

MINUTES OF THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REGULAR SESSION MEETING
June 11, 2007

THE BLACK MOUNTAIN BOARD OF ALDERMEN met in regular monthly session on Monday, June 11, 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
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
Mona Robinson, Utility Account Rep.
Sherry Williams, Deputy Financial Officer
Casey Conner, Interim Recreation Director
Steve Jones, Deputy Fire Chief
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. Charlie L. Donnell, Retired Presbyterian Minister, Black Mountain, NC.

II. CITIZEN COMMENTS

Les Whittington, 26 Fortune Street, said he was told that the sewer line would be extended to his street within two years of annexation. He said he has been told by the Planning

Department that he would have to run a private line. Mr. Whittington is requesting that the plans for the sewer line extension to Highland Farms Retirement Center be amended to include Fortune Street.

Elaine Loutzenheiser, 410 Avena Road, agrees with Mr. Whittington. She said she was also told that the sewer would be extended to Avena Road/McCoy Cove due to annexation. Ms. Loutzenheiser stated that a lot of money has been spent on greenways. She feels no more money should be spent on greenways until a survey is conducted to see how frequently the greenways are used. She is not in favor of cutting out a police car needed by the Police Department in order to fund greenways. Ms. Loutzenheiser asked that the Recreation and Parks budget be reconsidered if it includes money for greenways. She said a position was cut in the Recreation Department last year, leaving the department short staffed with more work added.

Harry Hamil, 15 John Myra Avenue, made reference to the item under New Business regarding the Clevenger property as a possible location for Habitat for Humanity housing. He said when the Town acquired the Clevenger property, he remembers that Will Kennedy said that a task force would be appointed to make recommendations for the use of the property. Mr. Hamil said this has not been done, and he hopes the Board will not proceed with the request until there has been a study conducted of the property.

Bob McMurray, 127 Hilltop Road, is in favor of the Wayfinding and Signage Program. He feels the Chamber of Commerce can fund \$2,500 of the requested amount if the Town will fund \$2,500.

Richard Yeatman, 1120 Montreat Road, is also in favor of the Wayfinding Program.

Gale Jackson, Black Mountain Center for the Arts, hopes the Board will budget the \$2,500 for the Wayfinding program.

Ellen Farringham, 42 Wagon Trail, said she remembers how dedicated former Mayor Will Kennedy was in promoting affordable housing. She said the Housing Commission is working with Habitat for Humanity in exploring the Clevenger property for possible housing units.

Mayor Bartlett asked Mr. Caudle to report back to Les Whittington regarding the sewer line for Fortune Street.

III. ADOPTION OF THE AGENDA

The minutes of May 7, 2007 – Special Meeting, May 10, 2007 - Agenda Workshop, May 14, 2007 – Regular Session, May 14, 2007 – Closed Session, May 17, 2007 – Budget Meeting, May 30, 2007 – Budget Meeting were approved.

The agenda was amended with the following changes:

Under IV, Communications from the Mayor, added “B”, “Advantage West Presentation”
Under VI, Old Business, item “B”, “Ordinance Regulating Special Events”, on page 4, section 7, changed “shall remain in place no later than five (5) days after the event”.

Under VIII, Consent Agenda, item “E”, moved to VII, New Business, item “B” and changed height limitation from 35 feet to 55 feet”.

Under VIII, Consent Agenda, added item “G”, Budget Amendment #19.

Under IX, Communications from the Town Manager, added item “e” under “Projects Update”.

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

IV. COMMUNICATIONS FROM THE MAYOR

A. Resolution of Support for the Clean Water Act of 2007 – Mayor Bartlett read a Resolution of Support for the Clean Water Act of 2007. *Alderman White made a motion to approve the Resolution of Support for the Clean Water Act of 2007. The motion passed with a vote of 4-1, with Vice Mayor Sobol opposed.*

B. Advantage West Presentation – Pam Lewis and Dale Carroll were present representing Advantage West. Mr. Carroll gave a presentation to the Board on the Certified Entrepreneurial Community certification program. He said this program is intended to be proactive and to help make communities entrepreneurial ready. Mr. Carroll said the program is to help sustain our communities, build new businesses, and create better jobs for our families. Mr. Carroll thanked the Board for allowing him to present this program and hopes the Town will support this endeavor.

