



TOWN OF BLACK MOUNTAIN

Town Hall, 160 Midland Avenue, Black Mountain, NC 28711

Date: June 11, 2018 Time: 6:00 p.m.

AMENDED

Regular Session Agenda

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 **Conserve resources; print only when necessary.**

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act (ADA). Hearing assistive devices are available at the door.

Should you need other assistance or accommodation for this meeting, please contact
Town Clerk Angela Reece at 419-9310, or by email at angela.reece@townofblackmountain.org
(828) 419-9300 / TDD (800) 735-2962

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – *Pastor Jack Taylor, Mountain View Baptist Church, Black Mountain*
- Announcements – *Mayor Don Collins*

2. PROCLAMATION AND AWARD RECOGNITION

A. Kenny Capps

3. CITIZEN COMMENTS

Individuals wishing to address the Board are asked to sign in at the entrance to the board room, indicating the topic(s) or agenda item(s) you wish to discuss, so that the chair may group speakers according to topic. The chair will recognize individuals requesting to address the Board. **Comments by any one speaker shall be limited to three (3) minutes.** If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

A. State of Emergency, Black Mountain Water – *Jamey Matthews, Public Works Director*

5. CONSENT AGENDA

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.

A. Adoption of Minutes

Motion: To adopt the minutes of May 10, 2018 (Agenda Session), May 14, 2018 (Regular Session), May 14, 2018 (Special Call), May 21, 2018 (Budget Workshop), and May 24, 2018 (Special Call).

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 11, 2018

- B. Resolution to Authorize Staff to Apply for Grants Not Requiring Local Matching Funds**
#R-18-08

Motion: *To adopt R-18-08 authorizing staff to apply for grants that do not require a local match.*

- C. Budget Amendment for Insurance Reimbursement for Fire Truck Damage** **#FY2018-12**

Motion: *To approve Budget Amendment #FY2018-12 as submitted, increasing the expense accounts, 1010-5300-170 (M & R Trucks) by \$4,250, and the revenue account, 1000-3840-800 (Insurance Settlements) by \$4,250.*

- D. Budget Amendment for Transferring Funds to Water Capital for AMR** **#FY2018-13**

Motion: *To approve Budget Amendment #FY2018-13 as submitted, increasing the expense accounts, 3091-8100-542 (Transfer to Capital Reserve Fund) by \$125,000, and to decrease the expense account 3091-8100-730 (Capital Outlay) by \$125,000.*

Consent Motion: *To approve consent item A-D as presented.*

6. CITIZEN COMMENTS

*The chair will recognize individuals requesting to address the Board regarding the specific New Business or Unfinished Business items below. Comments by any one **speaker shall be limited to three (3) minutes.** If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.*

7. UNFINISHED BUSINESS -NONE

8. NEW BUSINESS

- A. Consideration of Request for Grant of Easement in portion of Carver Avenue lying on Town Property**
#R-18-07

Motion: *To adopt a Resolution #R-18-07 to grant an eighteen foot wide easement in that portion of Carver Avenue where it now exists, extending from the end of town maintenance as a public street to the point where it crosses the southern boundary of the Carver Center property on to private property.*

- B. Award Legal Services Contract**

Motion: *To award Legal Services Contract to _____.*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 11, 2018

C. Recommendation for ONE Way Travel on Sixth Street

#R-18-09

Motion: To adopt Resolution #R-18-09 changing Sixth Street to one-way travel.

D. Authorization for Town Attorney to Open Investigation Regarding Censure Proceedings

Motion: To direct the Town Attorney to open an investigation regarding Alderman Jeremie Konegni's pending criminal charge, Buncombe County Docket Number 18CR84690- Assault on Female.

E. Appointment to fill vacancies on Town Boards and Commissions

1. **ABC Board** – (1) vacancy/3-yr term ending June 30, 2021

4 applicants: **Rick Harwood** (applying for re-appointment)

David Groce (applying for 1st full term)

Karen Stout (applying for 1st full term)

Matthew Putnam (applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

2. **Greenways Commission** – (3) vacancies/ 3-yr terms ending June 30, 2021

4 applicants: **Leslee Temple** (applying for re-appointment)

Fred Grogan (applying for re-appointment)

Julia Weatherford (applying for 1st full term)

Karen Wilson (applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 11, 2018

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill 3 year term ending June 30, 2021 by a by a vote of _____ for and _____ against.

3. **Historic Preservation Commission** – (2) vacancies/ 3-yr terms ending June 30, 2021
AND (1) unexpired term ending June 30, 2020

2 applicants: **Elaine Loutzenheiser** (applying for re-appointment)
Debra Wooton (re-applying for **unexpired term ending June 30, 2020**)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

Nomination: _____ **unexpired term ending June 30, 2020**

By: _____

Motion: To appoint _____ to fill an **unexpired term ending June 30, 2020** by a vote of _____ for and _____ against.

Additional applications are needed to fill the remaining full term.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 11, 2018

4. **Planning Board** – (3) vacancies/ 3-yr terms ending June 30, 2021

8 applicants: **Lee Reed** (applying for re-appointment)
 John Schaff (applying for re-appointment)
 Charlotte McRaine (applying for 1st full term)
 Jennifer Willet (applying for 1st full term)
 Lynsey Smith (applying for 1st full term)
 Matthew Turner (applying for 1st full term)
 Pamela Norton (applying for 1st full term)
 Theresa Fuller (applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a
vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a
vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a
vote of _____ for and _____ against.

5. **Recreation Commission** – (2) vacancies/ 3-yr terms ending June 30, 2021

6 applicants: **Daniel Bennett** (applying for reappointment)
 Jerry Bryson (applying for 1st full term)
 Lori Pisani (applying for 1st full term)
 Lee Reading (applying for 1st full term)
 Matthew Turner (applying for 1st full term)
 Theresa Fuller (applying for 1st full term)

Nomination: _____

By: _____

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 11, 2018

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

6. Urban Forestry Commission– (1) vacancy/ 3-yr term ending June 30, 2021

3 applicants: **Mara McLaughlin** (applying for reappointment)
Matthew Putnam (applying for 1st full term)
Rhea (Ray) Bockhorst (applying for 1st full term)

Nomination: _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2020 by a vote of _____ for and _____ against.

**7. Zoning Board of Adjustment – (1) REGULAR TERM ending June 30, 2021
AND a 3rd Alternate vacancy**

Current Alternates: 1st Alternate **Ted Mattson** (original alternate appointment 12/2017)
2nd Alternate **Janet McKimpson** (original alternate appointment 12/2017)
3rd Alternate **VACANT**

5 applicants: **Cheryl Milton** (applying for reappointment TO A REGULAR SEAT)
Bob Pauly (applying for consideration of a regular seat or 3rd Alternate)
Charlotte McRaine (applying for consideration of a regular seat or 3rd Alternate)
Pamela Norton (applying for consideration of a regular seat or 3rd Alternate)
Theresa Fuller (applying for consideration of a regular seat or 3rd Alternate)

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

June 11, 2018

Nomination **FOR REGULAR SEAT:** _____

By: _____

Motion: To appoint _____ to fill a 3 year term ending June 30, 2021 by a vote of _____ for and _____ against.

3rd Alternate Seat Nomination: _____

By: _____

Motion: To appoint _____ to fill the **3rd Alternate seat** beginning July 1, 2018 by a vote of _____ for and _____ against.

9. PUBLIC HEARING

The chair will recognize individuals requesting to address the Board regarding the specific topic of the public hearing. Public hearing comments by any on speaker shall be limited to ten (10) minutes. The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of each Public Hearing.

A. Public Hearing for FY18-19 Budget

#O-18-02

Motion:

1. To open the public hearing.
2. To close the public hearing.
3. To adopt **Budget Ordinance #O-18-02** as presented [or as amended].

10. COMMUNICATION FROM STAFF

- A. Town Attorney – Ron Sneed
- B. Interim Town Manager – Justin Hembree

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT



Justin Hembree
Interim Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 11, 2018

SUBJECT: Resolution #**R-18-08** authorizing staff to apply for grant funding that do not require a local match.

AGENDA INFORMATION

Agenda Location:	CONSENT
Item Number:	5B
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: Occasionally foundation grants that do not require local match will be brought to the attention of staff. These types of grants further existing projects, or initiate action items identified in the comprehensive plan. Applications often request documentation that staff has been authorized by the governing board to apply for the grant.

MOTION FOR CONSIDERATION: To adopt Resolution #**R-18-08** authorizing staff to apply for grants that do not require a local match.

FUNDING SOURCE: N/A

ATTACHMENTS: Draft Resolution #R-18-08

MANAGER’S COMMENTS AND RECOMMENDATIONS:



TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

BoA Regular Session
June 11, 2018
Agenda Item 5-B

RESOLUTION #R-18-08

RESOLUTION OF THE BOARD OF ALDERMEN SUPPORTING STAFF TO APPLY FOR GRANTS NOT REQUIRING LOCAL MATCH

WHEREAS, the Town of Black Mountain staff seek grant opportunities to further work to the benefit of the citizens of Black Mountain; and

WHEREAS, the Town of Black Mountain may benefit from grant opportunities not requiring local matching funds; and

WHEREAS, the grant applications often require the support of the Board of Alderman.

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain, that

Section 1: The Board of Aldermen authorize staff to apply for grant funding that does not require matching funds.

Section 2: This Resolution authorizes the Town Manager to sign grant documents in coordination with the Town of Black Mountain.

Section 3: This **Resolution #R-18-08** shall be effective upon its adoption.

READ, APPROVED AND ADOPTED by a vote of ____ to ____ this 11th day of June, 2018.

Don Collins, Mayor

ATTEST:

Angela Reece, Town Clerk

Justin Hembree, Interim Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 11, 2018

SUBJECT: Budget Amendment #FY2018-12 for Insurance Reimbursement for Fire Truck Damage

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 5C
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Justin Hembree, Interim Town Manager

BRIEF SUMMARY: On May 18, 2018, a Fire Truck (E-42) was involved in an accident on I-40 sustaining moderate damage. The vehicle was unmanned and was providing a safety barrier to emergency personnel at the time of the incident. An insurance claim was filed and the Town will be receiving \$4,250 shortly.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY2018-12 as submitted, increasing the expense accounts, 1010-5300-170 (M & R Trucks) by \$4,250, and the revenue account, 1000-3840-800 (Insurance Settlements) by \$4,250.

FUNDING SOURCE: N/A.

ATTACHMENTS: Budget Amendment #FY2018-12.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2018-12
Fiscal Year 2017-2018

Dept.	Account #	Account Name	Debit	Credit	Comments
	1010-5300-170	MR Trucks	4,250		
	1000-3840-800	Insurance Settlements		4,250	Insurance Recovery

Totals: 4,250 4,250

BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 11, 2018

SUBJECT: Budget Amendment #FY2018-13 Transferring Funds to Water Capital for AMR

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 5D
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Justin Hembree, Interim Town Manager

BRIEF SUMMARY: In the FY17-18 budget, the Board of Aldermen approved a capital purchase in the water fund for \$125,000 for the automatic read water meters (AMR). This was meant to be the first of five annual purchases to change over all Town water meters from manual read to automatic read. The Town did not finalize this first purchase in the current fiscal year and wishes to transfer these funds to the Water Capital Reserve Fund. Town staff is hopeful to expend these funds (as well as the \$125,000 budgeted in FY18-19 for this purpose) in the summer or early fall of 2018.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY2018-13 as submitted, increasing the expense accounts, 3091-8100-542 (Transfer to Capital Reserve Fund) by \$125,000, and to decrease the expense account 3091-8100-730 (Capital Outlay) by \$125,000.

FUNDING SOURCE: N/A.

ATTACHMENTS: Budget Amendment #FY2018-13.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2018-13
Fiscal Year 2017-2018

Dept.	Account #	Account Name	Debit	Credit	Comments
	3091-8100-542	Trans to Cap Reserv	125,000		
	3091-8100-730	Capital Outlay		125,000	Transferring funds
					budgeted in FY17-18
					to Cap Reserve for
					purchase of automatic
					read water meters

Totals:	125,000	125,000
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 11, 2018

SUBJECT: Consideration of request for grant of easement in portion of Carver Avenue lying on Town property.

