

MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REGULAR SESSION
September 12, 2005

THE BLACK MOUNTAIN BOARD OF ALDERMEN met in regular monthly session on Monday, September 12, 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
Gary Bartlett, Director of Public Safety
Elizabeth Teague, Planning Director
Bob Watts, Public Works Director
Randy Wilson, Recreation & Parks Director

Representing the media:

John P. Kennedy, Black Mountain News
David Forbes, Asheville Daily Planet
Gary & Sally Biggers, Black Mountain Video Productions

Mayor Begley led the Pledge of Allegiance, followed by prayer, led by Rev. Craig Bulkeley, Pastor of Friendship Presbyterian Church, Montreat 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 August 4, 2005 - Agenda Workshop, August 8, 2005 - Regular Session, and August 8, 2005 – Closed Session were approved.

The agenda was amended at the Agenda Meeting on September 8, 2005 with the following changes:

Under VI, Communications from the Town Manager, added items 9-13.

Under VIII, Old Business, item “B”, amend wording of Public Hearing to read, “To approve a request from the declarant of the Village of Cheshire”.

Under VIII, Old Business, item “C”, amend the Motion for Consideration to read:

Direct the Town staff and the Town Attorney to develop a proposed agreement which will allow Carver Youth Center, Inc. to use a portion of Carver Center in accord with the following guidelines:

- A three-year lease, terminable upon 30 days’ notice by either party after completion of the first year, with no rent being charged in the first year, \$250 per month rent being charged in the second year, and \$500 per month rent being charged in the third year;
- Improvements to the facility on the behalf of the Carver Youth Center are to be made solely at their expense and subject to pre-approval by the Director of Recreation and Parks;
- Carver Youth Center, Inc. shall procure and provide appropriate liability insurance coverage for the anticipated operations;
- The Black Mountain Recreation and Parks Department shall cooperate, to the extent feasible, to accommodate the youth center activities; and, The Town of Black Mountain shall provide moral and vocal support for the youth center effort.

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

III. COMMUNICATIONS FROM THE MAYOR

Mayor Begley acknowledged the recent disaster in August of Hurricane Katrina which affected the gulf states of Louisiana and Mississippi. He said this is a terrible tragedy and encourages everyone to help in any way they can. Mayor Begley said that he attended a meeting at the American Red Cross with Town Manager, Tony Caudle and Director of Public Safety, Gary Bartlett where several organizations gave updates on how people in the community can help.

IV. COMMUNICATIONS FROM TOWN ATTORNEY – None.

V. CONSENT AGENDA

A. Adoption of the Minutes

Motion: To adopt the minutes of August 4, 2005 - Agenda Workshop, August 8, 2005 - Regular Session, and August 8, 2005 – Closed Session

B. Adoption of Budget Amendment #03

Motion: To adopt Budget Amendment #03 as submitted

- C. Property Disposition Policy
Motion: To approve the proposed policy for equipment disposition and direct that it be included in the Town's Statement of Policy
- D. **CALL FOR PUBLIC HEARING** – To Call for a Public Hearing to Solicit Input on Proposed Projects for the FY 2006-2011 Capital Improvement Program
Motion for Consideration: To Call for a Public Hearing on October 10, 2005 at 6:00 p.m. or as soon thereafter as possible in the Public Safety Building to Solicit Input on Proposed Projects for the FY 2006-2011 Capital Improvement Program

VI. COMMUNICATIONS FROM THE TOWN MANAGER

A. Review of Consent Agenda

B. Projects Update

1. **Fuel Shortage** – Mr. Caudle reported that because of the recent gas shortage due to the recent hurricane in the gulf, he has requested staff to conserve gas and consolidate trips as much as possible.

2. **Riverwalk Park** – Mr. Caudle reported that Stephanie Wilds is developing an area at Riverwalk Park for a dog park and will be taking her request to the Recreation Commission.

