

**MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN**  
**REGULAR SESSION**  
**May 9, 2005**

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**THE BLACK MOUNTAIN BOARD OF ALDERMEN** met in regular monthly session on Monday, May 9, 2005 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  
Shirley Raines, Town Clerk  
Ron Sneed, Town Attorney  
Jerry Atkins, Zoning Administrator  
David Ballard, Golf Pro  
Gary Bartlett, Director of Public Safety  
Casey Conner, Interim Recreation & Parks Director  
Bob Watts, Public Works Director

Representing the media:

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 Pastor Steve Morrison, Grace Fellowship Church of God, 116 North Fork Road, Black Mountain, NC.

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 March 29, 2005 – Special Workshop, April 7, 2005 - Agenda Workshop, April 11, 2005 – Regular Session. The agenda was amended at the Agenda Meeting on May 5, 2005 with the following changes:

Under III, Communications from the Mayor, add item “B”, Transportation Advisory Committee Report.

Under IV, Communications from Town Attorney, add item “A”, Tax Refund Case.

Under V, Consent Agenda, move item “C”, Animal Control Ordinance to VIII, Old Business “D”. Add items K, L, & M.

Under V, Consent Agenda, add to Call for Public Hearing – “Close the Street Right-of-Way Known as McKnitt Parkway”.

Under VI, Communications from the Town Manager, add item “4”, Pool Renovations Update.

Under VII, Committee/Board Reports, add item “B”, Litter Sweep Report.

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

### **III. COMMUNICATIONS FROM THE MAYOR**

Mayor Begley presented a Proclamation honoring the First Baptist Church of Black Mountain. Mayor Begley said the congregation and staff would celebrate 100 years of service to the community on June 5, 2005. Rev. David Rayburn accepted the Proclamation on behalf of the church.

Mayor Begley gave an update on the Transportation Advisory Committee. He reported that he and Tony Caudle met with Alan Thornburg, District 13 Board Member, today (5-9-05). Mayor Begley said the Board wanted to know what path we needed to take to advance the causes that the Board has supported by consensus regarding the Lytle Cove interchange feasibility study. Mr. Thornburg indicated the best way would be to put the Board’s request in writing to him, and that representation would not necessarily be needed at regional Transportation Improvement Program meetings.

Alderman Sobol asked if someone should attend the TIP meeting next week for District 13 at Lake Junaluska or will the letter that is being sent from Mayor Begley be sufficient? Mr. Caudle replied that Mr. Alan Thornburg said it is not necessary to attend the meeting. Mr. Caudle said there are two paths for the TIP input – (1) through the DOT Division Engineer and (2) through the MPO path; letters will be sent to both organizations.

**IV. COMMUNICATIONS FROM TOWN ATTORNEY** – Mr. Sneed reported that the refund of property tax on the Public Safety Building would go to trial soon. The County has made an offer to settle in the amount of \$11,512.44. Mr. Sneed recommends that the Town accept this offer. *Alderman Sobol made a motion to accept the Town Attorney’s recommendation and accept the \$11,512.44. The motion passed with a vote of 5-0.*

### **V. CONSENT AGENDA**

With the adoption of the agenda for the May 9, 2005 Regular Session Meeting, the following actions were approved:

- A. Adoption of the Minutes  
*Motion: To adopt the minutes of March 29, 2005 – Special Workshop, April 7, 2005 - Agenda Workshop, April 11, 2005 – Regular Session*
- B. Adoption of Budget Amendment #13  
*Motion: To adopt budget amendment #13 as submitted*
- C. Move Animal Control Ordinance to Old Business “D”
- D. Request to Declare 1977 Public Works Dump Truck Surplus Property  
*Motion: To request that the Board declare the 1977, F 700 Ford dump Truck VIN #F706YV09024 surplus and accept closed bids for the sale of the truck with a minimum bid of \$5,000.00.*
- E. **CALL FOR PUBLIC HEARING** on proposed Fiscal Year 2005-2006 Annual Budget for the Town of Black Mountain  
*Motion: To call for a Public Hearing on the Recommended Budget for Fiscal Year 2005-2006 on Monday, June 13, 2005 at 6:00 p.m., or as soon thereafter as possible, to be held in the meeting room of the Public Safety Building at 106 Montreat Road, Black Mountain, NC*
- F. Approval of Reclassification of Recreation and Parks Director’s Job Description  
*Motion: To approve the placement of the Recreation and Parks Director’s position to Pay Grade 20*
- G. Acceptance of Grant from the Community Foundation of Western North Carolina for Planning the Owen Youth Center Program at the Carver Center  
*Motion: To accept the award of the grant funding from the Community Foundation of Western North Carolina for the purpose of planning for the development of the Owen Youth Center Program in the Carver Center, and to authorize the Town Manager to accept the grant award on the behalf of the Town*
- H. Appointment of Trustees to the Black Mountain Local Firemen’s Relief Fund Board  
*Motion: To affirm Charles Arnett as the Board’s designee to continue serving until January 2007 and to appoint Sterling Poe to fill the unexpired term (until January 2006) vacated by the death of the Board’s other designee, Frank B. Williams*
- I. Request from Historic Preservation Commission to Apply for Certified Local Government Status  
*Motion: To approve an application for submission to the State Historic Preservation Office requesting that the Town of Black Mountain be designated a Certified Local Government for the purposes of historic preservation and to authorize the Mayor to sign that application on the behalf of the Town*