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8A
Department:	Town Attorney
Contact:	Ron Sneed, Town Attorney
Presenter:	Ron Sneed, Town Attorney

BRIEF SUMMARY: A portion of that street known as Carver Avenue lies on the property owned by the Town known as the Carver Center. The Town maintains 0.06 mile (approximately 315 feet) as a town street, but from the end of the portion maintained by the Town as a public street and shown on the Powell Bill maps, the street curves south and continues to the southern boundary of the Town's property. No easement of record for the benefit of the property owners who need that road for access has been found. Some of the property owners have asked that the Town grant an easement in this portion of Carver Avenue to benefit their properties. The public records indicate that this road has been in use at this location for at least 60 years, and perhaps longer. At least twelve separate identifiable properties are served by this portion of Carver Avenue. After such long use, it is probable that the property owners could file an action asking the Court to find that they have a prescriptive easement, but that would be expensive for the property owners and the Town. If the property owners win, they have what this board could have granted them for much less expense, and if they lose all their properties will lose market value, negatively affecting the Town's tax base.

MOTION FOR CONSIDERATION: To adopt a resolution to grant an eighteen foot wide easement in that portion of Carver Avenue where it now exists, extending from the end of town maintenance as a public street to the point where it crosses the southern boundary of the Carver Center property on to private property.

FUNDING SOURCE: N/A

ATTACHMENTS: Tax map with affected part of Carver Avenue marked, proposed Resolution, proposed Grant of Easement

GRANT OF EASEMENT

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Prepared by & return to: **Ronald E. Sneed, Box 47**
P.O. Box 995, Black Mountain, NC 28711
File # 18-150.T

THIS GRANT OF EASEMENT, made and entered into this ____ day of May, 2018, by and between **THE TOWN OF BLACK MOUNTAIN**, a North Carolina Municipal Corporation, owner of that property described in Deed Book 1557 at Page 525, Buncombe County Registry, hereinafter called Grantor, and **CHERYL HARPER**, owner of that property described in Book 868 at Page 363, **WILLIAM ALEXANDER**, owner of that property described in Book 5638 at Page 184, **PAULETTE BROWNLEE**, owner of that property described in Book 1280 at Page 555, **TWILIGHT DEVELOPMENT, INC.**, owner of that property described in Book 5640 at Page 1372, **GLENDIA TARLETON and GLENDIA LYNCH**, owners of that property described in Book 5649 at Page 645, **EQUITY TRUST CO., as custodian f/b/o Donna Boyd IRA, as to a 21.7% interest, DONNA BOYD, individually, as to a 28.3% interest, and SILVER POINT PROPERTIES, LLC, as to a 50% interest**, owners of that property described in Book 5657 at Page 1438, **DIANE GURLEY**, owner of that property described in Book 4149 at Page 908, **JOHN R. STERLIN**, owner of that property described in Book 5028 at Page 698, **BRYANT WILLIAMS, JR., HARRIET J. WILLIAMS, BRUCE MOREHEAD, EMERRY MOREHEAD, PHYLLIS MOREHEAD EDWARDS, LAURA ESTRADA and CLIFFORD MOREHEAD**, owners of that property described in Book 1049 at Page 250, and **EDWARD W. LYTLE**, owner of that property described in Book 1086 at Page 551, all recorded in the Buncombe County Registry, hereinafter called Grantees.

WITNESSETH:

That the Grantors, for and in consideration of the sum of One Dollar and other good and valuable consideration in hand paid by the Grantees, the receipt of which is hereby acknowledged, have given, granted, bargained, sold and conveyed, and by these presents do give, grant, bargain, sell, convey and confirm unto the Grantees, their heirs and/or successors and assigns, a non-exclusive easement for the purpose of providing ingress, egress and regress to and from Fortune Street, also sometimes known as North Blue Ridge Road, said easement being eighteen (18) feet in width and being more particularly described as follows:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina.

BEING that existing street known as Carver Avenue, with the center of said easement being the center line of that portion of Carver Avenue that is not maintained as a town street, said portion beginning at the east end of the public and town maintained portion of Caver Avenue near the northeast corner of that property described in Book 5640 at Page 1372, Buncombe County Registry, and running with the existing street from said Beginning in a southerly direction to the southern boundary of Grantor's property described in Deed Book 1557 at Page 525, Buncombe County Registry.

TO HAVE AND TO HOLD the above described easement with all appurtenances thereunto belonging or in any wise appertaining, unto the Grantees, their heirs and/or successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has caused this Grant of Easement to be executed in its name by its duly elected Mayor acting at the direction of its Board of Aldermen who approved and directed the grant of the easement described herein.

TOWN OF BLACK MOUNTAIN

Don Collins, Mayor

NORTH CAROLINA, BUNCOMBE COUNTY

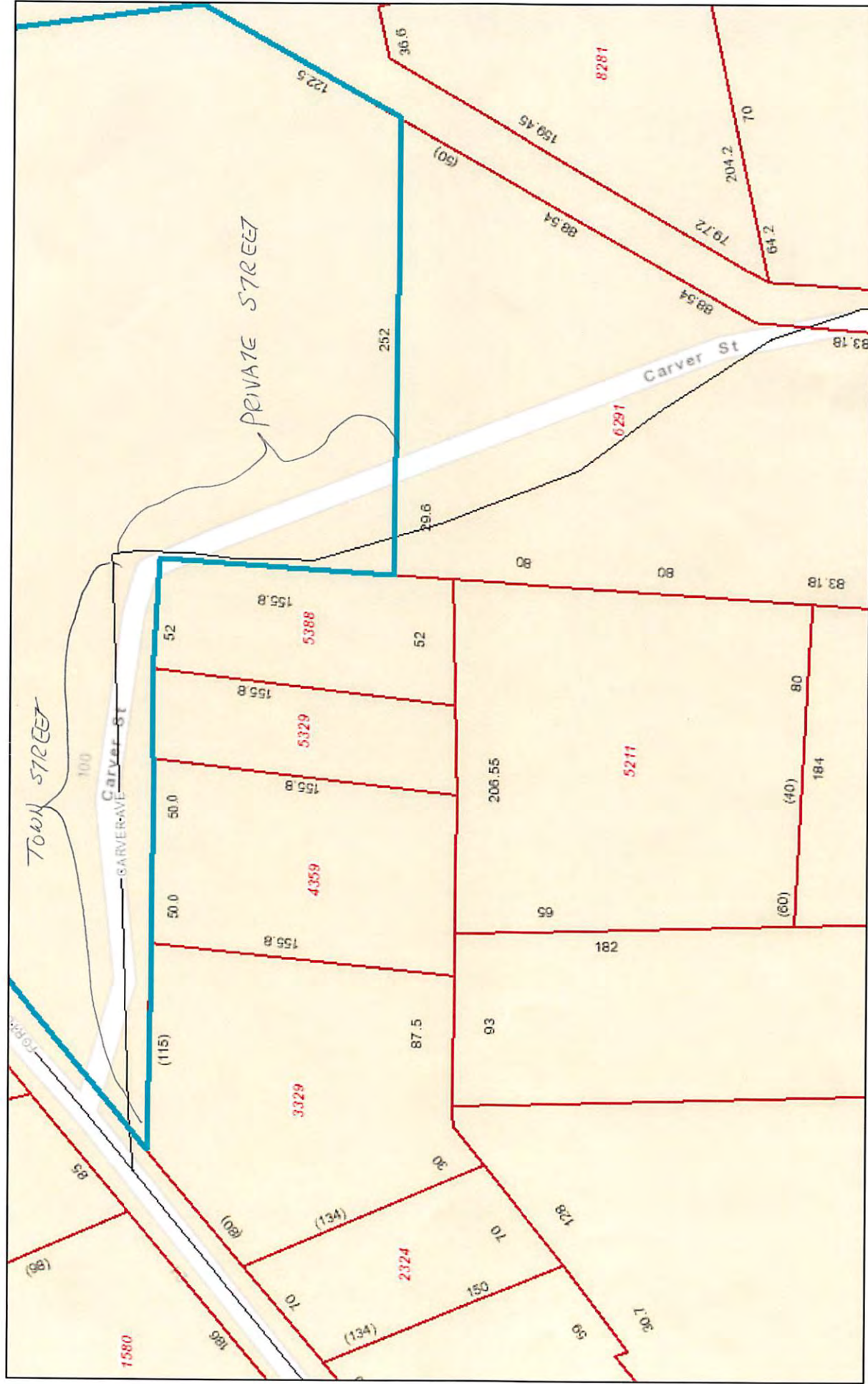
I certify that the following person(s) personally appeared before me this day, and each acknowledging to me that they voluntarily signed the foregoing document for the purpose therein stated and in the capacity indicated: **DON COLLINS, Mayor of the Town of Black Mountain.**

Dated: _____, Notary Public

Notary's typed or printed name

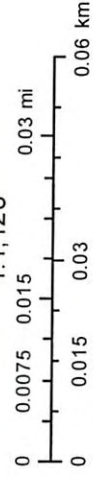
My commission expires: _____

Buncombe County



May 1, 2018

1:1,128



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),



BoA Regular Session
June 11, 2018
Agenda Item 8A

RESOLUTION #R-18-07

RESOLUTION TO GRANT AN EASEMENT IN THE PRIVATE PORTION CARVER AVENUE

WHEREAS, the Town is the owner of that real property located at the intersection of Fortune Street (also known as North Blue Ridge Road) and Cragmont Road described in Deed Book 1557 at Page 525, Buncombe County Registry, which said property is commonly referred to as the Carver Center; and

WHEREAS, there is a street known as Carver Avenue that crosses that property and serves as access to portions of the Town's property described in the Town's deed and several other properties owned by individual citizens; and

WHEREAS, 0.06 mile (approximately 315 feet) of that street is maintained by the Town as a Town street; and

WHEREAS, that street continues in existence beyond the point the Town maintains it as a city street, turning south and crossing the Town property to its southern boundary, where it continues on south, serving as access for several properties; and

WHEREAS, no recorded document has been found granting the right to use Carver Avenue to the property owners whose property is accessed over this street; and

WHEREAS, this Board has been advised that the road has been in use for such an extended period that the property owners would probably succeed if they brought an action in Court to prove they had an easement by prescription, it makes little sense to the Board to put its citizens to this expense, and to take on the expense of defending such an action, when it has the ability to grant an easement, insure its citizens access to their properties, and derive benefit from the enhanced value of their properties resulting from having good legal access, which

enhanced value maintains or boosts the tax base.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain, that the property owners using Carver Avenue as access to their properties shall be granted an easement, eighteen feet in width, over that portion of Carver Avenue as the same now exists from the end of that portion of Carver Avenue maintained as a public street to the point where Carver Avenue crosses the southern boundary of that property described in Deed Book 1557 at Page 525, Buncombe County Registry, and such grant of easement shall be executed by the Mayor on behalf of the Town.

I move the adoption of the foregoing resolution:

Alderman

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this 11th day of June, 2018.

Don Collins, Mayor

ATTEST:

Angela Reece, Town Clerk

Justin Hembree, Interim Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 11, 2018

SUBJECT: Legal Services Contract Award

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8B
Department: Administration
Contact: Justin Hembree, Interim Town Manager
Presenter: Justin Hembree, Interim Town Manager

BRIEF SUMMARY: The Town of Black Mountain Board of Aldermen have received two expressions of interest for the Town Attorney position. The Town Attorney will provide general legal counsel to the Board, Mayor, Town Manager, and Town staff, and, if necessary, will provide legal counsel, and/or coordinate additional outside legal counsel to the Town as plaintiff or defendant. The purpose of all submitted proposals was to demonstrate the qualifications, competence, depth and capability of the firms seeking to provide legal services to the Town of Black Mountain in conformity with the requirements of this request for proposals. The proposals addressed all the points outlined in the request for proposals. The proposals were prepared simply and economically, providing a straightforward, concise description of the individual's or firm's capabilities to satisfy the requirements of the request for proposals. Proposals were received from Ronald E. Sneed, P.A. and Ward and Smith P.A., and Roberts and Stevens P.A.

MOTION FOR CONSIDERATION: To award legal services contract.

FUNDING SOURCE: General Fund

ATTACHMENTS: Proposals for Attorney Legal Services Ronald E. Sneed, P.A., Ward Smith P.A. and Roberts and Stevens P.A.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Motion to select and adopt.

