ALDERMEN met in a regular monthly session on Monday, July 10, 2006 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

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

Mayor Will Kennedy
Vice Mayor C. Michael Sobol
Alderman Joan Brown
Alderman Chuck McKeown
Alderman Rosalie Phillips
Alderman Mary Leonard White

The following staff members were present:

Anthony N. Caudle, Town Manager
Bo Ferguson, Assistant Town Manager
Shirley Raines, Town Clerk
Rosa Hilbert, Senior Administrative Assistant
Ron Sneed, Town Attorney
LuAnn Bryan, Recreation and Parks Director
Steve Padgett, Interim Police Chief
Tim Rayburn, Fire Chief
Elizabeth Teague, Planning Director
Bob Watts, Public Works Director

Representing the media:

Gary & Sally Biggers, Black Mountain Video Productions
Andy Grabel, Black Mountain News
Jim Genaro, Asheville Daily Planet

Mayor Kennedy led the Pledge of Allegiance, followed with prayer led by Reverend Phil Dillingham of Grace and Knowledge Community Church.

Mayor Kennedy noted that this is the 1,350th regularly scheduled session of the Town of Black Mountain Board of Aldermen.

Mayor Kennedy 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. CITIZEN COMMENTS

Harry Hamil, 15 John Myra Avenue, said that each of the Board members should have received a letter from him concerning IX, Old Business, Item A – Request from Chamber of Commerce to Endorse Efforts to Construct a New Visitor Center and Future Rail Station. He asked the Board to address the issues in his letter during their discussion. He said the recommended motion and the requested action is actually two motions. Mr. Hamil feels that both of these motions appear to provide the Board’s stamp of approval for this particular plan, not that the Board is supporting efforts of trying to find a new visitor center, but feels it could be confused as support for a specific plan. He said he feels that the second motion authorizes an agreement which is not required at this time for the plans to move forward in terms of an evaluation of the site as was told to him by the President of the Chamber. He feels that if that is the intention of the Chamber, then there is no need for the second motion.

III. ADOPTION OF THE AGENDA

The minutes of July 6, 2006 – Agenda Workshop, July 10, 2006 – Regular Session, July 10, 2006 – Closed Session were approved.

The agenda was amended with the following changes:

Under VI, Consent Agenda, add item “D”, “Contract with First Incorporated for Grass Mowing”.

Under X, New Business, defer item “B” to the September meeting; move item “E”, “Approval of Office Equipment Leasing Contract with Kearns Business Solutions” to VI, Consent Agenda, item “E”.

With these changes the agenda was approved with a 5-0 vote on a motion by Alderman Brown.

IV. COMMUNICATIONS FROM THE MAYOR

A. Proclamation Honoring YMCA Blue Ridge Assembly - Mayor Kennedy read a proclamation honoring the YMCA Blue Ridge Assembly for 100 years of service. Executive Director, Roger Hibbard, accepted the Proclamation on behalf of the YMCA.

V. COMMUNICATIONS FROM TOWN ATTORNEY

Attorney Ronald Sneed said he was asked to determine whether or not the Town could save some money by talking with property owners in the Blue Ridge Road annexation area to see if they would be interested in waiving or releasing the Town from the obligation to put in sewer lines. He said that it can be done, but it is a very short-term fix because you cannot bind future property owners. He said the present property owners may say they do not need the lines, but that does not bind the future owners. Attorney Sneed said he confirmed that there is a statute of limitation of services and action can be brought from anyone within 24 to 27 months to sue the Town to force the completion of the construction of the sewer line. If no action by then, they

have lost their right for *writ-of-mandamus*. Attorney Sneed said that the Town has had this obligation on the books to complete the sewer lines for an extended period of time. Attorney Sneed said that might be a cause of action that by each time the Town, in its records, indicates that it will build the sewer lines, that renews its obligation to the citizenry. Attorney Sneed commented that his feeling is that if the Town elects not to construct the sewer line and if the Town has plans for any future voluntary annexation, it could be a problem.