Susan Robinson, Chair of the Historic Preservation Commission, presented a report to the Board of Aldermen regarding the Certified Local Government application.

- J. **CALL FOR PUBLIC HEARING** to Adopt a Resolution of Intent to Close a Portion of the Ten Foot Alleyway that Extends Northwest from West Cotton Avenue to West Keesler Street; and, to Close the Street Right-of-Way Known as McKnitt Parkway

*Motion:* To pass the Resolution of Intent to close the southwesterly portion of the alleyway that runs between West Cotton Avenue and West Keesler Street and, to Close the Street Right-of-Way Known as McKnitt Parkway and to hold a Public Hearing on the matter at the June 13, 2005 Regular Meeting at 6:00 p.m. or as soon thereafter as possible

- K. Permission to Apply for a Homeland Security Grant to Fund One Position in the Fire Department

*Motion:* To authorize the staff to apply for a Staffing for Adequate Fire and Emergency Response (SAFER) grant from the Department of Homeland Security as detailed in the attached application.

- L. Request for Approval for the Town of Black Mountain to Apply for a Progress Energy Foundation Grant for the Primary School Trail Project

*Motion:* Motion to apply for a grant from Progress Energy for the Primary School Trail Project and to authorize the Mayor to sign the grant application on the behalf of the Town.

Mayor Begley noted that he requested this item be placed on the agenda. He said the grant has already been signed and submitted and would like this action to be ratified. *Alderman Brown made a motion to ratify the action that has already been taken. The motion passed with a vote of 5-0.*

- M. Request from Riverlink to Endorse an Application to Restore Sections of the Swannanoa River

*Motion:* Motion to authorize the Mayor to draft a letter on the behalf of the Town in support of the RiverLink application for a Clean Water Management Trust Fund grant to restore the section of the Swannanoa River where it crosses property owned by the Town of Black Mountain at both the Black Mountain Recreational Park and off of White Pine Drive

N. Mr. Caudle said he has received notification today that the Community Foundation of Western North Carolina has awarded another grant to the Town of Black Mountain. He said Stephanie Wilds had applied for this grant to put up an educational staging area in the RiverWalk Park behind Bi-Lo. Mr. Caudle said the Board needs to accept this grant. *Alderman Brown made a motion to accept the grant from the Community Foundation of Western North Carolina for an educational staging area in the RiverWalk Park behind Bi-Lo. The motion passed unanimously.*

*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.*

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

### **A. Review of Consent Agenda**

**B. Projects Update**

**1. Filling of Open Positions** – Mr. Caudle reported that the new Planning Director, Elizabeth Teague, would begin work on May 16, 2005 and that the Assistant Town Manager, Bo Ferguson, would begin work on May 31, 2005.

**2. Sidewalk Construction Projects** – Bob Watts, Public Works Director, reported that paving has been completed on Vance Avenue, S. Dougherty Street, and Black Mountain Avenue. The next section will be the west side of Church Street, then to Highway 70 between Scotland and Ridgeway. He said the work should be completed within the next two weeks.

**3. MSD Work on Golf Course** – Mr. Caudle reported that sewer line repair work on the golf course is nearing completion. There is still some restoration work to be done. David Ballard, Golf Pro, noted that winter rates will remain in effect until June 1, 2005.

Mr. Caudle reported that our Town Clerk, Shirley Raines, has received the designation of Certified Municipal Clerk (CMC).

**4. Pool Renovations Update – Powerpoint Presentation** – Alderman Sobol gave a powerpoint presentation on repairs to the decking at the pool. He said approximately 40 volunteers worked in April repairing the deck. Alderman Sobol said this is only a band-aid solution for 2-3 years until a new pool is built. He said the pool passed inspection and will open on Memorial Day weekend.