**Legal Services Contracts
follow this section**



PROPOSAL FOR POSITION AS
TOWN ATTORNEY FOR THE TOWN OF BLACK MOUNTAIN

In response to the Proposal Information requested as an application to be the Town Attorney for the Town of Black Mountain, the undersigned provides the following information.

1. *Name, address, telephone number, fax number and email address of firm. Include contact person and telephone number for purposes of following up on proposal.*

Ronald E. Sneed, P.A.
104 Church Street
PO Box 995
Black Mountain, NC 28711
Phone: 828-669-7953
Fax: 828-669-4322
E-mail: ronsneed@bellsouth.net
Contact Person: Ronald E. Sneed
828-669-7953

2. *Please provide a brief description of your personal, educational and professional background. Educational background should include undergraduate and postgraduate degree(s), and any relevant information regarding licensure, certification, honors, and/or professional associations with which you are involved. You may include any other personal information you deem relevant and wish to share with the Board.*

I am a native of Black Mountain, having attended Charles D. Owen High School. I received a President's Scholarship from Jacksonville University and attended that school for my undergraduate studies, obtaining a degree in English and graduating in 1972. I was drafted in the fall of 1972 and spent two years in the army. I then attended the University of North Carolina Law School at Chapel Hill, graduating in 1978 and taking and passing the bar exam in 1978. I am a member of the North Carolina State Bar, the North Carolina Bar Association including the Real Property Section, Construction Law Section, Zoning, Planning and Land Use Section, and Estate Planning & Fiduciary Law Section of the NC Bar Association, the American Bar Association, and the North Carolina Advocates for Justice. I have attended at least one of the two annual municipal attorney conferences in North Carolina for the last 25 or more years.

3. *State the size of the firm, the firm's municipal law staff, the location of the office from which the work on this position is to be performed, and the number and nature of the professional staff to be employed in this appointment.*

My firm presently consists of one lawyer and a staff of three paralegals, with expertise in the areas of real estate, contracts, estate administration, business management, and the operation of a general law practice, meaning every paralegal has a broad experience in the different areas of

law practiced in a general practice. Any of the three paralegals are available to be called on for assistance as needed.

My office is two blocks from Town Hall and we are, and always have been, readily available to the town and town staff.

4, *Provide a narrative of the history of your firm, including date of inception, experience with relevant North Carolina municipal, state and federal law and the firm's experience performing services to North Carolina local government entities.*

After graduating from law school and passing the bar, I took a job with Eubanks & Faucette in 1978, and became partner in the firm of Eubanks & Sneed within two years, but left the firm in 1982. I formed my own firm in September of 1982 and I have been a solo practitioner most of the time since then, having employed two different associates at different times for short periods. At the time I joined Eubanks & Faucette in the fall of 1978, Bill Eubanks was the town attorney but, since the town's work was done for a discounted hourly rate, I immediately began handling the legal matters for the town as Bill passed that work off to me. In 1983, I was appointed as the town attorney for the Town of Black Mountain and I have served in that capacity since that time.

In addition to the work I do for the Town of Black Mountain, I have also worked as needed since 1996 for the City of Asheville as counsel to its Zoning Board of Adjustment for all matters in which the city had a direct interest, such as appeals of a staff decisions, and on a few occasions I have also advised their Historic Preservation Commission. I have been assisting the Town of Waynesville since 2013, assisting its boards that hold quasi-judicial hearings and advising their Development Services department on various matters. I have also advised the Zoning Board of Adjustment of the Town of Weaverville on a few occasions.

I have also taught municipal law, often holding workshops for boards that hold quasi-judicial hearings, and at the beginning of the recent recession I taught at a seminar designed to introduce lawyers to other areas of the legal practice for the North Carolina Bar Association, making a one hour presentation on local government regulations and land use.

5, *Narrative of the qualifications of the person(s) proposed to work directly with the Town to include:*

a. *Legal training, years of practice, area of specialization; include date of admittance to North Carolina Bar;*

I graduated from the University of North Carolina School of Law in 1978 and was admitted into the practice of law in August of that year. I have no specific area of specialization such that I am certified as a specialist in one area of law, as it is impossible for a solo practitioner in a general practice to meet the requirements for such certification, such as the requirement for a large percentage of the practice being spent working in a limited area of the law. That said, since

the fall of 1978, the major areas of my practice have been real property law, local government law, estate planning, estate administration, construction law, and litigation concerning all these areas of law and others.

b. Years of municipal, county or state government law practice.

As stated, I have been working in local government law, primarily municipal law, from the time I started practice in the fall of 1978, so that I have over 39 years experience in that area of law.

c. Litigation experience and demonstration of a satisfactory court track record.

I have tried cases in several areas of law for over 39 years, trying both bench (non-jury) trials and jury trials, and appearing before various administrative boards and commissions. I am not sure what a “satisfactory court track record” is and I have not kept score over the last four decades, but I suspect I won my share. My recollection is that I won the cases I expected to win and won a good percentage of those cases where it appeared that the case could not be won at trial. I have also handled a number of cases that have gone to the North Carolina Court of Appeals and beyond, losing my first one and having one appear that I had lost but in which the ruling by the Court of Appeals agreed with my argument to the trial judge. I won the rest. Two of the cases I handled on appeal were listed among the 100 most important appellate decisions for the year in which they were decided.

d. Identify any professional affiliations/detail experience in representing North Carolina municipalities.

See my response to items 2 and 4 above.

6. Identify the accessibility of the proposed designated lead Attorney, and the response time that the individual offers to the Town.

The lead and only attorney in my practice at this time is myself, Ronald E. Sneed. My office is two blocks from town hall. I live less than ten minutes from my office and town hall. Historically, and as will continue to be the case, I usually respond to contacts from the Town within a few hours, if not within a few minutes. All calls from the aldermen, the manager and the staff are taken immediately if that is possible.

7. Identify other resources the firm has to offer, including clerical and support staff, library and research capabilities, and other relevant information.

Fortunately, in this era I have access to an infinite amount of resources for legal research through Westlaw and other legal databases, and the separation between the capabilities of large firms and small firms has been shrunk by technology. Legal libraries no longer reside on shelves

in the law firm's library. I do have and maintain all relevant publications from the School of Government concerning municipal law. I have a working relationship with the School of Government and a multitude of other municipal attorneys. I have access to and knowledge of all the legal work of the Town of Black Mountain performed for the last 39+ years.

I cannot say that I have a large clerical staff. Each person in my office handles clerical work, but all members of my staff are experienced paralegals.

8. *Describe the level of coverage for malpractice insurance your firm carries. Is the coverage on a per client basis, or is the dollar figure applied to the firm as a whole? Provide documentation of malpractice insurance coverage.*

I carry a one million dollar malpractice policy, with the coverage being per occurrence on a claims made basis. A copy of my policy is enclosed.

9. *Within the last five years has your organization, its officers, partners, employees, shareholders or principals been a party in any litigation or other legal proceedings as a defendant relating to the services provided by your entity? If so, provide an explanation and indicate the current status or disposition of any such situation.*

No

10. *State whether the firm, its officers, partners, principals, agents, or employees, that are expected to perform services under this RFP, have been disciplined, admonished, warned, or had any license, registration, charter, certification, or any similar authorization to engage in the legal profession suspended or revoked for any reason.*

None of the described action have occurred or exist.

11. *Has the firm been in bankruptcy, reorganization or receivership in the last five years? If so please explain current status.*

No

12. *Has the firm been disqualified or terminated by any municipal, county, state government or other public agency? If so please explain under what circumstances this disqualification or termination occurred.*

I was the town attorney for the Town of Old Fort for a short period, from the fall of 2012 into 2015, but was replaced after about two years from the date of my appointment. No reason was given to me by the mayor when he informed me that the town board had decided not to keep me on as town attorney.

13. *If you are selected as Town Attorney, what fees will you charge and under what terms? (e.g. Will you require a monthly minimum or retainer?) Also, please provide a concise statement describing your philosophy for cost effectiveness in providing legal services to the Town.*

If selected to continue to serve as Town Attorney, I will charge the Town \$220.00 per hour for work done for the Town, with the exception that a flat fee of \$125.00 will be charged for the monthly agenda meeting, and \$425.00 for the regular meeting of the board of aldermen. These flat fees include review of the agenda and preparation for the meetings, including any initial research the agenda indicates I may need to have done to be prepared for the meeting.

I will be able to provide legal services to the Town in a cost effective manner by charging the Town only two-thirds of my usual hourly rate, using paralegals at a lower hourly rate (\$125.00 per hour) where practical, and by using my knowledge of the legal history of the town and my long experience to deliver services with less time expended to get the answers and do the work the Town needs. In addition, my varied areas of practice will avoid the need to often go to outside counsel for such matters as title examinations and litigation, exposing the Town to higher hourly rates.

14. *How do you propose to meet the Town's legal needs when you are on vacation or are otherwise unavailable?*

Even when on vacation, I am reachable by my staff and I monitor my email and voice mails, and respond directly or direct action by my staff to address whatever pressing matter might arise. I also have always made arrangements for another municipal attorney to be available if something comes up that requires the physical presence of a lawyer to resolve. This practice will continue.

15. *Please identify any conflicts, or potential conflicts of interest that your firm may have in representing the Town of Black Mountain, and your approach to avoiding conflicts of interest.*

Unfortunately, in a small town it is impossible to completely avoid conflicts. We do have a conflicts checking system in place, and should a conflict arise between the town and a citizen who is or has been my client which must be handled, we will identify the conflict and advise the Town of the need to employ outside counsel to handle that matter. Should that occur, I would not be able to represent the town or the individual. Surprisingly, this has not happened more than a couple of times over the last 39+ years.

16. *Describe your plan for transitioning service from the town's current attorney and how you plan to handle any existing lawsuits or legal matters. Include estimated time needed for the transition and what type of relationship you anticipate with the current attorney.*

Not applicable if I am selected.

17. Please provide a list of client references with whom we may confer.

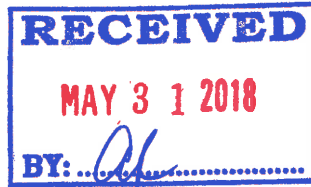
Without consent from the clients, I cannot provide the names or other information about my clients. Others in the area of municipal law who can be consulted are Robin Currin, city attorney for the City of Asheville, Elizabeth Teague, Director of Development Services for Waynesville, Bill Cannon, town attorney for the Town of Waynesville, and Eddie Ward, Town Clerk for Waynesville. Ellis Hankins, former executive director of the League of Municipalities, might even say a few nice words about me.

18. Please share any other information you feel would be useful to the Board as they consider proposals for legal services.

Unlike the accounting firm hired each year to audit the town's financial matters, there is value to continuity when considering who should be the Town Attorney.

Respectfully submitted, this 15th day of May, 2018.

Ronald E. Sneed



Black Mountain, North Carolina

RESPONSE TO REQUEST FOR PROPOSAL
TO PROVIDE LEGAL SERVICES

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WARD AND SMITH, P.A.
ATTORNEYS AT LAW

FIRM AND ATTORNEY CONTACT INFORMATION

Proposal Follow-up Contact:

Derek J. Allen
82 Patton Avenue, Suite 300
Asheville, NC 28801
P: 828.348.6012
E: dja@wardandsmith.com

Street Address:

Ward and Smith, P.A.
82 Patton Avenue, Suite 300
Asheville, NC 28801

Mailing Address:

Post Office Box 2020
Asheville, NC 28802-2020

Phone and Fax:

P: 828.348.6070
F: 828.348.6077

Website:

www.wardandsmith.com

Our Asheville office will be the primary point of contact, but each of our five offices work seamlessly. The Town of Black Mountain (the "Town") will have access to all of our attorneys regardless of office location.



CONTACT INFORMATION, cont.