VI. CONSENT AGENDA

- A. Adoption of the Minutes
Motion: To adopt the minutes of July 6, 2006 – Agenda Workshop, July 10, 2006 – Regular Session, July 10, 2006 – Closed Session
- B. Adoption of Budget Amendment #01
Motion: To adopt Budget Amendment #01 as submitted
- C. Approval of North Carolina Department of Transportation Pedestrian Planning Grant Municipal Agreement
Motion: Adoption of the Municipal Agreement Resolution
- D. Approval of Contract with First Incorporated for Grass Mowing Along Street Rights-of-Way and in the Cemetery.
Motion: To approve the two-year contract with First Incorporated in the amount of \$20,444 annually for mowing of grass along street rights-of-way throughout Town and in the Town cemetery and to authorize the Town Manager to execute said contract on behalf of the Town.
- E. Approval of Office Equipment Leasing Contract with Kearns Business Solutions
Motion: To authorize the Town Manager to sign a lease with Great America Leasing Corporation in association with Kearns Business Solutions to provide printers, a copier and fax equipment for use in Town Hall, and to contract with Kearns Business Solutions to provide service on the equipment.

All items on the Consent Agenda are considered routine, to be enacted by one motion without discussion. If a member of the Governing body requests discussion of an item, the item will be removed from the Consent Agenda and considered separately.

VII. COMMUNICATIONS FROM THE TOWN MANAGER

- A. **Review of Consent Agenda**
- B. **Projects Update**
 - 1. **U.S. 70 Sidewalk Project** – Mr. Caudle reported that the first phase of the project is designed to go from Cragmont Road to the division between old U.S. Hwy 70 and new U.S. Hwy 70. He said the plans were sent to NCDOT review office as they included a retaining wall.
 - 2. **Water Line Mitigation Project** – Mr. Caudle reported that this project is a \$200,000 construction project, which is funded by a mitigation grant. He said this project

moves one of the major water lines out of the floodway and floodplain. He said that construction began on the project two weeks ago. **Where????**

3. Staff Training – Mr. Caudle said that a new directive from the Federal Government requires that all local governments that receive FEMA disaster assistance after January 01, 2007 are required to have a certain level of training for all Town employees.

4. Department of Insurance Fire Rating – Mr. Caudle reported that the Department of Insurance has delayed their inspection visit that allows the Town to establish a fire rating for the community which is currently 4. He said that staff is working to maintain that rating. Mr. Caudle said the visit is postponed at least until next spring. Vice Mayor Sobol requested the Board to direct the staff to proceed in giving an analysis on both in-Town and out-of-Town of the affect on all of the properties if the fire rating went from a 4 to a 5. The Board agreed by consensus.

5. Police Chief Selection Process Update – Mr. Caudle said that the Town has received approximately 60 applications for the Police Chief position. He said that six candidates were sent questionnaires for additional information. Mr. Caudle said that the candidates will be narrowed down to four who will be interviewed on August 30, 2006.

6. Mr. Caudle said that the Town is currently accepting Planning Board applications of which there are two vacancies and will be appointed at the next meeting. Mr. Caudle asked that interested persons contact the Town Clerk no later than August 31, 2006.

7. Mr. Caudle reminded the audience that the Mayor’s Cup Raft Race, sponsored by the Land-of-Sky Regional Council, is scheduled for this Sunday, August 20, 2006 at 3:00 p.m. at the French Broad River Park.

VIII. COMMITTEE/BOARD REPORTS

A. Oath of Office for Boards/Commissions - The Oaths of Office for the Historic Preservation Commission and Recreation Commission will be scheduled at a later date.

B. Appointment to Fill Vacancies on Greenways Commissions – Mr. Bo Ferguson, Assistant Town Manager, reported that there are seven applicants to fill the vacancies on the Greenways Commission. The Board voted by acclamation to appoint Mike Blaine, Ann Lutz, Jon McNair, Vicky Miller, O’Neil Tate, Julia Weatherford, and Julie White to fill these vacancies.

