

MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REGULAR SESSION MEETING
August 13, 2007

THE BLACK MOUNTAIN BOARD OF ALDERMEN met in regular monthly session on Monday, August 13, 2007 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 Bartlett called the meeting to order at 6:00 p.m. with the following members present:

Mayor Carl R. Bartlett
Vice Mayor C. Michael Sobol - absent
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
Ron Sneed, Town Attorney
David Ballard, Golf Pro/Manager
Casey Conner, Interim Recreation Director
Kevin Pressley, Police Chief
John Shaw, Golf Course Superintendent
Tim Rayburn, Fire Chief
Elizabeth Teague, Planning Director
Bob Watts, Public Works Director

Representing the media:

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

Mayor Bartlett led the Pledge of Allegiance, followed by prayer led by Rev. Jim Hunter, Blue Ridge Church of Christ, Black Mountain, NC.

II. CITIZEN COMMENTS

Ken Pittman, President, Chamber of Commerce, 20 John Hazel Drive, Swannanoa, NC, thanked the staff and Board for being involved with the Chamber during the Sourwood Festival. He said this is a very important event in Black Mountain.

Mr. Pittman said there has been discussion about the importance of the rezoning of the Industrial District. He said the entire industrial district is getting touched in some way. He said that the Board of Directors of the Chamber of Commerce called a special meeting on August 13, 2007 and voted unanimously to support a motion to refer the rezoning of the I-1 Industrial District back to the Planning Board for further study and recommendations. Mr. Pittman said he hopes the Board will consider their request.

Mayor Bartlett thanked the Chamber of Commerce, the staff, and the many volunteers who help to make the Sourwood Festival so successful each year.

Bob Gunn, 102 Pleasant Drive, supports the comments by Ken Pittman. He said the process on the rezoning should include citizen input.

Harry Hamil, 15 John Myra Avenue, said the Board was apprised of the fact on July 11, 2007, that they did not follow North Carolina General Statutes 160A-383 about how rezoning changes comply with the planning documents of the Town, not just the comprehensive plan. It also says that the Planning Board shall provide a written recommendation about how this complies with the comprehensive plan and other plan documents. He said as far as he knows, no such written recommendation has ever been made by the Planning Board on the O-I and I-2 portions of the changes. It has made a written recommendation on the 55' height limitation in the I-1 district. He said it seems that this Board, the way it votes tonight, will be voting without the procedure having been fulfilled that is required by the North Carolina General Statutes. Mr. Hamil asked if that would cause the action to be reversed? He said he doubts it. The question before this Board is whether or not this Board, when it is informed about the existence about state requirements, will fully comply with the spirit, not only the letter of those requirements. He does not believe the Board has done so. Mr. Hamil stated there have been two requests tonight that call for that type of compliance.

Ruth Brandon, 722 Laurel Avenue, said it appears that the greenway project just keeps on taking tax dollars. She said she wants to challenge the expenditure of the tax dollars to purchase a greenway. She hopes future projects will not bankrupt the Town. There is nothing wrong in building greenways when we can afford it. Ms. Brandon reminded the Board members that the contingency fund is for emergencies. She said the Board put greenways ahead of the public safety position that was requested. She asks that the Board set the greenways aside and fill the position of fire inspector. Ms. Brandon said the Board needs to talk with the citizens.

Gay Fox, 307 Tomahawk Avenue, asks that the Board think long and hard about raising the building height on U.S. 70. She said clean air is important and asks that the height not be raised on smoke stacks.

III. ADOPTION OF THE AGENDA

The minutes of July 5, 2007 – Agenda Workshop, July 9, 2007 - Regular Session were approved.

The agenda was amended with the following changes:

Under VII, New Business, move items “A”, “B”, “C” to VIII, Consent Agenda.

With these changes the agenda was approved unanimously on a motion by Alderman Brown.