Other Office Locations	
Greenville	New Bern
Street Address: 120 West Fire Tower Road Winterville, NC 28590 Mailing Address: Post Office Box 8088 Greenville, NC 27835-8088 Phone and Fax: P: 252.215.4000 F: 252.215.4077	Street Address: 1001 College Court New Bern, NC 28562 Mailing Address: Post Office Box 867 New Bern, NC 28563-0867 Phone and Fax: P: 252.672.5400 F: 252.672.5477
Raleigh	Wilmington
Street Address: 5430 Wade Park Boulevard Wade II, Suite 400 Raleigh, NC 27607 Mailing Address: Post Office Box 33009 Raleigh, NC 27636-3009 Phone and Fax: P: 919.277.9100 F: 919.277.9177	Street Address (University Corporate Center): 127 Racine Drive Wilmington, NC 28403 Mailing Address: Post Office Box 7068 Wilmington, NC 28406-7068 Phone and Fax: P: 910.794.4800 F: 910.794.4877

QUALIFICATIONS

WE ARE INVESTED IN BUNCOMBE COUNTY

Ward and Smith is a statewide law firm with core commitments to the areas where our offices reside. Reliability, responsiveness, and teamwork are the standards that define Ward and Smith, and our proximity from Asheville to Black Mountain will allow us to serve you without delay. Our values and devotion to client satisfaction transcend preconceived notions of how a law firm works, and we are proud to demonstrate the expansive nature of how our attorneys implement these ideals. At Ward and Smith, your legal matters are handled with attentive intelligence by attorneys who work together efficiently and effectively across practice areas. Dedication to the practice of law and commitment to each and every client is our collective mission.

Ward and Smith supports the communities it works in by actively participating in numerous civic and nonprofit organizations. We take pride in our widespread outreach and encourage our attorneys and staff to devote time to meaningful causes. In Buncombe County, our attorneys and staff are actively involved in many organizations, including the Asheville Area Chamber of Commerce, Asheville Buncombe Regional Sports Commission, LEAF, Buncombe County Boys & Girls Club, and YMCA of Western North Carolina. We know Buncombe County because we are invested in it.

WORKING WITH LOCAL GOVERNMENT ENTITIES AND REPRESENTING BOARDS AND COMMISSIONS

Ward and Smith is the successor to a practice founded in 1895. The Firm's attorneys have extensive experience representing governmental entities that share many legal issues with those faced by the Town. Our attorneys attend board meetings, oversee quasi-judicial proceedings, update boards and staff on legislation and case law affecting local governments, and advise staff on day-to-day issues that all local governments face. We also assist our local government entities with matters involving public finance, public records, competitive bidding, open meetings, ethics compliance, and conflicts of interest.

The Firm regularly acts as legal counsel to a variety of quasi-governmental and public-purpose entities. These include Neuse Regional Water and Sewer Authority, Carteret-Craven Electric Membership Corporation, Craven Community College, Cape Fear Community College, Pitt Community College, and various public housing authorities.

QUALIFICATIONS, cont.

WE HAVE REPRESENTED THE FOLLOWING MUNICIPALITIES AND COUNTIES

City of Asheville (employment law)	Buncombe County (employment law)	Ayden Housing Authority
City of Clinton	Cleveland County (employment law)	Eastern Carolina Regional Housing Authority
City of Greenville	Dare County	Farmville North Carolina Housing Authority
City of Havelock	Martin County	Housing Authority of the City of New Bern
City of Jacksonville	Mecklenburg County	Housing Authority of the Town of Beaufort
City of Roanoke Rapids	Nash County	Lexington Housing Authority
Town of Ayden	New Hanover County	Mount Olive Housing Authority
Town of Belhaven	Pitt County	Plymouth Housing Authority
Town of Burgaw	Sampson County	Washington Housing Authority
Town of Grifton	Wayne County	Cape Fear Public Utility Authority
Town of Holden Beach	Craven County Economic Development Commission	Martin County Regional Water and Sewer Authority
Town of Hope Mills	Martin County Economic Development Corporation	Neuse Regional Water & Sewer Authority
Town of Montreat	Town of Tarboro	North Carolina State Ports Authority
Town of Mount Olive	Redevelopment Commission	
Town of St. James		
Town of Swansboro		
Town of Trent Woods		

EXPERIENCE WITH QUASI-JUDICIAL PROCEEDINGS

In the course of representing our local government clients, our attorneys regularly provide assistance in preparing boards for and conducting quasi-judicial proceedings such as special use permit applications, variances, and appeals from administrative zoning decisions. We also assist with the preparation and delivery of written decisions as required by the General Statutes and local ordinances.

OPEN MEETINGS AND PUBLIC RECORDS LAW

Clients – whether governmental bodies or interested citizens – often ask about how North Carolina's open meetings and public records laws works. Ward and Smith is highly experienced in answering those questions. Each open meetings and public records issue should be considered in light of the actual text of the statutes and the facts involved. We will provide the Town with the insight and objective analysis required to deal with often tricky questions about whether a board can enter a closed session or whether a public records request is valid.

QUALIFICATIONS, cont.

EMPLOYMENT LAW

Since the sweeping labor and employment laws of the mid-1960s, employers, including local governments, have faced an ever-increasing number of laws and regulatory agencies governing their employee relations. Numerous federal and state laws have been added to the Equal Pay Act (1963), Title VII of the Civil Rights Act (1964), and the Age Discrimination in Employment Act (1967) including, but not limited to: the Family and Medical Leave Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, the Americans with Disabilities Act, and the North Carolina Wage and Hour Act. Our Labor and Employment Practice Group attorneys understand the burden these laws place on employers. We work with clients to develop, implement, and defend policies and practices related to all aspects of the employment relationship to lessen the impact of these burdens to the greatest extent possible. We are a trusted advisor and a fierce advocate for our clients.

Our attorneys are experts in labor and employment laws. We strive to know and understand the frequent changes in the law — before clients call for help. Our employment law litigation experience encompasses all types of civil rights discrimination, affirmative action compliance and claims, state and federal wage and hour issues, wrongful termination charges, unemployment claims, breach of employment contracts, occupational safety and health matters, labor disputes, and workers' compensation claims. On behalf of our clients, we appear before state and federal courts and regulatory and administrative agencies such as the Equal Employment Opportunity Commission, the National Labor Relations Board, the North Carolina Industrial Commission, the North Carolina Division of Employment Security, and federal and state Departments of Labor. In addition, our attorneys are increasingly involved in alternative dispute resolution and often serve as arbitrators and mediators.

REAL ESTATE

Attorneys in our Real Estate Practice Group provide advice and counsel to clients on the acquisition, development, financing, leasing, and sale of real property and improvements and the various related issues. The legal services we provide include negotiating, drafting, and reviewing purchase and sale contracts for buyers and sellers; examining the real estate title records and advising our clients on how the various easements, declarations, restrictions, and other title exceptions may impact the use and value of the property and the client's plans for the property; representing buyers and sellers in real estate purchase and sale transactions and preparing the various documents associated with such transactions; preparing leases and advising landlords and tenants on lease issues; preparing development documentation, and advising clients regarding subdivision and land use matters associated with the development process; preparing and reviewing construction contracts for owners and contractors; and negotiating and reviewing loan documents for lenders and borrowers.

Attorneys in the Real Estate Practice Group regularly appear before governmental bodies to represent clients on a variety of government related issues, including subdivision of property, zoning amendment

QUALIFICATIONS, cont.

applications, land use permits, environmental issues, and property taxes. Our knowledge of the various regulations affecting those matters coupled with our years of experience working in these areas give us a unique ability to advise and assist our clients in governmental matters.

LITIGATION

Our litigation attorneys work closely with clients to make important litigation decisions and zealously represent our clients' interests, while maintaining the professionalism our clients have come to know and expect. We provide our clients with exceptional and strategic legal judgment tempered by a cost effective approach to achieve the best possible result. Our attorneys routinely prepare litigation budgets and case management plans. We offer our clients the latest in litigation and trial technology including both in-house and hosted document management and E-discovery programs. We utilize a number of multi-media tools for mediation, arbitration, and trial presentations.

Our firm has represented various governmental entities in litigation matters, including:

- Representation of the County of New Hanover in a construction defect claim against a contractor. We defended the County against a lawsuit brought by a removed County Commissioner demanding to be reinstated.
- Representation of Cape Fear Public Utility Authority in numerous condemnation actions to acquire sewer easements. This representation involved various litigation, including defense of inverse condemnation claim and defense of claim for reimbursement of impact fees.
- Representation of Neuse Regional Water and Sewer Authority in numerous condemnation actions and other litigation.
- Representation of Cape Fear Community College in numerous condemnation actions: This representation involved various litigation, including defense of the College against a wrongful discharge claim by a former president, a construction defect claim against a contractor, and a defense of easement dispute.
- Representation of the Town of Grifton, the City of Havelock, and other municipalities regarding code drafting, interpretation, and enforcement issues.

Additionally, our litigation attorneys have represented clients on zoning issues, including conditional use permits, special use permits, text amendments, and re-zonings, as well as other land use and planning issues, and issues involving solar farms, wind farms, and condo-tels.

QUALIFICATIONS, cont.

SPECIAL CAPABILITIES

PUBLIC COMMUNICATIONS, LOBBYING, AND GOVERNMENT RELATIONS

Ward and Smith's team brings unique communications and government affairs capabilities to the Town. Our government relations professionals have decades of experience helping clients deal with regulatory and legislative issues in Raleigh and Washington, D.C. Our experience representing governmental entities allows us to also be effective advocates before the General Assembly and Congress for the often unusual needs of a local government.

The Town will benefit from the relevant and effective personal experience of our attorneys, lobbyists, and communications experts. Their combined experience includes appointed offices in state and federal government, employment with North Carolina state agencies, and senior positions within the U.S. Department of Defense, as well as staff positions in the U.S. Congress, public policy foundations, media outlets, and other key positions in government relations.

The Firm can tackle traditional lobbying, regulatory monitoring, and legal advice related to compliance with the complex laws governing ethics, elections, and lobbying in North Carolina and Washington, D.C. We are ready to confront and shape any government relations challenge that the Town might face. Even if you do not need this capability now, you never know when it might be critical to the successful outcome of some unforeseen event. We are ready to go.

OUR FIRM AND YOUR TEAM

FIRM INFORMATION AND OUR TEAM APPROACH

Ward and Smith is a mid-size law firm with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, North Carolina. Firm-wide, we currently employ 92 attorneys and 147 support staff. The Town will benefit from our entire team, but the Town's core team will consist of three attorneys, one paralegal, and one administrative assistant. We can serve the Town's Board, Mayor, Town Manager, and Town staff most efficiently from our Asheville office, but any attorney from any of our offices will be made available, schedule permitting, without additional cost or travel expenses. We believe the following will be most involved with the Town. Attorney resumes have been included outlining each team member's experience and qualifications.

- **Derek Allen:** Leader of the Town's team, Lawyer of the Year 2015 in category of Land Use Litigation, North Carolina government entities, board governance, procurement, open meetings, public records, and economic development law, quasi-judicial proceedings, litigation, zoning and land use. Successful representation of Guilford County, City of Greensboro, and Town of Oak Ridge in zoning and land use litigation.
- **Joanne Badr Morgan:** Real estate law, development and transactions, zoning and land use.
- **Bill Durr:** Civil litigation in state and federal courts, depositions, pre-trial and dispositive motions, mediations, arbitrations, jury trials, and appeals, more than 28 years of litigation experience and successfully tried to verdict over 75 jury and non-jury cases in State and Federal courts, successful representation of many clients in arbitration proceedings and cases on appeal, served as an elected judge for 9 years, presiding over many criminal jury trials.
- **Rendi Mann-Stadt:** Labor and employment law, personnel policies and procedures, personal services procurement, wage and hour issues, OSHA, and related personnel issues.

AVAILABILITY

Our attorneys are committed to building and maintaining relationships with the Town and understand your unique needs. We will work to become fully acquainted with the management style and operations of the Town. This will enable us to provide timely and effective legal services. Because of our teamwork approach, the Town will always be able to reach a Ward and Smith attorney by phone for assistance, even if the Town lead attorney is on vacation or otherwise unavailable.

Attorneys within the proposed legal team for the Town will be accessible by phone and email and are dedicated to ensuring a quick turnaround time for all Town matters. Our attorneys will provide frequent

OUR FIRM AND YOUR TEAM, cont.

and full communication to the Town with respect to pending and anticipated legal issues. We advocate a proactive and preventive approach to our clients' legal issues so that through proper planning and maintenance our clients can avoid legal difficulties and costs. We believe that this approach will provide the Town with responsive, high quality, and cost-effective legal services.