Alderman Brown congratulated the Owen graduating class of 2007. She noted that there were 147 graduates this year.

V. COMMUNICATIONS FROM TOWN ATTORNEY – None

VI. OLD BUSINESS

A. PUBLIC HEARING on Proposed Fiscal Year 2007-2008 Annual Budget for the Town of Black Mountain

Mayor Bartlett opened the public hearing.

Harry Hamil, 15 John Myra Avenue, said he thinks the budget documents should contain statements regarding any law suits that have been brought against the Town. Mr. Hamil said, over his objection, the Planning Board agreed to the dollar figure allocated in the budget for the Planning Board. He said he objected for two reasons: (1) There will be a number of new people joining the Board and will need training; he does not feel enough money has been budgeted for the training. (2) There are other expenses other than training. He said he has used over 245 sheets of paper printing material for the Planning Board and thinks there should be better ways to help with incidental costs.

Elaine Loutzenheiser, 410 Avena Road, asked if a tax increase has been recommended. Mr. Caudle said no tax increase is budgeted.

Philip Bisesi, 15 Hi View Drive, said the Boards and Commissions should have material printed by Town staff. Mr. Caudle said he thinks Mr. Hamil was referring to documents he creates.

Mayor Bartlett closed the public hearing.

Alderman Brown made a motion to approve the Annual Budget for the Town of Black Mountain for Fiscal Year 2007-2008 and to include \$2,500 to fund the Wayfinding and Signage Program and to include \$28,423.50 to fund half a position with the Buncombe County Drug Enforcement Task Force and agree to a two-year commitment.

Vice Mayor Sobol referred to the fire inspector position requested by the Fire Department. Vice Mayor Sobol said it is clear staff will need help with the Ingle's expansion. However, he feels the position should be on a contract basis for FY 2007-08 and review the workload next year to see if a full-time employee is needed. Mr. Rayburn, Fire Chief, said his concern is the availability of qualified personnel to fill the position. Mayor Bartlett called for a vote. *The motion passed with a vote of 5-0.*

Vice Mayor Sobol made a motion to subcontract the fire inspector position for the Ingle's expansion project instead of adding a full-time position to staff. The motion passed with a vote of 4-1 with Alderman Brown opposed.

Mr. Caudle thanked the staff for the preparation of the 2007-08 budget.

B. Consideration of Proposed Ordinance Regulating Special Events – Mr. Caudle said this is an ordinance that will allow the Town to regulate group activities, special events, and demonstrations on Town-owned property and Town-controlled property only. He said this does not regulate special events on private property. The process is set forth in the ordinance – it is purely an administrative process; it only calls for Board intervention in situations where we have appeals of the decision of the Town Manager. Mr. Caudle said closing of Sutton Avenue from Broadway to Black Mountain Avenue will be limited to only a couple of events including the Sourwood Festival and 4th of July street dance. *Alderman Brown made a motion to adopt revisions to Title IX, General Regulations, Chapter 105 of the Town of Black Mountain Code of Ordinances. The motion passed with a vote of 5-0.*

C. Consideration of Ordinance Regulating Post-Construction Stormwater Runoff

Harry Hamil, 15 John Myra Avenue, hopes the Board will be open in the future for changes as the Planning Board wants to provide a workable ordinance. He encourages the Board to accept the Planning Board's motion #2.

Vice Mayor Sobol asked that staff prepare a manual for builders and citizens outlining the necessary steps required to adhere to the Stormwater Ordinance.

Alderman White made a motion to adopt a local post-construction and illicit discharge prevention ordinance in compliance with "Phase II" Regulations of the Clean Water Act as proposed at the May meeting with the following changes:

- a. Amend Section 157.02 Applicability and Jurisdiction as provided below.
- b. Amend Section 157.03 Interpretation and Definitions to replace definitions of development and redevelopment with revised definitions provided in the 2006 State Session Law and Model Ordinance.
- c. Amend Section 157.07 Effective Date and Transitional Provisions to include the phrase “or for which Conditional Use Permits have been issued”.
- d. Amend Section 157.09 Review Procedures Replace paragraphs A and B with single paragraph from State Session Law and Model Ordinance.
- e. Delete paragraph E (duplicated) concerning commercial development and redevelopment of Section 157.10 General Standards; and

Direct the Planning Board and staff to pursue improvements to this ordinance as a result of any new data and ask the Planning Board to have handouts outlining the necessary steps required to adhere to the Stormwater Ordinance available to developers within six months. The motion passed with a vote of 5-0.