IV. COMMUNICATIONS FROM THE MAYOR

V. COMMUNICATIONS FROM TOWN ATTORNEY - None

VI. OLD BUSINESS

A. PUBLIC HEARING on Voluntary Annexation of a Portion of the Property Known as The Settings, Phase IIIA

Mayor Bartlett opened the public hearing.

Harry Hamil, 15 John Myra Avenue, said the Planning Board members were not allowed to go on The Settings property, after it was determined that attendance by all members at the same time would be considered a public meeting. Mr. Hamil asked that the Board of Aldermen address the issue of entering property. He said the Board of Aldermen is asking the Planning Board to approve requests, but they sometimes have limited access.

Blake Madden, 412 S. Cherokee Avenue, said the Town is annexing property and developers will not let staff on the property. He said he has only lived here 14 years, and thinks there is something wrong about building gated communities. He would like to know what is the vision for Black Mountain and what is this Town going to look like in a few years?

Bob Gunn, 109 Pleasant Drive, said an agreement should be in place with the Town and developers to allow access to the properties they are developing.

Chip Knight, The Settings Development Group, said the Planning Board was invited to the property and when it was discovered that such a gathering would be considered a public meeting, the invitation was withdrawn. He said The Settings is private and has been marketed as a private community.

Alderman Phillips asked why Phase IIIA has not been subdivided. Mr. Knight said this phase will come before the Planning Board for subdivision at a later date. Alderman Phillips asked if the staff and Planning Board will be allowed to enter the property. Mr. Knight said yes.

Alderman Brown made a motion to approve the request for voluntary annexation, as submitted by The Settings, Inc., of that portion of their Master Plan known as Phase IIIA. The motion passed with a vote of 4-0.

B. Certification of Comprehensive Plan Consistency for Increase in Height Limitation for the I-1 Zoning District

Mr. Caudle noted that at the July meeting, the Board amended the I-1 zoning district to increase the height of the buildings from 35' to 55'. He said this proposed motion is to bring the change into compliance with legislation that was passed by the North Carolina General Assembly in 2005 which requires a consistency statement with the Town's long-range plan be

passed by the Board as a part of the decision-making process. Mr. Caudle said both items “B” and “C” on the agenda, this being “B”, is to provide some language for consideration by the Board based on the comments made at the last meeting where the height increase was passed.

Alderman White made a motion that the Board of Aldermen finds their action in increasing the height in the I-1 zoning district from 35 feet to 55 feet to be consistent with vision statement 10, “Economic Opportunity”, of the Town’s comprehensive plan which supports the continued viability of existing businesses and industries in Black Mountain, and specifically “moderate-sized clean industry providing good paying jobs”.

Alderman Brown noted that the Board granted the 55 feet building height mainly to accommodate Ingle’s request to expand the warehouse. She said she believes the Board was rushed into making a decision and feels strongly that the Board has made a mistake. Alderman Brown said the rezoning request should have been sent to the Planning Board for review. Alderman Brown requests that Attorney Ron Sneed study this and see if this can be withdrawn until the Planning Board can bring back recommendations.

With no further discussion, the motion passed with a vote of 4-0.

C. Certification of Comprehensive Plan Consistency for the Rezoning of Property on U.S. 70 from I-1 to O-I

Mr. Caudle said this item is tailored to the change in zoning that occurred for property that was south of U.S. 70 and west of Blue Ridge Road and the property was rezoned to I-1 to O-I. He said the motion for consideration defines the consistency associated with the action taken at the July meeting.

Alderman White made a motion that the Board of Aldermen finds their action in amending the zoning map for a portion of the I-1 zoning district south of U.S. 70 and west of Blue Ridge Road to the O-I designation consistent with the comprehensive plan because the lower height limitations of the O-I district are more appropriate to maintain the “small town atmosphere” that is a primary goal of the Comprehensive Plan, in that it is more appropriate to have buildings of less height as an entryway into the park and residential properties served by Blue Ridge Road and that buildings of no more than 35 feet in height are more consistent with the height of structures allowed in the C-2 zoning district on the north side of U.S. 70.