C. Alderman Phillips announced that an action item of the Comprehensive Plan has been completed. The Black Mountain Area Cultural Resources Organization began with objectives to raise awareness among the people in the community of the rich arts and cultural resources in Black Mountain. Membership in this coalition will be voluntary and is open to all organizations, businesses, and individuals. Town supported arts and cultural associations such as the Arts Center, Museum, Library will be the key organizers and all other art and cultural entities

are invited to join. The next meeting will be September 6, 2006 at the Black Mountain Center for the Arts. Interested persons may also call Jill Jones at the Museum.

D. Alderman Brown said that each year the Land of Sky Regional Council gives various individuals and organizations the opportunity to nominate special people who have shown intergovernmental relations within our area. This award is presented to an individual who has worked, not only in Buncombe County and Black Mountain but throughout the Land-of-the-Sky Region. The award is given in memory of Robert Parrish, who was a long time Mayor of Fletcher. She said Representative Goforth has done much for us, particularly with his initiative through state government and bringing about the possible veterans' nursing home, expansion of the women's correctional center, and many other initiatives. *Alderman Brown made a motion to nominate Representative Bruce Goforth for the Robert Parrish award. There were no other nominations. The motion passed with a vote of 5-0.*

IX. OLD BUSINESS

A. Request from Chamber of Commerce to Endorse Efforts to Construct a New Visitor Center and Future Rail Station

Jim Buckner, Chamber representative, addressed the Board and said that his report is a further update of the on-going 5-year plan to develop a new public service facility on a small portion of municipal-owned property on a parking lot south of the railroad tracks on Broadway. Mr. Buckner said the Board was briefed after the Chamber's meeting with the North Carolina Department of Transportation (NCDOT). He said the Chamber was granted a meeting with various departments of the DOT and the attendees from Black Mountain were Ken Pittman, Bob McMurray and himself. Mr. Buckner reported that this new facility will be owned by the Town in order to be eligible to receive funding from several state agencies. Mr. Buckner updated the report as follows:

- NCDOT has offered to pay 50% of the initial plans which is the Fifteen Per Cent Plan.
- NCDOT has given the name of a Raleigh based architect firm which has done extensive work on similar projects and is familiar with DOT requirements.
- It will be necessary to create a municipal agreement between the Town and NCDOT. A staff person from NCDOT has already been assigned to work with the Town. Mr. Buckner said the Chamber is requesting the Board to authorize the Town to assign a staff person to work with DOT to draft the municipal agreement.
- A lease agreement will be needed for the future between the Town and the Chamber.
- The Chamber has accepted a deadline of December 1, 2006 to have the Fifteen Per Cent Plans to Raleigh to be placed on funding schedules for 2007 – 2008.

Mr. Buckner said the plans are only conceptual. He said that until the municipal agreement is in place, the Chamber does not have the latitude to proceed. Mr. Buckner said the Chamber is requesting the Board of Aldermen to proceed promptly in order to meet the December 1, 2006 funding deadline.

Alderman White asked if there would be sufficient room for parking. Mr. Buckner said if there is a parking problem, the designers will need to adjust their plans to accommodate what is needed.

Alderman Phillips asked why was this site chosen and whether other sites were considered. Mr. Buckner said that this site and project was chosen because it could be located on Town-owned property and is in the middle of the Town's business district. He said it would serve many purposes and be eligible for grants from various agencies. Mr. Buckner said that no other sites were considered for the project.

Alderman Phillips said if the Chamber contributes 40%, where will the other 60% come from. Mr. Buckner said that it will come from various state agencies, not from the Town of Black Mountain.

Alderman Brown asked what will happen to the old Chamber building. Mr. Buckner said that it will become a piece of downtown commercial property available for sale.

Mayor Kennedy asked the specific location of the site and what does it include. Mr. Buckner said the site is immediately to the right after crossing the railroad tracks. He said the under-utilized parking lot is the proposed location. Mayor Kennedy inquired about the railroad rights-of-way. Mr. Buckner said they have surveys that show the location of rights-of-ways. He said that next to the proposed site is the bank property and to the west is the McCoy Building property.

Alderman Phillips inquired about covenants or restrictions about the parking. Mr. Caudle responded that the larger portion of the piece of property that was provided to the Town by the bank was given free and clear of parking restrictions. He said that another portion of the property was provided by the owner of the McCoy Building and the covenants have not yet been reviewed by the Town Attorney.