We will commit to attendance at monthly Board meetings, monthly Agenda Workshop meetings, and special-called meetings. Our Asheville office is within close proximity to Black Mountain allowing our attorneys to respond quickly should special or emergency meetings arise.

FIRM RESOURCES

At Ward and Smith, we work seamlessly as a single team by drawing on attorneys from different practice groups who are best qualified to address clients' problems. We have a strategic objective that at least two attorneys will have extensive, in-depth experience in each area of the law. This assures our clients that their distinct needs always are handled by someone with experience in their matters.

We are dedicated to leveraging technology and achieving a collaborative environment which fosters growth, innovation, and productivity. Our award-winning business intake process exemplifies its dedication to business process efficiency. We adhere to best practices and mitigate risks through the use of leading edge technologies including risk management, records, and case management solutions. Investments in cloud technology solutions, videoconferencing, and a robust infrastructure enable legal solutions to be obtained from any of our five offices, offering clients the advantage of an enterprise of legal experts. Our courtroom presentation technology has helped to achieve favorable results for clients and has won praise from our opponents. Mobile solutions supporting all smartphones and tablets ensure our attorneys can maintain constant contact with clients and access work product while out of the office.

We are a full-service law firm, but we provide the focused attention and knowledge that will benefit the Town. Our dedication to the practice of law and commitment to each and every client is our collective mission and we believe it is what sets us apart from other law firms. We welcome the opportunity to be your first choice for legal services.



Derek J. Allen

E: dja@wardandsmith.com

P: 828.348.6012

F: 828.348.6077

Post Office Box 2020
Asheville, NC 28802-2020

Professional Experience

Derek leads the Alcoholic Beverage Law, Real Estate Development, and Zoning and Land Use practices. He has extensive experience with craft breweries ranging in size from small startups to those with national distribution. His practice includes representation of craft breweries, wineries, and distilleries in a wide range of permitting, regulatory, and trade issues. Derek has experience in all aspects of civil litigation, including depositions, hearings, mediations, arbitrations, jury trials, and appeals. He advises clients and litigates cases involving all forms of commercial, business, development, and real property disputes in state and federal courts. He has litigated numerous matters concerning land use issues at the trial and appellate levels. Derek also has experience litigating corporate and partnership disputes before the North Carolina Business Court. He routinely appears in front of city and county governmental bodies.

Practice Concentrations

Food and Beverage

Commercial Litigation

Condemnation and Eminent Domain

Land Use and Zoning

Local Government Administration

Education

J.D., The University of North
Carolina School of Law, 1997

B.A., Political Science and History,
magna cum laude, with distinction,
The University of North Carolina
Asheville, 1993. Tennis Scholarship.

Admitted to Practice

North Carolina, 1997

All state courts in North Carolina
United States Court of Appeals for
the Fourth Circuit
United States District Court for the
Eastern, Middle, and Western
Districts of North Carolina

Honors and Distinctions*

The Best Lawyers in America, 2010-2018

"Lawyer of the Year," Best Lawyers, 2015

The Business Journal of the Triad, 40 Leaders Under Forty Award

"Legal Elite," Business North Carolina, 2007-2008, 2010-2013

"Rising Star," North Carolina Super Lawyers, 2009-2011

"Super Lawyer," North Carolina Super Lawyers, 2010-2011



Professional and Community Affiliations

Asheville Area Chamber of Commerce (Leadership Asheville Alumnus, Class XXIX)

Asheville Buncombe Regional Sports Commission (board member)

Brewers Association Associate Member

Community Associations Institute

Diana Wortham Theatre (member, board of directors)

LEAF (member, board of directors)

North Carolina Bar Association — Committee: Arts, Entertainment & Sports Law Committee (past chair)

North Carolina Bar Association — Sections: Litigation; Zoning, Planning and Land Use (former council member)

North Carolina Creditors Bar Association

North Carolina Economic Developers Association

The University of North Carolina at Asheville Foundation Board (member, executive committee)

United Way of Asheville and Buncombe County (member, board of directors)

Western North Carolina Green Building Council (board member)

* Please see the following websites for an explanation of the membership standards for the following recognitions: www.bestlawyers.com; businessnc.com/special-sections/legal-elite/; and www.superlawyers.com/north-carolina.



Joanne Badr Morgan

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Asheville, NC 28802-2020

Professional Experience

Joanne's practice emphasizes the representation of banks and other financial institutions in commercial loan transactions involving asset-based and real estate secured loans, including new construction, multi-family, mixed use, retail, hotel, and healthcare related projects. She also represents real estate developers and business owners in connection with acquisition, disposition, planning, financing, construction, and leasing negotiations. Joanne's representation has further included the representation of developers and housing authorities in connection with tax credit developments of multifamily and affordable housing.

Joanne regularly advises clients on a broad range of business law matters, including the formation and structuring of new businesses and investment entities, business transfers and acquisitions, asset purchase and sale transactions, and contract drafting and negotiation.

Joanne's unique combination of experience in commercial lending, development, real estate, and business law allows her to provide sound guidance to her clients in connection with a broad range of legal issues. Clients find her knowledge of these processes beneficial when navigating these frequently complex waters, and they rely on her to focus on the smallest details of their transactions while never losing sight of the big picture.

Practice Concentrations

Commercial Real Estate
Acquisition, Financing,
Development, Subdivision, and Sale

Negotiation and Preparation of
Leases

Representation of Financial
Institutions and Borrowers in Loan
Transactions

Education

J.D., *with honors*, Quinnipiac
University School of Law, 2008.

Articles Editor, [Quinnipiac Health
Law Journal](#).

B.A., University of North Carolina at
Chapel Hill, 2003.

Admitted to Practice

North Carolina, 2008

Connecticut, 2008

New York, 2009

Honors and Distinctions*

"Rising Star," North Carolina Super Lawyers, 2018

Professional and Community Affiliations

28th Judicial District Bar

Asheville Area Chamber of Commerce (Leadership Asheville Alumna, Class XXXIV)

Buncombe County Boys & Girls Club (Advisory Council Member)

Community Foundation of Western North Carolina (Board Member)

North Carolina Bar Association — Real Property Section Council Member 2016-2019

Western North Carolina Real Estate Foundation (Board Member)

* Please see the following websites for an explanation of the membership standards for the following recognitions: www.bestlawyers.com; businessnc.com/special-sections/legal-elite/; and www.superlawyers.com/north-carolina.



William S. Durr

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P: 828.348.6062

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Post Office Box 2020
Asheville, NC 28802-2020

Professional Experience

Bill's practice experience encompasses civil litigation in both the state and federal courts. He has represented clients in a broad variety of complex construction, business, and commercial disputes. His civil litigation experience includes depositions, pre-trial and dispositive motions, mediations, arbitrations, jury trials, and appeals. Other areas of his litigation practice include insurance coverage disputes, personal injury, agribusiness litigation, and representation of professional athletes and other high net worth individuals in a variety of family law matters. Prior to joining the firm, Bill practiced civil litigation in Binghamton, New York. He also presided over numerous jury trials in his capacity as the Acting Village Justice and Village Justice for the Village of Johnson City, New York.

Practice Concentrations

Business Litigation

Commercial Litigation

Agribusiness Litigation

Equitable Distribution

Education

J.D., Washington University School
of Law, 1990. Order of Barristers.

B.A., University of Rochester, 1987

Admitted to Practice

North Carolina, 2001

All state courts in North Carolina

United States District Court for the
Eastern, Middle, and Western
Districts of North Carolina

Honors and Distinctions*

The Best Lawyers in America, 2013-2018



Professional and Community Affiliations

Asheville Downtown Association, Executive Committee Secretary

American Angus Association

American Bar Association — Sections: Antitrust Law; Family Law; Litigation

Asheville Area Chamber of Commerce (Leadership Asheville Alumnus, Class XXXIII)

Asheville Home Builders Association

North Carolina Angus Association

North Carolina Bar Association — Sections: Antitrust and Complex Business Disputes Law; Business Law; Construction; Family Law; Litigation

Virginia Angus Association

Harry C. Martin American Inn of Court

* Please see the following websites for an explanation of the membership standards for the following recognitions: www.bestlawyers.com; businessnc.com/special-sections/legal-elite/; and www.superlawyers.com/north-carolina.



Rendi L. Mann-Stadt

E: rms@wardandsmith.com

P: 828.348.6016

F: 828.348.6077

Post Office Box 2020
Asheville, NC 28802-2020

Professional Experience

Rendi's practice experience encompasses a wide range employment and business law matters. Additionally, she counsels health care providers on employment, regulatory, compliance, and transactional matters. Rendi has represented clients before professional boards, administrative agencies, and in state and federal courts in a wide variety of employment matters, including FLSA, FMLA, USERRA, and wrongful discharge. She also represents clients in general and business litigation matters, including closely-held businesses and their owners on such issues as the formation of business entities and the acquisition and sale of businesses, including start-up businesses, business transfers and acquisitions, transactional matters, and contract drafting and negotiation.

Practice Concentrations

Business Formation/Organization
and Reorganization

Corporate and Limited Liability
Company Law

Employment Contracts and
Covenants Not to Compete

Employment Discrimination and
Harassment

Employment Litigation

Wage and Hour Law

Education

J.D., *magna cum laude*, University
of Illinois College of Law, 1994.

Articles Editor, [University of Illinois
Law Review](#).

M.B.A., University of Louisville,
1986

B.S., Boston College, 1977

Admitted to Practice

North Carolina, 2002

Illinois, 1994

United States Court of Appeals for
the Fourth and Seventh Circuits

United States District Court for the
Middle and Northern Districts of
Illinois

United States District Court for the
Middle and Western Districts of
North Carolina

Honors and Distinctions*

"Legal Elite," Business North Carolina, Employment, 2013, 2016, 2018



Representative Experience

Regular representation and assistance to large and small employers in a variety of employment issues including Fair Labor Standards compliance, severance and discharge matters, discrimination claims, ACA compliance, NLRA matters

Representation of employer in National Labor Relations Board complaint of wrongful discharge

Representation of seller of \$1 million established manufacturing entity with buyer SBA financing

Representation of developer in new \$5 million hotel project

Representation of entity with significant statutory liability in Telephone Consumer Protection Act matter resulting in settlement

Representation of medical practice in contractual and shareholder issues related to entry and exit of partners

Representation of medical service provider in litigation brought by former employee

Representation of municipalities in wrongful discharge suit

Professional and Community Affiliations

28th Judicial Bar (member and secretary 2009-present, Pro Bono Committee)

American Bar Association — Sections: Labor and Employment Law; Litigation

Asheville Area Chamber of Commerce (Leadership Asheville Alumnus, Class XXXI)

Attorney Registration and Disciplinary Commission of Supreme Court of Illinois

Child Abuse Prevention Services (member, board of directors 2008-2010)

Federal Bar Association

Irene Wortham Center (past chair; member, board of directors 2005-present)

The Mediation Center (member, board of directors 2011-present)

North Carolina Association of Women Attorneys

North Carolina Bar Association — Section: Labor and Employment Law

Society for Human Resource Management

United Way (funding council)

WCQS Public Radio (member, Advisory Board 2011-present; president, 2012)

Western North Carolina Human Resource Association

YWCA Tribute to Women and Industry Award Recipient (2010)

** Please see the following websites for an explanation of the membership standards for the following recognitions: www.bestlawyers.com; businessnc.com/special-sections/legal-elite/; and www.superlawyers.com/north-carolina.*

INSURANCE

MALPRACTICE AND PROFESSIONAL LIABILITY INSURANCE

Our professional liability insurance has total liability limits of \$20,000,000, split equally between two carriers and two policies. The first layer (primary) of coverage is provided by AXIS Professional Insurance. The second layer (excess) of coverage is provided by QBE – Specialty Insurance Company. In the event that a claim ever resulted in paying out damages, the limits of the primary policy would be exhausted before the excess policy would be tapped.

Each year during the renewal process we reassess our limits of liability to make sure we are adequately insured. Both policies renew annually on July 18.

We have included in this portion verification (i.e., copies of the Declarations Pages) of both our primary and excess policy coverage.



AXIS PRO® LP LAWYERS PROFESSIONAL LIABILITY INSURANCE POLICY

DECLARATIONS

THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS CLAIM EXPENSES. PLEASE READ THIS POLICY CAREFULLY.