Alderman White said this does not change the vote from last month; it brings the ordinance in compliance with legislation by the North Carolina General Assembly in 2005.

With no further discussion, the motion passed with a vote of 3-1, with Alderman Brown opposed.

D. Second Reading of Ordinance Rezoning Parcels in the Light Industrial District (I-1) Which Are North of U.S. 70 to General Industrial District (I-2) Zoning

Mr. Caudle explained that this is the second reading of the ordinance rezoning parcels in the Light Industrial District (I-1) which are north of U.S. 70 to General Industrial District (I-2)

zoning. He said this was passed on a 3-2 motion at the July meeting, but because the vote on the night of introduction did not exceed a 2/3 majority, it required a second reading. Mr. Caudle said this motion contains not only the proposed language to effect the rezoning but also the consistency statement to which we refer to the two items above.

Alderman White made a motion to rezone parcels in the Light Industrial District which are north (as referenced on Attachment 1) of U.S. 70 to General Industrial District (I-2) zoning, including the parcels listed by PIN (also in Attachment 1) and that the Board of Aldermen finds their action in amending the zoning map for the property under consideration to be consistent with the comprehensive plan goal of maintaining the “small town atmosphere” of the community in that: (a) this area is uphill from U.S. 70 and buildings of greater than 35 feet in height will be more visible and obtrusive than taller buildings on the south side of U.S. 70; and (b) rezoning would be more consistent with the heavy industry currently in existence in this area.

Alderman White said this is the third meeting in which we have addressed these three motions. The Planning Board has discussed the motions at their meeting and discussion was also held at the agenda meeting. She said the Planning Board gave us a calendar showing their work plans, and they will be looking at these three issues in the future. *With no further discussion, the motion passed with a vote of 3-1 with Alderman Brown opposed.*

E. Referral of Recent Zoning Map Amendments to Planning Board for Additional Review and Recommendations

Alderman Brown asked that this issue be put on the agenda since the three zoning issues passed. She wants to know when these rezoning issues can be brought back for review with the Planning Board. After discussion, Elizabeth Teague, Planning Director, referred to the Town’s Zoning Ordinance, Title XV, Section 153.153, which states that the same zoning classification cannot be reconsidered for a period of one year from the date of final determination of the prior request unless the Planning Board recommends to the Board of Aldermen that the reconsideration be given after the Planning Board has found either: there has been a substantial change of character of the area; or, evidence of factors or conditions exist which were not considered by the Planning Board or the Board of Aldermen in previous deliberations which might substantially alter the basis upon which the previous determination was reached.

With no further discussion Alderman Brown made a motion to direct the Planning Board to review previously and currently zoned industrial property in the west end of Black Mountain and to report back to the Board of Aldermen any recommendations for changes in the existing regulations that the Planning Board might have to address desired development patterns in that portion of Town. The motion passed with a vote of 4-0.

VII. NEW BUSINESS - None

VIII. CONSENT AGENDA

A. Adoption of the Minutes

Motion: To adopt the minutes of the minutes of July 5, 2007 – Agenda Workshop, July 9, 2007 - Regular Session