**VII. COMMITTEE/BOARD REPORTS**

**A. Announcement of Committee Vacancies** – Mayor Begley reported there are vacancies on the following committees: ABC Board, Board of Adjustment, Historic Preservation Commission, Housing Commission, Planning Board, Recreation Commission, and Urban Forestry Commission. He noted that anyone interested in applying to serve on these committees should download the application form from the web site or complete an application at Town Hall.

Mr. Caudle reported that an error was made in computing the time that Phyllis Genetti has served on the Planning Board. She completed less than 2/3 of an unexpired term and is, therefore, eligible for reappointment.

*Alderman White said in accordance with the recommendation of the Organizational Study, she would like to make a motion that we decrease the number of members on the Planning Board and accomplish this by attrition and only accept applications from those current members eligible for reappointment. We would accept the applications of two of those people and that would decrease the membership by one, if this motion passes we would have 6, 7, or 8 members and by attrition, we would get down to the five members suggested by the Organizational Study.*

Alderman Brown said she feels we should accept applications from anyone who wishes to apply and not limit to the two members who are eligible for reappointment.

*After further discussion, the motion passed with a vote of 3-2 with Aldermen Brown and Garrison opposed.*

**B. “Litter Sweep” Report** – Alderman White reported that Pam Hoen, Town employee, and Bronte Lamm, Beautification Committee, worked on the “Litter Sweep” program this year. There were 22 people who picked up 263 bags of litter and spent 188 volunteer hours. Alderman White said a lot of the volunteers were women from the Correctional Center and she commends everyone who helped.

## **VIII. OLD BUSINESS**

**A. Second reading of ordinance amendment to rezone the property located at 1194 Old US 70 W, further described as PIN #0609.16-84-5103, from O-I to C-2**

Jerry Atkins, Zoning Administrator, said this is the second reading for a request from Mr. Endre Pasztor to rezone property located at 1194 Old US 70 W. from O-I “Office Institutional” to C-2 “General Business”. He said the Planning Board heard this request at their meeting on March 7, 2005 and voted 7-2 to recommend approval. At the public hearing on March 14, 2005 the Board of Aldermen voted 3-2, with the Mayor casting the tiebreaking vote, to approve the request for rezoning. Since this was not a 4/5 majority vote, a second reading is required. *Alderman Brown made a motion to approve a request to rezone the property located at 1194 Old US Hwy 70 West, further described as PIN #0609.16-84-5103, from O-I to C-2 as recommended by the Planning Board at their meeting on March 7, 2005. The motion passed by a vote of 3-2 with Vice Mayor Kennedy and Alderman Sobol opposed.*

**B. PUBLIC HEARING on the Annexation by Petition of a Portion of the Property Known as “The Settings”, a.k.a. Buncombe County Property Identification Number 0618.00-45-4735 as Described in Plat Book 96, pages 162, 163 and 164**

Mayor Begley opened the public hearing.

Town Attorney, Ron Sneed, presented an introduction to the annexation ordinance for “The Settings”.

Mikkel Hansen, 112 Hilltop Road, asked why was the Planning Board not asked to review the plans for “The Settings”. He said the Town now has to adhere to the Buncombe County rules and regulations.

Elaine Loutzenheiser, 410 Avena Road, said the Planning Board is not putting any restrictions on any construction by “The Settings”. She said if approval is granted by Buncombe County, the Town is not asking “The Settings” to abide by any rules. Ms. Loutzenheiser said she agrees with Mikkel Hansen that the Board of Aldermen does not consider the Planning Board a Planning Board at all.

Harry Hamil, 15 John Myra Avenue, said he is not here to speak against “The Settings” coming in; he is against the process the Board of Aldermen has used. We are zoning it R-10. If they have the ability to sub-divide, they will have the opportunity to sub-divide any lots. He asked what is the cost for running the water and what is the valuation? He feels the green space should have been discussed. He said it seems the Town is relying on the permanence of covenants to restrict the development. Mr. Hamil does not know if that is reasonable for the Board to depend on and thinks the Board needs a written statement from the Town Attorney as to whether that is something the Town should have good reason to rely on so that in 15-30 years we are not set up for a major problem.

With no further comments, Mayor Begley closed the public hearing.

Vice Mayor Kennedy asked if “The Settings” is under the control of the Town ordinances. Mr. Sneed replied that “The Settings” has to comply with the Town ordinances.

Alderman Sobol said “The Settings” will put in water and sewer. Mr. Watts explained that the water will come from John Jacobs Road, behind Cheshire Fitness Center, and “The Settings” will be responsible for all costs associated with this.