CHANGES TO ORDINANCE:

157.02 Applicability and Jurisdiction Changes:

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development which results in a cumulative disturbance of 12,000 square feet (0.275 acre) of land or which increases built upon area by a net amount of 5,000 square feet or more if said project is less than or equal to 1 acre in disturbance. No development or redevelopment shall occur within the Town of Black Mountain’s jurisdiction except in compliance with the provisions of this ordinance. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

Exemptions.

1. Any redevelopment activity as defined in this ordinance.
2. Any development ~~or redevelopment~~ that cumulatively results in an increase of less than 5,000 square feet of built upon area and that cumulatively disturbs less than 12,000 square feet.
3. Development that disturbs less than 12,000 square feet is not exempt if such activities result in a net increase of 5,000 square feet or more of built upon area or if such activities are part of a larger common plan of development or sale, including a subdivision, Planned Unit Development, Unified Housing Development, or development resulting in four or more parcels, dwellings or commercial units, even though multiple, separate or distinct activities take place at different times on different schedules.
4. Development ~~and redevelopment~~ activities that are within the Town’s designated Downtown Historic District and which cumulatively disturb less than one acre are exempt from this ordinance. ~~but must effectively convey run-off to the Town’s municipal separate stormwater sewer system (“MS4”).~~
5. Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

CHANGES TO ORDINANCE:

Section 157.03 Definitions Change:

Development: Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

and

Redevelopment: Any rebuilding activity other than a rebuilding activity that results in no net increase in built upon area and provides equal or greater stormwater control than the previous development.

To:

Development: Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

and

Redevelopment: Any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

Section 157.07 Effective Date and Transitional Provisions Change:

This Ordinance shall take effect on *July 1, 2007¹*. All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain **(Add) or for which Conditional Use Permits have been issued** prior to the effective date of this ordinance shall be exempt from complying with provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions.

Section 157.09 Review Procedures Change:

- A. Permit Required. A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- B. Residential or commercial projects that result in a documented no net increase in built upon area and provide equal or greater stormwater control than the previous development, do not need a stormwater permit but are subject to BMP maintenance and performance requirements (Sec 157.13-22).⁵

To:

- A. Permit Required; Must Apply for Permit

A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

VII. NEW BUSINESS

A. Request from the Housing Commission to Work with Habitat for Humanity on Site Plan for Housing on Clevenger Property

Ms. Irene White, Chair of the Housing Commission, reported that the Housing Commission has met with Habitat for Humanity to consider possible housing on the Clevenger property. Ms. White said their initial proposal is to build a sub-division with five to six housing units. She said this would require that the Town transfer property to Habitat for Humanity. After discussion, Mayor Bartlett requested staff to find out if the bank will release the property. *Alderman Brown made a motion to approve Habitat concept and to authorize the Town Manager to pursue more formal plan with Habitat for Humanity to provide the Board options for the transference of property after consulting with the bank. The motion passed with a vote of 5-0.* Vice Mayor Sobol said to make sure the Town still has a greenway through the Clevenger property.

B. CALL FOR PUBLIC HEARING to Consider Zoning Text Amendment to Raise Height Limitation in the Light Industrial District

Alderman White made a motion to call for a Public Hearing to consider raising the building height limitation for the Light Industrial District from 35 feet to 55 feet on Monday, July 9th, 2007 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. The motion passed with a vote of 5-0.

Alderman White made a motion to call for a Public Hearing to consider a request to rezone parcels in the Light Industrial District which are north of US 70 to General Industrial District (I-2) zoning, including parcels listed in Attachment 1 on Monday, July 9th, 2007 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. The motion passed with a vote of 5-0.

Alderman White made a motion to call for a Public Hearing to consider a request to rezone parcels in the Light Industrial District which are south of US 70 but east of the parcel that now contains Blue Ridge Broadcasting to Office Institutional (I-O) zoning, including parcels listed in Attachment 2, but excluding the parcels listed in Attachment 3 on Monday, July 9th, 2007 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. 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.)