- B. Budget Amendment #01
Motion: (a) To approve Budget Amendment #01 authorizing the appropriation of water retained earnings to the water operations capital outlay line item, and (b) to declare Consolidated Pipe and Supply as a sole source provider in accordance with GS 143-129
- C. Budget Amendment #02
Motion: To approve Budget Amendment #02 authorizing the appropriation of contingency funds to the police contract services line item
- D. Budget Amendment #03
Motion: To adopt Budget Amendment #03 as submitted
- E. Budget Amendment #04
Motion: To approve Budget Amendment #04 and authorize disbursement of grant funds to the Salvation Army Boys and Girls Club
- F. Budget Amendment #05
Motion: To adopt Budget Amendment #05 authorizing the allocation of grant funds and the purchase of recycling bins to satisfy grant agreement
- G. Budget Amendment #06
Motion: To adopt Budget Amendment #06 authorizing the appropriation of fund balance to the public works capital outlay line item
- H. **CALL FOR PUBLIC HEARING** on Annexation of a Portion of the Property on Red Plum Lane in Black Mountain Estates
Motion: To set a Public Hearing to be held on Monday, September 10, 2007 in the meeting room of the Public Safety Building located at 106 Montreat Road, Black Mountain, NC for consideration of the request for voluntary annexation of Lot 1 and a portion of Lot 2 on survey submitted by the petitioner, also known as Buncombe County Property Identification Number 0609.07-69-6034 as further described in Plat Book 75, Page 150 and Plat Book 85, Page 125, by Mountain Ventures, Inc.
- I. Proposed Additions to the Fee Schedule for the Planning and Development Department
Motion: To adopt the proposed Department fee schedule for paper and printing costs and a permit fee of \$50.00 to assist with the processing of Certificates of Appropriateness applications for major works within the Historic District
- J. Execution of Agreement with the State Department of Natural Resources to Install Three Rain Gauges as Part of the Regional Flood Mitigation Program
Motion: To approve and authorize the Town Manager to execute contract agreements with the State and with Distinctive AFWS Designs on the behalf of the Town of Black Mountain in order to install three rain gauges in the Black Mountain area as part of a regional rain monitoring and flood warning system
- K. Grant Project Ordinance – FIT Initiative Grant
Motion: To adopt “Grant Project Ordinance NC Health and Wellness Trust Fund Commission FIT Initiative Grant” as submitted and authorize the General Administration Department to include this project into Fund 60 – Grant/Special Revenue Fund

- L. 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 office equipment for the Town government, and to contract with Kearns Business Solutions to provide service on the equipment
- M. Award of Installment Purchase Financing to BB&T
Motion: To adopt the attached resolution accepting financing terms offered by BB&T Governmental Finance to provide \$265,500.00 financed at 3.97% for a term of 10 years for the purchase of automated meter reading units
- N. Agreement to Purchase Automated Meter Reading Equipment
Motion: (a) To declare Datamatic as a sole source provider in accordance with GS 143-129, and (b) to approve the purchase of 2,950 Firefly meter reading units in the amount of \$265,500
- O. Purchase of Recycling Bins
Motion: To approve the purchase of 4,000 recycling bins from SCL A-1 Plastics of Bramton, Ontario, Canada for \$21,000 contingent upon the receipt of grant funds that have been awarded to the Town for this purchase

IX. COMMUNICATIONS FROM THE TOWN MANAGER

A. Review of Consent Agenda

B. Projects Update

- 1. Fire Department Report** – Chief Rayburn gave the June 2007 report for the Fire Department.
- 2. Police Department Report** – Chief Kevin Pressley presented the June 2007 report for the Police Department.
- 3. Water Leak Detection/Meter Replacement Report** – Bob Watts, Public Works Director, gave an update on the water leak detection/meter replacement.
- 4. Bus Stop Relocation Update** – Mr. Ferguson reported that the new bus stop location will be moved to the Town Hall parking lot by September 1, 2007. He said staff will present a proposal for construction of a bus shelter for this area at the September meeting.
- 5. Skateboard Update** – Casey Conner, Interim Recreation Director, reported that approximately 22 people attended the last skateboard meeting and a lot of the kids decided that the elements that could be purchased for \$13,000 would not be enough to keep the kids from downtown. Mr. Conner said the additional elements would bring the cost to \$25,000, and the kids want to raise the additional \$12,000. Alderman Brown asked if Mr. Conner thought the kids could raise that amount of money. Mr. Conner said the Recreation Department is going to help by creating a sponsorship team to raise some funds. Alderman Brown asked if there are any ordinances prohibiting skateboarding downtown? Mr. Caudle replied no.
- 6. Planning Board Annual Report; Land Use Code Update** – Mr. Caudle reported that the Planning Board has submitted an annual report and proposed work plan for the Land Use Code Update.