3. **Yard Sale Sign Placement** – Ms. Elizabeth Teague, Planning Director, reported that the Planning Board considered the request to allow people to post more signs for yard sales. Ms. Teague said the yard sale signs can cause visibility issues if signs are left on telephone poles and nails and sharp tacks that are left on the poles also cause concern for the utility company. Suggestions from the Planning Board included placing kiosks in high visibility areas, which staff would need to maintain; talk with the grocery stores to see if they will allow posting of signs; meet with Black Mountain News to discuss allocating space for advertising yard sales with the Town paying for the space. Ms. Teague said the Planning Board did not feel the existing ordinance poses a problem, but will continue to look at solutions.

4. **Pay Classification Plan Update** – Mr. Caudle reported the second part of the contract with Springsted, Inc., which is the rewriting of the staff job descriptions, is currently in process. Staff will come back to the Board with new job descriptions and a proposal, if necessary, with adjustment in salaries.

5. **Policy Manual for Boards and Commissions** – Mr. Caudle reported that staff is working on an updated version of the policy manual for Boards and Commissions. It is hoped that a draft will be presented to the Board of Aldermen at the October meeting.

6. **Well Lot/Arts Center Parking** – Mr. Caudle reported that the parking lot by the Center for the Arts will be paved in the near future. He said a new sidewalk has been constructed and retention areas have also been incorporated. Mr. Caudle said this project is a cooperative effort with the Beautification Committee and the Center for the Arts and a lot of the

work has been done with grant money. He said staff is trying to improve the traffic flow in this area.

7. Group Health Insurance Program Improvements – Mr. Caudle reported that staff will be participating in some programs through our Health Insurance Company. The company is offering programs to help staff deal with chronic diseases, such as diabetes, asthma, hypertension, and obesity. He said incentives will be offered to employees who agree to participate in the programs.

8. TCC Update - Mr. Caudle explained that the Town is a part of the French Broad Metropolitan Planning Organization. The MPO is a regional planning organization which encompasses three counties. It is designed to talk regionally about transportation issues and be able to get projects into the appropriate pipelines and plan long term for transportation issues for the entire region. Mr. Caudle said the Mayor sits on the Transportation Advisory Committee, which is made up of elected officials, which is the policy-making body for the three-county area. Mr. Caudle said he sits on the TCC which is advisory to the policy making body. At the last meeting the committee approved taking to public comment the proposed long range plan that is required under federal guidelines. It lists the projects that are important to the region and the committee tries to place priority on the projects and talk about funding mechanisms. He said the committee also considered a draft priority needs list for 2007-2013. This is a document that is done in accordance with the state requirements for planning, and is a list of priority needs that the three-county area wants to see put in the state's Transportation Improvement Program. Mr. Caudle said this should be acted on at the next meeting.

9. Pigeon River Fund Grant Application for Flat Creek Greenway – Elizabeth Teague, Planning Director, presented a budget for approval by the Board for a proposed grant application to the Pigeon River Fund. The Pigeon River Fund is managed by the Community Foundation and was set up to improve water quality in western North Carolina, improve public access, and to create educational opportunities. Ms. Teague said the project is one that staff has been working on with the Greenways Committee and the Health Initiative Task Force to try and leverage some additional funds into the greenway development, as well as to improve the corridor around Flat Creek. The first phase is the Primary School greenway trail. It would be from Scotland Avenue behind the Primary School and follow along Flat Creek up to Cotton Avenue. The second phase would go on and connect to the Montreat Gate. The project request to Pigeon River Fund is for the amount of \$24,880.00 to be matched by Town funds of \$1,500 of in-kind legal work as well as a portion of our annual greenway budget of \$13,500. Ms. Teague said the contractors, Equinox Environmental and RiverLink, will provide a comprehensive greenway and stream restoration master plan in order to pursue additional funding from the NCDOT Division of Bicycle and Pedestrian Transportation and from the Clean Water Management Trust Fund, as well as other sources.