COMPANY: AXIS Surplus Insurance Company		POLICY NUMBER: ENN 775480/01/2017		
Item 1. Firm: Ward and Smith, P.A. 1001 College Court New Bern, NC 28562		Item 2. Policy Period: (A) Inception Date July 18, 2017 (B) Expiration Date July 18, 2018 <i>Both dates at 12:01 a.m. at the address listed in Item 1.</i>		
Item 3. Limits of Liability (Inclusive of Claim Expenses): a. \$ <u>10,000,000</u> each Claim b. \$ <u>10,000,000</u> Aggregate		<u>Tammy Walton, National Producer Number 5542881</u> <u>The insurance company with which this coverage has been placed is not licensed by the State of North Carolina and is not subject to its supervision. In the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund.</u> Surplus Lines Tax \$11,934 Stamping Fee \$954.72		
Item 4. Retentions: \$ <u>100,000</u> each Claim				
Item 5. Premium: [REDACTED] Broker Fee \$500				
Item 6. Notices to Company: <table border="0"><tr><td><u>Notice of Claim(s) To Be Sent To:</u> AXIS Professional Insurance Address: 300 Cornell Drive, Suite 8000 P.O. Box 357 Berkeley Heights, NJ 07922-0357 Facsimile: (908) 508-4389 USClaimNoticeBH@axiscapital.com</td><td><u>All Other Notices To Be Sent To:</u> AXIS Professional Insurance Address: One State Street, Suite 1700 Hartford, CT 06103 Facsimile: (860) 707-1725</td></tr></table>			<u>Notice of Claim(s) To Be Sent To:</u> AXIS Professional Insurance Address: 300 Cornell Drive, Suite 8000 P.O. Box 357 Berkeley Heights, NJ 07922-0357 Facsimile: (908) 508-4389 USClaimNoticeBH@axiscapital.com	<u>All Other Notices To Be Sent To:</u> AXIS Professional Insurance Address: One State Street, Suite 1700 Hartford, CT 06103 Facsimile: (860) 707-1725
<u>Notice of Claim(s) To Be Sent To:</u> AXIS Professional Insurance Address: 300 Cornell Drive, Suite 8000 P.O. Box 357 Berkeley Heights, NJ 07922-0357 Facsimile: (908) 508-4389 USClaimNoticeBH@axiscapital.com	<u>All Other Notices To Be Sent To:</u> AXIS Professional Insurance Address: One State Street, Suite 1700 Hartford, CT 06103 Facsimile: (860) 707-1725			
Item 7. Endorsements Effective at Inception: AXIS 102 ASIC (04-15) Signature Page No. 1 LP 1110 101 (09-11) Additional Insured Amendatory Endorsement No. 2 LP 1110 107 (09-11) Defense and Settlement Amendatory Endorsement No. 3 LP 1110 MANU Definition of Professional Services Manuscript Endorsement – Fund-Specific Administration No. 4 SOS-NC (11-03) Service of Suit Clause – North Carolina SLN-NC (07-06) Policyholder Notice – North Carolina				

**QBE Specialty Insurance Company**

Wall Street Plaza, 88 Pine Street, New York, New York 10005

Home Office: c/o CT Corporation System, 314 East Thayer Avenue, Bismarck, North Dakota 58501

EXCESS INSURANCE POLICY DECLARATIONS

THIS POLICY IS A CLAIMS MADE POLICY AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY TO PAY JUDGMENTS OR SETTLEMENT AMOUNTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY PAYMENT OF DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

Item 1: Named Insured: Ward & Smith, P.A.

Mailing Address: 1001 College Court
New Bern, NC 28562

Item 2: Policy Period: From: July 18, 2017 To: July 18, 2018
At 12:01 A.M. Standard Time at the mailing address stated in Item 1

Item 3: Limit of Liability:

- A. 100% of \$10,000,000 any one Claim
- B. 100% of \$10,000,000 in the aggregate

Item 4: A. Followed Policy

Insurer: Axis Surplus Insurance Company
Policy Number: ENN775480/01/2017
Limit of Liability: \$10,000,000 Each Claim & \$10,000,000 Aggregate
Policy Period: July 18, 2017 to July 18, 2018

**Tammy Walton, National Producer Number
5542881**

**The insurance company with which this coverage
has been placed is not licensed by the State of
North Carolina and is not subject to its supervision.
In the event of the insolvency of the insurance
company, losses under this policy will not be paid
by any State insurance guaranty or solvency fund.**

Surplus Lines Tax \$4,042

Stamping Fee \$323.36

Item 5: Premium and Applicable Charges

Premium: \$80,840

Item 6: A. Notice to Insurer of a Claim or circumstance:

QBE Specialty Insurance Company
Attn: The Claims Manager
Wall Street Plaza
88 Pine Street, 18th Floor
New York, New York 10005
Telephone: (877) 772-6771
Facsimile: (212) 894-7899;
Email: professional.liability.claims@us.qbe.com

B. All Other Notices to Insurer:

QBE Specialty Insurance Company
Attn: Underwriting
Wall Street Plaza
88 Pine Street, 18th Floor
New York, New York 10005
Telephone: (877) 772-6771
Facsimile: (212) 894-7899
Email: professional.liability.claims@us.qbe.com

Item 7: Retroactive Date: Unlimited

In witness whereof, the Insurer has caused this Policy to be executed, but it shall not be valid unless also signed by a duly authorized representative of the Insurer.

WAIVERS

Within the last five years no member of Ward and Smith, its officers, partners, employees, shareholders, or principals have been party in any litigation or other legal proceedings as a defendant relating to the services provided by Ward and Smith.

Neither the firm nor any of its officers, partners, principals, agents, or employees, that are expected to perform services under this RFP, or otherwise, have been disciplined, admonished, warned, or had any license, registration, charter, certification, or any similar authorization to engage in the legal profession suspended or revoked for any reason.

Ward and Smith has not been in bankruptcy, reorganization, or receivership in the last five years.

CLIENT ENGAGEMENT HISTORY

Ward and Smith regularly represents governmental entities as general and special legal counsel. It is not uncommon for our special counsel roles to conclude in the normal course of a project. At other times, a client's priorities and strategies may change, and we may withdraw from representation or adjust our services accordingly.

The only instance we have identified within the last five years that might be construed as a less-than-amicable departure from a municipal or county client was when we ceased representing a small municipality in the eastern part of the state. Attorney-client confidentiality obligations keep us from providing details related to the engagement, but suffice it to say that within a year after termination of our services, the town manager was fired, the police chief resigned, and the mayor was indicted for public corruption. Our goal was to help our client, but when that became impossible, termination was the appropriate step.

Ward and Smith attorneys will always provide honest and objective legal advice. If that advice so upsets a client that termination is the only viable option, we are willing to take termination over downgrading our standards.

FLAT FEE AND HOURLY RATES

Legal costs are highly variable and depend on a range of factors beyond the control of legal counsel and the Town. Ultimately, legal services depend on the Town's needs and budget. Regardless, we are willing to find the proper scope of work that matches your budget and goals. However, the Town's prudent use of a flat fee to cover most legal services will allow both the Town and the Firm to plan and budget accordingly. We often work on a flat fee basis for core legal services, and we welcome the opportunity to do so for the Town.

We are committed to providing the Town with professional services of superior quality. We believe that your satisfaction with the cost of such services is of equal importance in maintaining a long term relationship.

The Town faces a multitude of legal issues, some known, some unexpected. Predicting all of the legal issues the Town will encounter is not possible. We have found that a two-pronged approach works well when providing legal services to municipalities such as the Town. We propose:

1. **Flat Fee Monthly Retainer.** This retainer will establish a set amount for the basic budgeting process. In addition, it provides a baseline to determine whether the Town is receiving value from us. Likewise, we can assess whether the retainer is reasonable for the time and complexity of the work involved. As the relationship develops, either the Town or the Firm may desire to discuss an adjustment to the flat fee retainer. For our monthly flat fee, we propose:

- **\$9,000 per month.** This amount will cover:
 - Attendance at all Town regular, workshop, and special meetings.
 - Preparing weekly status reports providing updates to the Town Mayor and Board through the Town Manager.
 - Routine review and preparation of ordinances, amendments.
 - Approval of all official bonds.
 - Review and approval of draft resolutions as requested.
 - Assistance with real estate transactions, including foreclosures, preparation of deeds and property descriptions, filing of liens, and sale or acquisition of property associated with Town projects and/or operations.
 - Assistance with development and review of deeds, contracts, offers, and any other instruments relating to the business of the Town as requested.

FLAT FEE AND HOURLY RATES, cont.

- Advise the Mayor, Board, and other Town officials, as to the legality and legal consequences of proposed courses of action.
- **Additional Services: Conduct one annual ethics compliance seminar for staff or Board; conduct one annual labor and employment law seminar for staff.**

This flat fee is our best estimate of the time, care, and expertise required to meet the Town's expectations. We encourage the Town to meet with us and discuss the fee in more detail if the Town would like to adjust the monthly fee. We are open to a best and final offer based on more detailed discussions. Once the proposed fee is agreed upon by both the Firm and the Town, those fees will be guaranteed for two (2) years from the acceptance date of the proposal, with review and negotiation of terms, every two years thereafter.

2. **Projects Outside Scope of Work Covered by the Retainer.** For projects outside the scope of this proposal, including legal prosecution and defense for and against the Town and for and against the Town officials acting in their official capacity, the fee (hourly or fixed) would be set at the beginning of engagement. If possible, we will determine a fixed fee in consultation with you. Although it is not possible to set a fixed fee for every sort of legal issue, we will do all we can to work with you to identify matters that can reasonably be predicted to cost a certain amount. This approach allows the Town to budget for a particular matter. Due to the highly variable nature of these fees, we cannot provide an estimate without considering particular facts and circumstances. When hourly rates are used, those rates will be:

- **Attorneys with up to seven years' experience: \$265.00**
- **Attorneys with more than seven years' experience: \$375.00**
- **Paralegals: \$135.00**

Increases, if any, in these fees would be subject to your prior approval.

CONFLICTS OF INTEREST

Conflicts of interest are inherent in today's complex legal world. We conduct extensive conflict checks and due diligence review for all new clients and existing clients with new matters. Sometimes, conflicts of interest do arise. When we identify a conflict or potential conflict, we move quickly to resolve any issues by disclosing the problem to all involved clients and taking steps in accordance with the Rules of Professional Conduct.

Although we represent a large number of government entities, individuals, and corporations that are located in or do business in Buncombe County, we have not identified any conflicts of interest that we believe would interfere with our ability to zealously represent the Town.

TRANSITIONING SERVICES

Ward and Smith respects the current Town's attorney's representation and will welcome the opportunity to meet as colleagues to transition services. A number of factors will need to be considered when estimating the time needed for a full transition, including the status of existing lawsuits or legal matters. Ward and Smith is committed to expediting a full transition as quickly and efficiently as possible.

REFERENCES

City of Jacksonville
John Carter, Esq., City Attorney
P: 910.938.5221
E: jcarter@jacksonvillenc.org

City of Jacksonville
Dr. Richard Woodruff, City Manager
P: 910.938.5221
E: rwoodruff@ci.jacksonville.nc.us

City of Havelock
Mr. Frank Bottorff, City Manager
P: 252.444.6400
E: fbottorff@havelocknc.us

Craven County
Mr. George S. Liner, Board of Commissioners
P: 252.617.0888 (Cell)
E: gliner@cravencountync.gov

Town of Swansboro
Mr. Scott Chase, Town Manager
P: 910.326.4428
E: schase@ci.swansboro.nc.us

ARTICLES OF INTEREST

OUR EXPERIENCE IS YOUR EXPERIENCE

Ward and Smith attorneys provide timely legal updates and information by frequently authoring and publishing articles. These resources are made available to you on our website. We have included a sample of articles we think would be especially interesting to the Town. The articles only hint at the depth and breadth of our experience. (In the electronic version of this proposal, you can click on the linked document to read it.).

[New Statutes of Limitation For Zoning Enforcement](#)

March 27, 2018 | [Stanley M. Sams](#)

Statutes of limitation are laws that place a limitation on the period of time within which a party may commence litigation about certain matters.