Harry Hamil, 15 John Myra Avenue, referred to his comments at the beginning of the meeting regarding the fact there is no plan for the use of the Clevenger property. He said this is the reason he is not going to continue serving on the Planning Board. He said there is no overall plan for the Clevenger property and when it was presented to the public, they were told there would be a plan.

Ben LaFrombois, 100 Meadowbrook Drive, asked if the rezoning has to be specific parcels.

Philip Bisesi, 15 Hi View Drive, said he would like the Board to address a master plan. The Board should design every piece of property.

VIII. CONSENT AGENDA

- A. Adoption of the Minutes
Motion: To adopt the minutes of May 7, 2007 – Special Meeting, May 10, 2007 - Agenda Workshop, May 14, 2007 – Regular Session, May 14, 2007 – Closed Session, May 17, 2007 – Budget Meeting, May 30, 2007 – Budget Meeting
- B. Adoption of Budget Amendment #18
Motion: To adopt Budget Amendment #18 authorizing the transfer of contingency funds to the Police Department’s contract services line item
- C. Agreement Between the Buncombe County Board of Elections and the Town of Black Mountain
Motion: To approve the Agreement between the Buncombe Country Board of Elections and the Town of Black Mountain authorizing the Board of Elections to conduct all elections for the Town of Black Mountain pursuant to North Carolina General Statute 163.285 and to authorize the Town Manager and Mayor to sign the agreement on behalf of the Town
- D. Acceptance of \$25,000 Grant from the Pigeon River Fund for Stream Bank Restoration on Flat Creek Behind Black Mountain Primary School
Motion: To accept the grant award from the Pigeon River Fund for matching proceeds to conduct stream bank restoration on Flat Creek behind the Black Mountain Primary School and to authorize the Town Manager to sign the letter of acceptance on the behalf of the Town
- E. Item “E” moved to “New Business”, item “B”.
- F. Request to Amend Personnel Policy Manual to Designate Calendar Year as Charge Time for Family Medical Leave and to Clarify Drug Testing Procedure
Motion: To amend the Personnel Policy Manual by adopting the revisions to Article VII, Section 7 and Article XII, Section 5
- G. Adoption of Budget Amendment #19
Motion: To approve Budget Amendment #19 authorizing the appropriation of water retained earnings to the water operations capital outlay line item

IX. COMMUNICATIONS FROM THE TOWN MANAGER

A. Review of Consent Agenda

B. Projects Update

1. Review of the Consent Agenda

2. End of fiscal year budget amendment meeting was scheduled for

June 26, 2007 at 9:00 a.m.

3. Fire Department Monthly Report – Tim Rayburn, Fire Chief, presented the May 2007 report for the Fire Department. Chief Rayburn reported that the Fire Department will be accepting fluorescent bulbs for recycling. Chief Rayburn noted that the Department of Insurance inspection is scheduled the week of June 25. He said this can potentially affect the fire insurance rating.

4. Police Department Monthly Report – Kevin Pressley, Police Chief, presented the May 2007 report for the Police Department.

5. Projects Update

a. Pool Opening – Mr. Caudle reported that the pool opening was delayed due to problems in the pump house. He said the pool is now open.

b. Downtown Merchants' Survey – Kevin Pressley, Police Chief, noted that a survey was sent out to downtown businesses requesting input on several issues. He said many businesses responded and a lot of good information was received.

c. Fire Rating Inspection – Mr. Caudle reported that the Department of Insurance fire inspection is scheduled the week of June 25.

d. Bus Stop Relocation - Bo Ferguson, Assistant Town Manager, reported that he had met with Mountain Mobility and Asheville Transit and discussed a location on State Street for the bus stop. He said before a decision is made, they would like to meet with Bi-Lo representatives next week. The Board agreed that staff should meet with Bi-Lo.

e. Greenways Update – Bo Ferguson, Assistant Town Manager, gave the Board an update from McGill Associates on the Black Mountain Greenway Norfolk & Southern Railway Pedestrian Underpass project. He said the Town recently requested that McGill Associates re-examine the flood modeling and any alternative construction designs that might allow for a new pedestrian walkway to be constructed within the floodway and under the existing railroad bridge. This evaluation will consider the relocation of existing exposed water and sewer lines upstream of the railroad bridge. Removal of these utilities may produce flood conditions more favorable to obtaining a “no-rise”. Mr. Ferguson noted that McGill Associates indicated they could provide the Town additional findings and recommendations by July 13, 2007.