10. Community Foundation Grant Application for Village Way Greenway – Elizabeth Teague, Planning Director, reported that staff has been working with the Greenways Committee and the Health Initiative Task Force to apply for a grant to the Black Mountain Endowment Fund, which is set up to improve Black Mountain through local projects. This project is to create a separate pedestrian and bicycle trail that would connect the Primary School to the Elementary School. Ms. Teague said this would create a safe walkway for students and staff to walk between the two schools.

11. Federal Emergency Management Agency Grant for Fire Department

Gary Bartlett, Public Safety Director, reported that the Fire Department applied for a grant to purchase personal protective equipment for (50) firefighters. He said last week Congressman Taylor's office called to let us know that we were awarded a grant in the amount of \$30,827, which will purchase half of the equipment.

12. Purchase of Fire Department Tanker Truck – Gary Bartlett, Public

Safety Director, reported that \$60,000 had been budgeted for a tanker truck to be used at Laurel Ridge. He said the Riceville Fire Department purchased a new truck and has offered their old truck to Black Mountain for \$30,000.

13. Local Response Effort for Hurricane Katrina Evacuees - Mr. Caudle

said he is very impressed with the work that is taking place locally to help with the Katrina evacuees. He said if anyone is looking for assistance, they should contact the American Red Cross as they are acting as a clearinghouse during this disaster.

VII. COMMITTEE/BOARD REPORTS

A. Bus Report – Alderman Brown reported that many people in Black Mountain

requested a change in routing with Asheville Transit. She said beginning within the next two weeks, the route from Black Mountain will go down U.S. 70 and be changed from continuing to the transit center via Kenilworth and Biltmore Avenue. It will go instead down Swannanoa River Road and stop at Riverbend Market Place (Wal-Mart and Kohl's) for shopping. Alderman Brown said Asheville Transit is also working to provide bus passes for evacuees that will be staying at Montreat and Ridgecrest.

VIII. OLD BUSINESS

A. PUBLIC HEARING - To approve a Resolution to Close a Portion of the Right-of-Way of Ridgedale Avenue from the Intersection with Reunion Hill Lane to the Intersection with Carolina Heights Road, and the Alleyway from Vine Street into Robert and Jean Briscoe's Property

Mayor Begley opened the public hearing at 6:55 p.m.

Jerry Atkins, Zoning Administrator, explained that a request had been received from Robert and Jean Briscoe requesting to close a portion of the right-of-way of Ridgedale Avenue from the Intersection with Reunion Hill Lane to the Intersection with Carolina Heights Road, and the Alleyway from Vine Street into their property.

Jean Briscoe, property owner, said her land bisects all these roads. She said that in order to access Ridgedale Avenue one would have to trespass on private property, a portion of Ridgedale Avenue has already been closed, her property is the only one which is bisected by Ridgedale Avenue, and all other adjoining properties terminate at Ridgedale Avenue. Ms. Briscoe also noted that people drink and party on that portion of Ridgedale Avenue and cannot be arrested for trespassing because they are deemed to be on public property. She requests that the Board approve her request.

Harry Hamil, 15 John Myra Avenue, said the Planning Board asked the Town Attorney to provide an opinion on the rights of access to platted but unopened streets. In the opinion it states that the only right to the use of that right of way until it is accepted by the Town is at the permission of one of the property owners that is abutting the property. He said there are five property owners that abut this end of the alleyway but because the alleyway continues on, it will also affect the other people. Mr. Hamil said we need to take a broader approach so we do not end up having people come piece-meal to get a portion of a right of way closed.

Mayor Begley closed the public hearing at 7:05 p.m.

Alderman Garrison made a motion to pass the Resolution to close the right-of-way of Ridgedale Avenue from the intersection with Reunion Hill Lane to the intersection with Carolina Heights Road and the alleyway from Vine Street into Robert and Jean Briscoe's property as recommended by the Planning Board.