[Muddy Waters: Stormwater Permits Not Meant to Control Flooding or Flood Losses](#)

January 17, 2018 | [Amy P. Wang](#)

Those living in communities subject to North Carolina Stormwater Permits or local stormwater management easement agreements are increasingly alarmed as rainy weather, even without a named storm, causes property to saturate and appear flooded.

[NC Department of Transportation Condemnation: What Do They Mean By Permanent Utility Easement?](#)

January 15, 2018 | [Ryal W. Tayloe](#)

When the North Carolina Department of Transportation ("DOT") exercises its power of eminent domain, in addition to taking private property in fee simple, it will often take various easements, including Permanent Utility Easements ("PUE").

[Federal Tax Liens In Foreclosure Proceedings](#)

August 8, 2017 | [Lance P. Martin](#)

Henkel v. Triangle Homes is a North Carolina Court of Appeals case with dueling tax foreclosure proceedings involving the same property.

ARTICLES OF INTEREST, cont.

[House Bill 89: Does It Grant or Just Tweak The Power to Abolish a Public Housing Authority?](#)

March 23, 2017 | [James W. Norment](#)

Since 1969, Chapter 157 of the North Carolina General Statutes (the "Housing Authority Law") has allowed municipalities and counties to create and abolish Public Housing Authorities.

[TAKEN! Historic Eminent Domain Decision: NCDOT Must Pay When it Files a Transportation Corridor Protection Map](#)

June 16, 2016 | [Ryal W. Tayloe](#), [Jeremy M. Wilson](#)

On June 10, 2016 the North Carolina Supreme Court affirmed the decision of the North Carolina Court of Appeals in the case of Kirby v. North Carolina Department of Transportation.

[Don't Let the Golden Goose Get Away: The Need for Caution When Contracting with a Local Government Unit](#)

April 24, 2013 | [Jeremy M. Wilson](#)

When contracting with a local government unit, it is important for businesses to consider additional legal requirements that, if not complied with, may void what appeared to be a golden opportunity.

[Sequestration and the Department of Defense Budget: Its Stunning Impact on the National and North Carolina Economies](#)

August 22, 2012 | [James W. Norment](#), [Hugh R. Overholt](#)

What is Sequestration? "Sequestration" is the fancy name given in Washington, D.C., to an extremely ugly and blunt form of congressional budget control.

[The North Carolina Open Meetings Law: What Members of Governing Boards and Citizens Need to Know](#)

March 14, 2011 | [James W. Norment](#)

Clients – whether governmental bodies or interested citizens – often ask about how North Carolina's Open Meetings Law works.

ARTICLES OF INTEREST, cont.

[Municipalities, Farmers, and Manufacturers Targeted by EPA's New Enforcement Initiatives](#)

June 2, 2016 | [Amy P. Wang](#)

Municipalities and those involved in animal feeding and food manufacturing operations take heed: heightened EPA scrutiny is coming your way!

[Eminent Domain 101](#)

November 10, 2015 | [Eric J. Remington](#)

The power of eminent domain, also referred to as condemnation, is the power to involuntary take a person's private property for a public purpose.

[E-Verify Changes Expected for North Carolina](#)

October 27, 2015 | [Hayley R. Wells](#)

In the final days of the 2015 legislative session, the North Carolina General Assembly passed the Protect North Carolina Workers Act ("Act").

[Residential Planned Communities and Condominiums: Changing the Rules After the Game has Begun](#)

June 20, 2016 | [William F. Wolcott, III](#)

As Americans, it is in our nature to always look for ways to improve anything and everything affecting our lives, including the cars we buy, the food we eat, and yes, even the organizations to which we belong.

[North Carolina General Assembly Makes Public-Private Development Agreements More Available And Attractive](#)

May 24, 2016 | [Clifford P. Parson](#)

Before 2005, North Carolina's laws on vested rights offered developers some protection, but not enough, for the large, multi-phased, multi-year, mixed use developments that are becoming the norm.



*Writer's Direct Phone: 828/258-6919
Writer's Direct Fax: 828/210-6554
Writer's E-mail: bclarke@roberts-stevens.com*

May 31, 2018

Don Collins, Mayor
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

Re: Town of Black Mountain Attorney Position

Dear Mayor Collins:

Enclosed is a proposal from Roberts & Stevens responding to the Town of Black Mountain's request for legal services. Please let me know if you have any questions.

Sincerely,

ROBERTS & STEVENS, P.A.

BC/sh
Enclosure

William Clarke



Response to Town of Black Mountain's Request for Proposal For Legal Services

May 31, 2018

1. William Clarke
Roberts & Stevens, PA
City Centre Building
301 College Street, Suite 400
Asheville, NC 28801
Mailing address: PO Box 7647 (28802)
Phone: (828) 258-6919
Fax: (828) 210-6554
E-mail: bclarke@roberts-stevens.com
2. William Clarke is a native of Western North Carolina. He was born in Bat Cave and grew up on Hickory Nut Gap Farm in Fairview. He graduated from Princeton University with a degree in American History in 1979 and from the University of North Carolina School Of Law in 1982.

William Clarke has practiced law in Asheville and western North Carolina since 1982, first with Redmond Stevens Loftin & Currie, then with its successor firm, Roberts & Stevens.
3. Roberts & Stevens has 25 lawyers. We would propose the following individuals to provide legal services. William Clarke would be the primary contact. Jacqueline Grant would provide employment counsel including litigation defense. She graduated from Western Carolina University in 1992 and obtained her JD from the University of North Carolina at Chapel Hill in 1995. John Noor would also provide services as needed. He graduated from the University of North Carolina at Asheville in 2007 and obtained his JD from the University of North Carolina at Chapel Hill in 2011. No staff or lawyers are dedicated to municipal law, however, adequate attorney and support staff can and will be provided as needed. The firm's offices are located in Asheville, and services will be provided from that office.

4. Roberts & Stevens was formed in 1986 as the result of a merger of Redmond, Stevens, Loftin & Currie and Roberts and Cogburn. The firm and its predecessors have represented the Metropolitan Sewerage District since the District's formation in the 1960's. The firm has extensive experience representing local governments in litigation including land condemnation, construction, contract review and preparation, employment matters, environmental issues, land use, litigation including land condemnation, real estate and constitutional issues.
5.
 - a. William Clarke obtained his Juris Doctor degree from UNC Chapel Hill in 1982. He was admitted to the Bar in North Carolina in 1982 and has been in practice continuously since that date. He is admitted to practice in all state and federal courts in North Carolina. His practice focuses primarily on environmental law and representation of public entities.
 - b. William Clarke has worked on legal matters for MSD since 1982. He has served as general counsel since 1999. He has served as Town Counsel for the Town of Biltmore Forest since 2012. He has also represented other local governments on environmental matters including Brownfields redevelopment and land condemnation.
 - c. Mr. Clarke has represented local governments in land condemnation litigation, employment litigation, contract disputes, enforcement actions, constitutional challenges and appeals. He has successfully settled and tried multiple cases in the State Court system and in the North Carolina Office of Administrative Hearings.
 - d. Mr. Clarke has been recognized in Best Lawyers in America since 1999, as a North Carolina Super Lawyer and as a member of the North Carolina Legal Elite. He is a member of the North Carolina Bar Association, Environment, Energy and Natural Resources, and the Government and Public Sector law sections.
6. You will have Mr. Clarke's direct telephone number and mobile phone number. It is Mr. Clarke's practice to answer his own phone when he is available and to promptly return phone calls and e-mails.
7. The firm has multiple clerical and support staff including legal assistants and paralegals. The firm has online access to multiple legal research data bases through Westlaw.
8. Malpractice Insurance coverage is \$6,000,000.00 per claim. A copy of Roberts & Stevens Declarations page is enclosed.
9. No.
10. No.
11. No.

12. No.
13. If selected, attorney time would be billed at the rate of \$250 per hour plus expenses. Expenses include mileage, filing fees, copies, postage and other fees necessary to adequately represent the Town. The Town will be consulted prior to incurring any extraordinary expenses. Statements will be sent monthly (electronically). The firm will utilize the knowledge and experience of its lawyers, technology and a practical cooperative approach to problem solving to provide cost effective legal services. The firm is willing to consider alternative fee arrangements.
14. Jacqueline Grant or John Noor, both partners in the firm, will be available to handle a matter or refer the matter to the appropriate person or persons in the firm.
15. We are not aware of any actual conflicts. The Town of Black Mountain is a member of the MSD and of the Land of Sky Regional Council, to whom the firm currently provides services. We do not believe that is a conflict, but if a conflict should arise, the firm would withdraw from representation of either party.
16. If selected, we would propose to meet with the Town Manager and Town Attorney, and review all pending matters. It may make sense for the current Town Attorney to finish up some projects. We would expect that the transition could be done in 30 days or less. We expect the relationship with the current attorney would be a good one.
17. Tom Hartye, P.E. General Manager, MSD
828-225-8399
Jonathan Kanipe, Town Manager, Town of Biltmore Forest.
828-274-0824

Sincerely,

ROBERTS & STEVENS, P.A.

BC/she
Enclosure

William Clarke

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: June 11, 2018

SUBJECT: Recommendation for ONE Way Travel on Sixth Street **#R-18-09**

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8C
Department:	Building, Planning and Zoning Services Department
Contact:	Jamey Matthews, Public Works Director
Presenter:	Jamey Matthews, Public Works Director

BRIEF SUMMARY: Sixth Street is currently a dead end street with two-way traffic. This resolution will change Sixth Street to one-way travel from Montreat Road to Portman Villa, in anticipation of connecting Sixth Street to Portman Villa in the future. This traffic pattern is supported by fire code, and was determined in collaboration with the planning department as well.

MOTION FOR CONSIDERATION: To adopt Resolution **#R-18-09** changing Sixth Street to one-way travel.

FUNDING SOURCE: N/A

ATTACHMENTS: Draft Resolution

MANAGER'S COMMENTS AND RECOMMENDATIONS:



TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

BoA Regular Session
June 11, 2018
Agenda Item 8-C

RESOLUTION #R-18-09

RESOLUTION OF THE BOARD OF ALDERMEN CHANGING SIXTH STREET TO ONE-WAY TRAVEL

WHEREAS, the Town of Black Mountain seeks to protect public safety; and

WHEREAS, the Town of Black Mountain is in compliance with State of North Carolina Fire Code;

WHEREAS, it is in the public interest for Sixth Street to have one-way travel from Montreat Road to Portman Villa

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain, that

Section 1: The Board of Aldermen authorize changing Sixth Street to one-way travel in anticipation of connecting to Portman Villa.

Section 2: This **Resolution #R-18-09** shall be effective upon its adoption.

READ, APPROVED AND ADOPTED by a vote of ____ to ____ this 11th day of June, 2018.

Don Collins, Mayor

ATTEST:

Angela Reece, Town Clerk

Justin Hembree, Interim Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: December 13, 2010

SUBJECT: Resolution Adopting a Code of Ethics and Rules of Procedure for the Black Mountain Board of Aldermen

AGENDA INFORMATION

Agenda Location: Consent
Item Number: 7-F
Department: Board of Aldermen
Contact: Darlene Whisenant, Town Clerk
Presenter: Marcy Onieal, Town Manager

BRIEF SUMMARY: Sections 160A-86/87 of the North Carolina General Statutes, adopted by the NC General Assembly, and effective on January 1, 2010, requires that all local governing boards in the state of North Carolina adopt a code of ethics no later than January 1, 2011. As a means to encourage and strengthen ethical behavior among the state's elected officials, the General Assembly included in this same legislation a requirement that all elected officials must complete a minimum of 2 clock hours of ethics training within one year of election or reelection (each time an elected official takes office). All members of the Black Mountain Board of Aldermen have complied with this requirement, having completed ethics training through UNC School of Government classes and webinars in late 2009 and early 2010.

Adherence to the locally adopted code of ethics is largely a matter of voluntary compliance, as NCGS §160A-86 does not authorize sanctions or other means of enforcing ethics codes. However, the ordinance does provide for the adoption of a resolution of censure, when a board member fails to comply with some provision of the code. Legal action may be taken if a board member's behavior violates some other law, such as the state's criminal law, open meetings or public records law, or common law or constitutional limitation that affects government actions (e.g. provisions regarding procedural due process, conflicts of interest, gifts and favors . . .)