Mr. Caudle announced that there would be a Green Building Home Tour on Saturday, June 23; interested parties should meet at Town Hall. He said there is also an Energy Day scheduled for June 30 at Lake Tomahawk Clubhouse from 1-5 p.m., offering green building and energy efficiency education.

X. COMMITTEE/BOARD REPORTS

A. Appointments to Fill Vacancies on Boards and Commissions

1. ABC Board (1) vacancy –

Vice Mayor Sobol made a motion to reappoint Donna Hughes to the ABC Board for a three-year term. The motion passed with a vote of 5-0.

2. Board of Adjustment (3) vacancies –

Vice Mayor Sobol made a motion to reappoint Beau Bobbitt to the Board of Adjustment for a three-year term. The motion passed with a vote of 5-0.

Vice Mayor Sobol made a motion to suspend the rules and reappoint Teresa Tatham to the Board of Adjustment for an additional three-year term. The motion passed with a vote of 5-0.

Alderman Brown made a motion to appoint Elaine Loutzenheiser to the Board of Adjustment. The motion passed with a vote of 5-0.

3. Greenways Commission (2) vacancies –

Vice Mayor Sobol made a motion to reappoint Diana McCall to the Greenways Commission for a three-year term. The motion passed with a vote of 5-0.

Alderman Brown made a motion to appoint Dottie Shuman to the Greenways Commission for a three-year term. The motion passed with a vote of 5-0.

No other applicants.

4. Historic Preservation Commission (2) vacancies –

Alderman White made a motion to appoint Joe Laudenslayer to the Historic Preservation Commission for a three-year term. The motion passed with a vote of 5-0.

No other applicants.

5. Housing Commission (4) vacancies –

Alderman White made a motion to reappoint Carole McNutt to the Housing Commission for a three-year term. The motion passed with a vote of 5-0.

Alderman Brown made a motion to appoint David Bassett as a non-voting member to the Housing Commission as a representative to Habitat for Humanity. The motion passed with a vote of 5-0.

No other applicants.

6. Planning Board (5) vacancies –

Alderman White made a motion to appoint Terry McCall to the Planning Board. The motion passed with a vote of 5-0.

Vice Mayor Sobol made a motion to reappoint Ryan Stone to the Planning Board. The motion passed with a vote of 5-0.

Alderman Brown made a motion to reappoint Phyllis Genetti to the Planning Board. The motion passed with a vote of 5-0.

Alderman Phillips made a motion to appoint John Rountree to the Planning Board. The motion passed with a vote of 5-0.

Alderman Phillips made a motion to appoint Richard Yeatman to the Planning Board. The motion passed with a vote of 5-0.

7. Recreation Commission (3) vacancies –

Alderman White made a motion to reappoint Judy Eubanks to the Recreation Commission for a three-year term. The motion passed with a vote of 5-0.

Alderman Brown made a motion to reappoint Terry McElrath to the Recreation Commission for a three-year term. The motion passed with a vote of 5-0.

Alderman Brown made a motion to appoint Lib Harper to the Recreation Commission for a three-year term. The motion passed with a vote of 5-0.

8. Urban Forestry Commission (1) vacancy –

Alderman Phillips made a motion to appoint Jerry Wicker to the Urban Forestry Commission for a three-year term. The motion passed with a vote of 5-0.

XII. CLOSED SESSION – *Alderman White made a motion to go into Closed Session at 9:00 p.m. to discuss real property acquisition as permitted in NCGS 143-318.11(5). Motion approved unanimously.*

XIII. ADJOURNMENT – *The Board reconvened to open session. At this time, Vice Mayor Sobol made a motion to enter into negotiations for the right-of-way easements for the Primary School (Flat Creek) Greenway and offer the fair market value to all property owners except for*

the Buncombe County School System, who is donating their easement. The motion passed with a vote of 5-0.

With no further business, Alderman McKeown made a motion to adjourn the meeting at 9:07 p.m. The motion passed with a 5-0 vote.

Carl R. Bartlett, Mayor

ATTEST

Anthony N. Caudle, Town Manager

Shirley J. Raines, CMC, Town Clerk