Vice Mayor Kennedy asked if the developers are still looking for property for affordable housing. Chip Knight replied they are looking at two other properties and made two offers but they were not accepted. Vice Mayor Kennedy asked if there is a schedule for bringing in Phases II & III. Mr. Knight said they hope to bring Phase II before the Board by the end of the summer and Phase III to follow shortly thereafter.

Alderman White said the ordinance states that the developer will be responsible for the design and review criteria for stormwater control facilities. She asked if they will have to adhere to our policies. Mr. Caudle replied that they would.

Vice Mayor Kennedy asked what is the total acreage of “The Settings” and what percentage will be absentee owners? Mr. Knight replied there are approximately 380 acres with 250 home sites. Mr. Knight said he does not know how many absentee owners there will be. He said this development is appealing to permanent home owners. Vice Mayor Kennedy asked what is the effect of a gated community in a small town? Mr. Knight said it would draw a lot of different people from across the country. “The Settings” has made arrangements for approved groups to use the hiking trails and also the clubhouse. Vice Mayor Kennedy said he is concerned about property not for public use and what it means to Black Mountain by a significant piece of property not being available for public use except under very specific circumstances.

*With no further discussion Alderman Sobol made a motion to approve the annexation ordinance which incorporates the annexation agreement for a portion of the property known as The Settings, a.k.a. Buncombe County Property Identification Number 0618.00-45-4735 as described in Plat Book 96, pages 162, 163 and 164. The motion passed unanimously.*

**C. Consideration of Request for the North Carolina Department of Transportation to Conduct a Feasibility Study Regarding the Construction of an Interchange at the Grade Separated Intersection of Interstate 40 and Lytle Cove Road**

*Vice Mayor Kennedy made a motion to request that the NCDOT conduct a feasibility study of the possibility of developing an interchange at the grade separated intersection of Interstate 40 and Lytle Cove Road. Alderman Sobol stated that this would be presented to the TIP, the TCC, and the MPO. The motion passed with a vote of 5-0.*

**D. Adoption of Buncombe County Animal Control Ordinance**

*Alderman Brown made a motion to adopt Buncombe County Animal Control Ordinance and rescind existing Town of Black Mountain Animal Control Ordinance.*

Gary Bartlett, Director of Public Safety, reviewed the Buncombe County Animal Control Ordinance and explained the changes that will be implemented. He said citizens can call the Asheville Humane Society at 253-1195 or the Police Department at 669-8072 for assistance.

*The motion passed with a vote of 5-0.*

**IX. NEW BUSINESS - None**

**X. CITIZEN COMMENTS -** At 8:00 p.m. Mayor Begley asked for Citizen Comments.

Max Langley, 204 Laurel Circle Drive, said he does not want his animals neutered. Mr. Caudle asked that he get in touch with Chief Staggs regarding his concerns.

Mikkel Hansen, 112 Hilltop Road, current member of the Planning Board, stated he does not wish to be considered for reappointment to the Planning Board.

Ron Collins, 400 Blue Ridge Road, asked how would the letter addressing Lytle Cove interchange study be delivered to the Department of Transportation. Mr. Caudle responded that the letter would be sent via mail to DOT Division Engineer and the letter would also be delivered to the Chair of the Transportation Advisory Committee at the Metropolitan Planning Organization. Mr. Caudle explained that staff would follow up with both organizations. Alderman Garrison suggested that the letters be sent by certified mail.

Belinda Box, 107 3<sup>rd</sup> Street, thanked the Board of Aldermen for allowing repair of the pool.

Harry Hamil, 15 John Myra Avenue, stated he thinks it strange for the Board to make a motion under Boards/Commissions to add an item for discussion. He said the Planning Board has had so much work to do they have had to break into sub committees. Mr. Hamil said the Planning Board is now being reduced in number, and no logic was given for reducing the number on the Planning Board. Mr. Hamil said he finds the Board of Aldermen's actions deplorable.

Elaine Loutzenheiser, 410 Avena Road, said she feels the citizens appreciate the Planning Board more than the Board of Aldermen does.

**XI. CLOSED SESSION** – *Alderman Garrison made a motion to go into Closed Session at 8:24 p.m. to discuss Property Acquisition - as permitted in NCGS 143-318.11(a)(5). Approved unanimously.*

**XII. ADJOURNMENT** - *With no further business, Alderman Garrison made a motion to adjourn the meeting at 9:01 p.m. The motion passed unanimously.*

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Wm. Michael Begley, Mayor

ATTEST

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Anthony N. Caudle, Town Manager

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Shirley J. Raines, CMC, Town Clerk