Mayor Kennedy asked if the Board had reviewed Mr. Hamil's memo concerning the Chamber's request for endorsement of a new visitor center and rail station.

Alderman McKeown asked what is Business to Business involvement. Mr. Hamil said none. Mr. Buckner said the Chamber of Commerce is a private organization and made the proposal in good faith to try to create something that would be a betterment for the Town. He said the Chamber is in complete agreement with the efforts of the Merchants Association and completely support them and welcome their input.

Alderman Brown said that the Chamber is asking the Board to endorse the Chamber proceeding ahead with conceptual ideas and present the plans and documentation at a later time. She asked whether the Chamber would bring to the table the Economic Development Committee and Business to Business as the planning continues. Mr. Buckner said the first proposal was to put together a group of local people willing to advise on the project. He said that the group needs the expertise of Town planning staff, local professionals and encourages interested persons to become part of the advisory process.

Alderman White asked if there was a legal reason to require a Public Hearing. Mr. Ferguson said that NCDOT would welcome public involvement in the design process; whether or not there would be a formal Public Hearing is unknown at the present time.

Alderman Brown made a motion (1) To endorse the Chamber of Commerce’s planning effort for a new rail station and visitor center on Town-owned land; and (2) To authorize the Town Manager to sign a municipal agreement with NCDOT Rail Division establishing the parameters for grant funding to support the planning process. Alderman White made an amendment to the motion to include public involvement a part of the planning process.

Alderman McKeown said he feels that the request is premature because there is not enough information about how the entities are to be involved, or about the parking or high-speed rail. Alderman McKeown said he is not against the endorsement; however, he feels that more time is needed on the project. *The Board voted unanimously to accept the amendment by Alderman White as the third part of the motion.*

Alderman Sobol inquired whether the Board’s endorsement means the Town is married to the plan. Attorney Sneed responded that the request is for endorsement of a planning effort or planning stage, it does not say that the Town will accept approved plan.

Alderman Phillips asked whether the plans will be processed through the Planning Board. Mr. Buckner said yes, the Chamber plans to follow the procedures, requirements, and guidelines of the Town.

With no further discussion the Board of Aldermen voted to approve the Chamber of Commerce endorsement request with a vote of 3-2 with Aldermen McKeown and Phillips opposed.

B. US 70 Corridor Study Steering Committee Representative

Elizabeth Teague, Planning Director, said that the Metropolitan Planning Organization (MPO) would like to organize a steering committee to direct the Planning process and make sure that public involvement is addressed. Ms. Teague recommended including representatives from Black Mountain Business to Business, Chamber of Commerce, Town staff, and an appointee from the Board of Aldermen. *Alderman Brown made a motion that Alderman McKeown be appointed to represent the Black Mountain Board of Aldermen. The motion was unanimously approved.*

X. NEW BUSINESS

A. Consideration of Proposed Conflict of Interest Policy

Bo Ferguson, Assistant Town Manager, said that the Town’s Historic District is eligible for federal grant funding, but the grant cannot be awarded without the Town having an approved Conflict of Interest policy in place. He said that the policy addresses any financial gain that may be received by either a member of the Board or an employee or member of Town management

through any decision that the elected body has control over. *With no further discussion Alderman Brown made a motion to adopt the proposed Conflict of Interest policy as presented. The motion passed with a vote of 5-0.*

B. Consideration of Alternative Approaches to Economic Development

Mr. Caudle reported that this item has been deferred to the September meeting. The Board of Aldermen has scheduled a joint meeting with the Chamber of Commerce Economic Development Committee on Thursday, August 17, 2006 at 8:00 a.m. in the Public Safety Building.