Vice Mayor Kennedy said he is not sure if closing the right of way will solve Ms. Briscoe's problem. He asked if there is another way that we can assist Ms. Briscoe that would be better? He asked if huge rocks could be placed to block the road so people cannot get through?

Ms. Briscoe answered that there is no way to access unless you go through my property.

Vice Mayor Kennedy said he is concerned that we may be closing a right of way that might be needed in the future. For example, another access may be needed to Montreat and Flat Creek. He challenges the Planning Board to look at other possibilities of solving the problem without closing this road.

Ms. Briscoe said she appreciates Vice Mayor Kennedy's long-range thinking.

Alderman White said platted land does not belong to the Town unless the Town wants to put in a road. She asked how is this trespassing and partying on Ms. Briscoe's land any different than any other land? Is this a different situation?

Ron Sneed, Town Attorney, said the Town has no rights until the road is opened up and starts maintaining it. At that time it is a public street.

Alderman Brown said she does not see the need for another road into Montreat.

After discussion, the motion failed with a vote of 2-3 with Aldermen Kennedy, Sobol, and White voting against.

After further discussion, Alderman Sobol made a motion to close the alley off Vine Street. The motion passed with a vote of 5-0.

Alderman White asked if we have some suggestions from the Public Safety Department as to how we can help Ms. Briscoe? Mr. Caudle said he thinks Ms. Briscoe can call for assistance and the Police Department will assist her. Mr. Caudle said he agrees with the Town

Attorney that the Town cannot place the boulders in the right of way because it is still private property.

B. PUBLIC HEARING - To approve a request from the declarant of the Village of Cheshire to amend their 1998 Master Plan to allow a rear yard encroachment of up to 12 feet within the 20-foot setback of residential buildings.

Mayor Begley opened the public hearing and noted that because he represents the developer, Vice Mayor Kennedy will preside.

Elizabeth Teague, Planning Director, said that the Planning Board, at the July 25th meeting, heard a request from Sikes Ragan of the Village of Cheshire to add an encroachment allowance to the Master Plan text of up to 12 feet in the rear yards of residential buildings. She said in the Master Plan, residential buildings have established setbacks for the front, side and rear yards. While the Plan text specified an allowable encroachment for porches, stoops and balconies in the front and side yards, it omitted an allowable encroachment for rear yards. Since all residential rear yards abut either alleyways or greenspace, the addition of this specification will not change the Master Plan layout itself, nor will it create situations where structures in neighboring rear yards are close enough to create either fire or privacy concerns.

Sikes Ragan, of the Village of Cheshire, explained that in the Master Plan, the residential buildings have established setbacks for the front, side and rear yards. However, the Plan omitted an allowable encroachment for rear yards.

Alderman Sobol asked if the request included all the lots? Mr. Ragan said it includes all the lots. Alderman Sobol said he thinks we should wait and include this request during the rewrite of the zoning ordinances.

Alderman Brown noted that the Traditional Neighborhood Development (TND) is different from sub-divisions and asked Ms. Teague to review the TND. Ms. Teague explained that the Master Plan and design guidelines actually become the zoning regulations for a TND. There is some flexibility between this TND and how it might be different to a future TND. She said there are specific guidelines that govern the basic goals of a TND. There is the ability to cluster houses, to create greenspace, create walkability, and allow mixed uses within the development area. Several zoning districts border the Cheshire property including R-20 and C-2. The Brookside Cove development is zoned R-10.

Alderman Sobol said there is a mechanism in place for Cheshire to achieve what they want to do.

Alderman Garrison said he has no problem with the interior lots or lots that back up to the alleyway. He understands the concerns from the residents of Brookside Cove.

Alderman Sobol suggested to limit the lots that are contiguous to the R-10 property and not allow the 12' encroachment for rear yards.

Alderman Brown asked what kind of barrier is required? Mr. Ragan said an architectural viewing has to be submitted for approval.