7. Leaf Collection Event – Mr. Ferguson reported that the Board had directed staff to establish a pilot program with GDS to transfer one load of leaves to the Clevenger property (by the community garden) and advertise to citizens that they are there for anyone who would like to pick them up. He said if the program is successful and the leaves are taken, we will continue to replenish it through leaf season. It is a minor issue but we do have to file a permit with the state showing establishment of a yard waste facility. Mr. Hamil has offered to provide some temporary fencing around the leaf pile. Mr. Ferguson noted that our contractor, GDS, frequently throughout leaf season, delivers some leaves to farms when they can get the truck into the property.

8. Black Mountain Greenway Project – Mr. Ferguson gave an update on the Black Mountain Greenway Project.

9. Additional Downtown Garbage Pickup – Mr. Ferguson reported that additional trash pickups have been added on Cherry Street due to complaints received from business owners.

10. Alderman Brown asked for an update on the U.S. 70 sidewalk project. Mr. Caudle said he would call the Department of Transportation to get a start date.

11. Mr. Caudle thanked the Chamber of Commerce and staff for all their work during the Sourwood Festival.

12. Mr. Caudle reported that a question had been asked regarding construction of the sewer line at Goodson Cove development. He said that the developer did acquire a permit in March. He said the Town passed an ordinance in May requiring developers to apply for a permit and pay a fee before cutting a street.

13. Land-of-Sky Regional Council's Pepsi Mayor's Cup Raft Race – Mr. Caudle reminded the Board that the Mayor's Cup Raft Race is scheduled for Sunday, August 19, 2007. This is an annual event coordinated by the Land-of-Sky Regional Council.

14. Mr. Caudle reported that there is a new feature on the web site, through Google, that creates maps that can be accessed through the web site showing the different facilities within the Town.

15. Mr. Caudle announced that Jim Orr, who is currently employed with the City of Asheville, has been hired as the Recreation Director. Mr. Caudle said he would join the staff on September 4, 2007.

X. COMMITTEE/BOARD REPORTS - None

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

Harry Hamil, 15 John Myra Avenue, referred to the annual report from the Planning Board. He said the report should have said that it was passed 3-2, with Hamil and Stone opposed, not 5-0. Mr. Hamil said he wanted the report to include the difficulties during 2006-07 and what the Board will face in the coming year. He said the lack of continuity made it difficult for the Planning Board to accomplish a lot and the lack of experience and the number of members on the Planning Board also made things difficult. Mr. Hamil said the Planning Board held 25 meetings during the year.

Elaine Loutzenheiser, 410 Avena Road, has attended Planning Board meetings and agrees with Mr. Hamil. She said the workload has been increasing the last two years.

Marilyn Sobanski, with Rainbow Recycling, thanked everyone for their help with the recycling event during the Sourwood Festival.

Alderman Brown also thanked the Women at the Correctional Center for their help during the Sourwood Festival.

Terry McCall, 122 Disosway Street, said the Planning Board attended a planning seminar at Western Carolina. He said he is a new member of the Planning Board and asks that the Board of Aldermen let the Planning Board know what they want so they can make the Land Use Code work. Mr. McCall thinks it would be a good idea to set up a joint workshop between the Board of Aldermen and Planning Board.

XII. ADJOURNMENT - *With no further business, Alderman McKeown made a motion to adjourn the meeting at 8:00 p.m. The motion passed with a vote of 4-0.*

Carl R. Bartlett, Mayor

ATTEST

Anthony N. Caudle, Town Manager

Shirley J. Raines, CMC, Town Clerk