C. Request to Authorize the Recreation and Parks Department to Negotiate Lease with the Salvation Army to Operate Teen Center

LuAnn Bryan, Recreation and Parks Director, introduced Mark Jeffries with the Salvation Army Boys and Girls Club. Ms. Bryan presented a sample lease and explained that they would like to begin negotiations with the Boys and Girls Club to operate a Teen Center at Carver Community Center. *Alderman White made a motion to authorize the Recreation & Parks Department, through the Town Manager and in conjunction with the Town Attorney, to negotiate a lease agreement with the Salvation Army to operate the teen center located at Carver Community Center. The motion passed with a vote of 5-0.*

D. Review and Consideration of Sutton Avenue Parking and Stormwater Management Feasibility Study

Bob Watts, Public Works Director, reported that there has been discussion of converting the area along the south side of Sutton Avenue between the cross streets of Broadway and Richardson Boulevard into a public parking area. He said the area is a drainage swell that collects all the water from the downtown area and works to filter the water. Mr. Watts voiced concern whether they could culvert part of this and achieve good filtration. He said the results of the study have been given to staff and now need to be reviewed by the Board of Aldermen. *Alderman White made a motion to ask staff to pursue the parallel parking option with asphalt; that they design a plan that includes planting in the breaks in the parking strip and on the streetside of the parking strip and that it also include a sidewalk on the opposite side of the street. The motion passed with a vote of 5-0.*

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

Andy Grabel, reporter for the Black Mountain News, inquired about the proposed Conflict of Interest policy. He asked to what degree do allegations have to be brought forth to be proven before the Board would take action. Town Attorney, Ron Sneed, said there is no standard at this point on how harshly someone is dealt with for a violation.

Harry Hamil, 15 John Myra Avenue, said there is in the current budget funds allocated for a sidewalk study at Sutton Avenue. Mr. Hamil said that Alderman McKeown is right and advised the Board to get the parallel parking and let the study show what to do.

Mr. Hamil said that the Board passed the Chamber of Commerce request with no one having an opportunity to speak against it. Mr. Hamil said that no downtown business people have been included in the discussion about the Chamber's request before the Board. Mr. Hamil said that the Board has taken over the issue of the location of the railroad station and the location of the tri-modal transportation hub which, in his opinion, is supposed to be a part of the transportation plan of the Town. Mr. Hamil said that where the railroad station goes controls where the transportation hub should be located. Mr. Hamil said that the Town needs to involve the committees in this town who are assigned responsibilities in those areas, and in the case of transportation, it is the Planning Board.

Elaine Loutzenheiser, 410 Avena Road, referenced the packet and said that in May of this year the Chamber of Commerce announced their intention to relocate their visitor center and offices to a new location, and proposed co-locating this facility with a new rail station facility. She said that they identified the Town-owned parking lot south of Sun Trust Bank. She thinks that is pretty specific.

Ms. Loutsenheizer said she did not know of any business in town that has a private loading zone, 24 hours a day. She asked if there was another business besides Bella Blooms who has this luxury. She said the parking in front of their business is public parking that the Town owns and is curious why it is allowed and thinks this situation should be reviewed.

Bob McMurray, 127 Hilltop Road, spoke to clear up one thing about the location of the visitor center and passenger rail station. He said the headquarters for the passenger rail was to be located at the present depot. He said that the Chamber has cooperated with the Rail Division for their preferred site. He said that the present proposed site was chosen by the Rail Division.

Ruth Brandon, 722 Laurel Avenue, referenced the Chamber of Commerce discussion. She said that she thinks that correct parliamentary procedure would require that an amendment to a motion be voted on before the original motion.

XII. CLOSED SESSION – *Vice Mayor Sobol made a motion to go into Closed Session at 8:00 p.m. to discuss:*

- A. Legal Advice from Attorney – as permitted in NCGS 143-318.11(a)(3)
- B. Personnel - as permitted in NCGS 143-318.11(a)(6)

The motion passed unanimously.

XIII. ADJOURNMENT

Vice Mayor Sobol made a motion to accept the offer from the Barnwell family to purchase a parcel of land from the Town at the corner of Fairway Drive and Byrd Road for an amount of \$1,250. The motion passed by a vote of 5-0.

With no further business Alderman McKeown made a motion to adjourn at 8:15 p.m. The motion passed unanimously.

Will Kennedy, Mayor

Anthony N. Caudle, Town Manager

ATTEST

Rosa Hilbert, Sr. Administrative Assistant

Shirley J. Raines, CMC, Town Clerk