Pierre Dalmas, 221 Brookside Avenue, said the rear yard encroachment should not affect the outlying borders of the property. There is concern about allowing buildings of this type so close to ours, which forces us to have a village concept that Cheshire is going for and that is not what our neighborhood was designed to be. He asked if there is a written document for Cheshire and could he get a copy of this? Mr. Caudle said it is available in the Planning and Zoning Department.

Harry Hamil, 15 John Myra Avenue, agrees this is the correct way to address this request. A TND is separate. A TND has two codes - an Urban Code and Architectural Code, that are passed by the Board of Aldermen and become an addendum to the Town ordinances. This has nothing to do with the zoning rewrite. The issue of setbacks – when you look at the documents, you immediately see there was an oversight. The rear setbacks were taken care of by the way the development was laid out, with the exception of the homes at Brookside Cove. Mr. Hamil said he lives next to a Planned Unit Development (PUD) and the Town allowed an addition, but did not allow him to build an addition. He said the rear setbacks need to be discussed. He feels there should be an alternative motion so that it would apply only to lots that do not back up to the exterior of the development.

Richard Gulliver, 210 Brookside Avenue, wants to emphasize the comments from Pierre Dalmas about the ancillary building which appears to be a storage building for people. This is a dwelling. It appears to be approximately 3' from the rear setback. If that is allowed to continue, we will have an extremely dense area which we did not plan on and the City probably did not plan on either.

Jerry Atkins, Zoning Administrator, explained that the way the TND is written, a development is allowed to go within 3' in the rear yard setback with an ancillary building.

Vice Mayor closed the public hearing at 8:00 p.m.

Alderman Brown made a motion to approve a request from the declarant of the Village of Cheshire to amend their 1998 Master Plan text to specify a rear encroachment within the setback of residential buildings as recommended by the Planning Board with the exception of those lots bordering Brookside Cove. With no further discussion, the motion passed with a vote of 4-1 with Vice Mayor Kennedy voting against.

Mayor Begley called for a recess at 8:05 p.m.

X. CITIZEN COMMENTS - At 8:20 p.m. Mayor Begley asked for Citizen Comments.

Eunice Stackhouse, 706 Cherokee Avenue, expressed a concern regarding the policy that Animal Control has been turned over to the County. She said the hours are Monday through Friday, from 8:30 a.m. to 5:00 p.m. She said unless there is an emergency, there is no provision for stray dogs on the weekend. Ms. Stackhouse said when the Town was in charge of animal control, the police always responded on the weekend if needed. Ms. Stackhouse requests that someone be assigned to enforce animal control on the weekends.

Elaine Loutzenheiser, 410 Avena Road, said she would like to see the traffic at the pedestrian crossings enforced when cars do not yield. Ms. Loutzenheiser also said that some dumpsters are not enclosed in accordance with the ordinance.

Belinda Box, 107 3rd Street, agrees that the pedestrian crosswalks need to be enforced. Ms. Box noted that she walks with her children to school two times per day and hopes the Town will receive the grant for improvements between the Primary and Elementary schools.

Harry Hamil, 15 John Myra Avenue, said he hopes the Board will participate in the workshops scheduled for the rewrite of the zoning ordinances. Mr. Hamil asked if it is permitted under the rules of the Board of Aldermen to reconsider a previous item based upon a request of an individual who voted on the side that won? If it is, he requests that the Board reconsider their vote on the closing of Ridgedale Avenue. He said the concern that was raised by the Board that the Town might need the access on Ridgedale Avenue in the future was one that was never mentioned before the public hearing.

VIII. OLD BUSINESS – contd.

C. Report from Carver Youth Center Support Group

Dr. Greenspan introduced Leslie Anderson and Carol Lawrence, the consultants who have been working with the Carver Youth Center Support Group. Ms. Anderson presented the plan of operation of the proposed youth center. Carol Lawrence reviewed the proposed budget for the Center. She said the budget did not include liability insurance because she had hoped that the Center could be listed on the Town's insurance policy. She said Mr. Caudle checked with the Town's insurance company and was informed that the Center could not be a part of the Town's policy. The proposed budget will have to be reviewed to try and find additional funding. Dr. Greenspan thanked the Board for their consideration and said that the insurance is an issue. Dr. Greenspan said the committee will come back to the Board with a revised budget.

Alderman Brown made a motion to direct the Town staff and the Town Attorney to develop a proposed agreement which will allow Carver Youth Center, Inc. to use a portion of Carver Center in accord with the following guidelines:

- *A three-year lease, terminable upon 30 days' notice by either party after completion of the first year, with no rent being charged in the first year, \$250 per month rent being charged in the second year, and \$500 per month rent being charged in the third year;*
- *Improvements to the facility on the behalf of the Carver Youth Center are to be made solely at their expense and subject to pre-approval by the Director of Recreation and Parks;*
- *Carver Youth Center, Inc. shall procure and provide appropriate liability insurance coverage for the anticipated operations;*
- *The Black Mountain Recreation and Parks Department shall cooperate, to the extent feasible, to accommodate the youth center activities; and, The Town of Black Mountain shall provide moral and vocal support for the youth center effort.*

The motion passed with a vote of 5-0.

IX. NEW BUSINESS

A. Exploration of Partnership with Mountain Area Information Network (MAIN)

Mr. Caudle explained that the Mountain Area Information Network (MAIN) is a 501-C3 non-profit that provides dial-up and high-speed wireless internet access to western North Carolina. The group has approached Black Mountain to explore if they can place transmitters on Town communications towers to provide their service to Black Mountain and Swannanoa. The group is willing to provide the Town with high-speed service at remote facilities and would look forward to partnering with the Town to provide broadband access in innovative ventures, such as computer labs or wi-fi hotspots.

Alderman Sobol made a motion to direct Town staff to work with MAIN to further explore the feasibility of providing their service in Black Mountain through the use of Town communication towers, and to prepare an agreement for consideration by the Board of Aldermen. The motion with a vote of 5-0.

B. Presentation from Council on Aging of Buncombe County (Wendy Marsh, Director)

Wendy Marsh, Director of Council on Aging of Buncombe County, addressed the Board and Black Mountain citizens regarding changes to federal regulations that affect the elderly. She then introduced Jackie Buttles, who briefly reviewed the new Medicare D Prescription Drug Program that will be available to seniors. Ms. Buttles said she is scheduled to be at the Lakeview Senior Center on September 20, 2005 to review the new Medicare D Prescription Drug Program. She encourages all seniors over 65 to attend the informational meeting.

XI. CLOSED SESSION - With no further business Mayor Begley asked for a motion to go into Closed Session. *Alderman Garrison made a motion to go into Closed Session at 9:25 p.m. to discuss:*

- A. Pending Litigation - as permitted in NCGS 143-318.11(a)(3)
- B. Property Acquisition – as permitted in NCGS 143-318.11(a)(5)

The motion passed unanimously.

The Board resumed the regular meeting at 10:06 p.m.

Alderman Sobol made a motion to instruct Town Attorney, Ron Sneed, to continue proceedings with access to the Murchison property cartway. The motion passed with a vote of 5-0.

Alderman Garrison made a motion to purchase property at 102 E. State Street from Williams Mountain Property, Inc. for the sum of \$475,000 with a \$25,000 option to be applied to the purchase price, with 3% annually being paid on the outstanding balance until such time the option is exercised. The motion passed with a vote of 4-1 with Alderman Sobol opposed.

XII. ADJOURNMENT - *With no further business, Alderman Garrison made a motion to adjourn the meeting at 10:12 p.m. The motion passed unanimously.*

Wm. Michael Begley, Mayor

ATTEST

Anthony N. Caudle, Town Manager

Shirley J. Raines, CMC, Town Clerk