The Board of Aldermen have directed the manager to draft a code of ethics and incorporate into the draft some rules of procedure, agreed to by all members of the board at their retreat on August 31, 2010, which would establish group expectations and standards for collective and individual behaviors under specific circumstances.

MOTION FOR CONSIDERATION: To approve Resolution #R-10-17, adopting the Black Mountain Board Code of Ethics and Rules of Procedure as presented.

FUNDING SOURCE: N/A

ATTACHMENTS:

- Excerpt from A. Fleming Bell, II: *A Model Code of Ethics for North Carolina Elected Officials*, UNC School of Government, 2010.
- Resolution #R-10-17

MANAGER'S COMMENTS AND RECOMMENDATIONS: The draft ordinance has been prepared using the UNC School of Government's Model Code of Ethics, and expectations discussed and agreed to by the Board during their retreat on August 31, 2010. Manager recommends adoption in order to meet the statutory deadline, with the understanding that the board may amend the ordinance from time to time as it sees fit.

Although not required to do so by the General Assembly, all Town employees also participated in ethics training during 2010, and the Manager has made ethics training a mandatory requirement for all new hires as a part of employee orientation.

SCOPE OF LOCAL CODES OF ETHICS

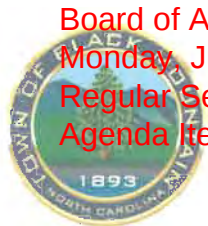
Under NCGS §160A-86, all North Carolina cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties **must** by January 1, 2011, adopt a resolution, ordinance or policy containing a code of ethics to guide actions by the governing board members in the performance of their official duties as board members. The code must address at least five key board member responsibilities. These responsibilities reflect concern for ethical principles as well as for the effects of the board members' decisions on others. The tenets of any code of ethics may be "aspirational", "prohibitive", or some combination of both.

The five areas to be addressed are as follows:

- 1) The need **to obey all applicable laws** regarding official actions taken as a board member (*e.g. the member must honor the oath of office, in which the member swore to uphold the constitutions and laws*)
- 2) The need **to uphold the integrity and independence** of the board member's office (*i.e. board members are required to base decisions on the public good and not on their personal desires or considerations of special interests*)
- 3) The need **to avoid impropriety** in the exercise of the board member's official duties (*i.e. board members must honor the public trust in carrying out their duties, by ensuring that their actions are above reproach*)
- 4) The need **to faithfully perform** the duties of the office (*i.e. a public official who acts faithfully is one whom others can trust, rely on, and respect*)
- 5) The need **to conduct the affairs of the governing board in an open and public manner**, including complying with all laws and standards concerning open meetings and public records (*i.e. public business must be dealt with openly and transparently in order to meet both the letter and spirit of the law*)

The statute allows for leeway in deciding what local codes of ethics will include, provided that all five topics listed above are covered. The language may be very detailed or very general, and may go so far as to describe behaviors toward which the board as a whole should strive or avoid.

The code should be comprehensive, covering the full range of ethical principles that apply to public officials. It should contain a statement of guiding principles, as well as prohibited behaviors that specifically apply to situations that are reasonably likely to occur. Finally, it should be clear, unambiguous, simple and easy to read and use.



TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

RESOLUTION #R-10-17

RESOLUTION OF THE BOARD OF ALDERMEN ADOPTING A CODE OF ETHICS AND RULES OF PROCEDURE FOR THE GOVERNING BODY OF THE TOWN OF BLACK MOUNTAIN

WHEREAS, the Constitution of North Carolina, Article I, Section 35, instructs that a “frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty”; and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina’s state motto, “*Esse quam videri*”, (*To be rather than to seem*); and

WHEREAS, as public officials elected to the Black Mountain Board of Aldermen, members are charged with upholding the trust of the citizens of Black Mountain, and obeying the law; and

WHEREAS, the North Carolina General Assembly ratified House Bill 1452 on the 28th day of July, 2009, requiring all members of governing boards covered by this act to receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office, and again, within 12 months after each subsequent election or appointment to the office, and requiring local governing boards to adopt a code of ethics no later than January 1, 2011; and

WHEREAS, the Board of Aldermen considers it to be in the best interest of the Town to adopt such a code;

NOW THEREFORE, BE IT RESOLVED by the Town of Black Mountain Board of Aldermen, in recognition of our blessings and obligations as citizens of the State of North Carolina, as public officials representing the citizens and residents of the Town of Black Mountain, and acting pursuant to the requirements of Sections §160A-86 and §160A-87 of the North Carolina General Statutes, that the following General Principles, Code of Ethics, and Rules of Procedure are hereby adopted, to guide members of the Board of Aldermen, town employees and members of all Town advisory boards, commissions and committees in the lawful performance of their duties and the lawful exercise of decision-making authority:

**CODE OF ETHICS & RULES OF PROCEDURE
FOR THE MAYOR AND BOARD OF ALDERMEN
BLACK MOUNTAIN, NORTH CAROLINA**

PREAMBLE

The purpose of this Code is to establish ethical guidelines and appropriate standards of conduct for the Mayor and Board of Aldermen of the Town of Black Mountain. It should not be considered a substitute for the law or for a board member's best judgment. All references herein to Members, Board, Aldermen or Board of Aldermen shall be understood to include the Mayor.

The Board of Aldermen hereby directs members of all advisory boards, commissions, committees and task groups, which currently serve, or which will serve, the Black Mountain Board of Aldermen, to respect and to abide by these same General Principles and Code of Ethics in the performance of their lawful duties, inasmuch as they may apply to the performance thereof.

GENERAL PRINCIPLES

- The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- Board members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- Board members serve in different capacities and roles, all with intrinsic and legitimate importance to the proper functioning of representative government:
 - As advocates, who strive to advance the legitimate needs of their citizens
 - As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions
 - As decision-makers, charged with arriving at fair and impartial determinations of an administrative or adjudicatory nature.
- Board members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Board members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each board member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

Section C-1. A Board Member Shall Ohey the Law

- A. Board members shall support the Constitution of the United States of America and the Constitution of the State of North Carolina, and shall obey all laws, codes, regulations and ordinances enacted by the Congress of the United States and the North Carolina General Assembly pursuant thereto. In addition, Board members shall support the Charter of the Town of Black Mountain, and obey the Code of Ordinances of the Town of Black Mountain, adhering to all provisions of the Code without favor or exception.
- B. Board members shall be guided by the spirit as well as the letter of the law in whatever they do. At the same time, board members should feel free to assert policy positions and opinions without fear of reprisal from fellow board members or citizens. To assert that a board member is behaving unethically because one disagrees with that board member on a question of policy is itself unfair, dishonest, irresponsible, and unethical.
- C. Board members shall endeavor to keep themselves fully informed and current, through the Town Attorney, Town Manager, and other widely recognized and reliable professional resources, of the most pertinent constitutional, statutory, and legal requirements with which they must be familiar in order to meet their legal responsibilities. A list of applicable laws and regulations, which may be regularly updated, accompanies this Code as Appendix "A".

Section C-2. A Board Member Shall Uphold the Integrity and Independence of His or Her Office

Board members shall demonstrate the highest standards of personal integrity, truthfulness, honesty, forthrightness and fortitude in all their public activities in order to inspire public confidence and trust in Town government. Board members shall participate in establishing, maintaining and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly and consistently to sound values
- Exhibiting trustworthiness
- Behaving at all times as if on duty as elected officials, in both public life and private life
- Using one's best independent judgment, while at the same time being able to consider the opinions and ideas of others
- Pursuing the common good rather than individual interests in all discussion and decision-making
- Presenting one's opinions in a reasonable, forthright, consistent manner regardless of the audience
- Remaining incorruptible and unaffected by improper influence

- Remaining unswayed by partisan interests, public clamor or fear of criticism
- Disclosing contacts and information about issues received outside of public meetings, and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves
- Treating other board members, employees and the public with patience, respect, courtesy and honesty, and honoring the opinions of others even when the board member disagrees with those opinions
- Being careful not to reach conclusions on issues until all sides have been heard
- Recognizing that individual board members may not speak or act on behalf of the Town board as a whole, unless the board takes official action as a body to so authorize it

Section C-3. A Board Member Shall Avoid Impropriety and the Appearance of Impropriety in All His or Her Activities

- A. It is essential that Town government attract those citizens best qualified and willing to serve in elective and appointed offices. Members shall avoid impropriety in the exercise of their official duties, and official actions of the Board must be beyond reproach. The Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all the relevant facts and circumstances surrounding a board member's action would conclude that the action was inappropriate.
- B. Board members shall not allow family, social, civic, partisan or other relationships to unduly influence their conduct or judgment, and shall not lend the prestige of the office of Mayor or Alderman to advance the private interests of others; nor should members convey, or permit others to convey, the impression that they are in a special position of influence or benefit. Board members shall not grant, nor seek, any special consideration, treatment or advantage beyond that which is available to every other citizen.
- C. If the mayor or board member has an interest in any official act or decision before the Board, he or she shall publicly disclose on the record of the Board the nature and extent of such interest and shall withdraw from consideration of the matter, if excused by the Board pursuant to N.C.G.S. §160A-75.
- D. If a board member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the Town Attorney, and should consider publicly disclosing the facts of the situation and the steps taken to resolve any real or perceived impropriety or conflict of interest.

Section C-4. A Board Member Shall Perform the Duties of the Office Diligently

- A. Board members should bear their fair share of board work, regularly attending and preparing for meetings, carefully analyzing all credible information properly submitted, mindful of the need not to engage in communications outside the meeting in quasi-judicial matters, and demanding full accountability from those over whom the board has authority.

- B. Board members should actively pursue policy goals in a manner consistent with orderly decision-making, rules of procedure, open government, respecting the rights of other members to voice goals and policies different from their own.
- C. Board members should demand and contribute to the maintenance of order and decorum, among themselves and the public, in all official and informal proceedings, and dispose promptly of Town business for which the board is responsible.
- D. Board members shall promote conservation and development of Town resources, employing equipment, property, funds and personnel only in legally permissible pursuits, and in a manner that maintains professional competence and exemplifies excellent stewardship.
- E. Board members should act as especially responsible citizens whom others can trust and respect, keeping in mind that trust and respect must continually be earned. To the extent appropriate, board members should be willing to put the board's interests ahead of their own, acknowledging the authority of the Board's majority, and refraining from attempts to undermine board policy or decisions, once action has been taken.
- F. Board members shall recognize and respect the council-manager form of government, assuming legislative, adjudicatory, and policy-setting responsibilities, while refraining from inappropriate interference in the impartial administration of Town affairs by town employees.
- G. Except for employees reporting directly to the Board, members shall refrain from attempting to exercise control, supervision or direction over town employees, and shall refrain from granting or seeking special consideration, treatment, advantage, or favor among employees.
- H. Board members shall expect employees to observe the same high standards of fidelity, diligence that apply to board members, in addition to standards of conduct that apply specifically to employees. Board members who become aware of improper conduct or substandard performance by a town employee shall promptly inform the Town Manager.
- I. Board members shall encourage and support recognized best practices in municipal administration and refrain from implementing policies or actions that may result in waste, fraud, favoritism, discrimination, nepotism, inequitable compensation or other administrative or employment practice detrimental to Town interests.

Section C-5. A Board Member Should Conduct the Affairs of the Board in an Open and Public Manner in Order to Inspire and Maintain Public Confidence and Trust

- A. Board members shall conduct the affairs of the board in an open and public manner, maintaining candor and transparency, and prompt response to public records requests, in

accordance with both the letter and spirit of the state's Open Meetings and Public Records Laws. Board members shall accord to every person who is legally interested in a proceeding his or her full right to be heard according to law.

- B. Board members shall demand, and contribute to ensuring, that any closed sessions held by the board are lawfully conducted and that such sessions do not stray from the purposes for which they are called.
- C. Consistent with the goal of preserving the public trust, board members shall respect the need for discretion and shall preserve confidentiality in deliberations among members, to the extent allowed by law, when the lack of discretion would pose a threat to legitimate Town interests.

Section C-6. A Board Member Should Regulate His or Her Extragovernmental Activities to Minimize the Risk of Conflict with His or Her Official Duties

- A. It is acknowledged that board members have legitimate economic, professional, vocational and personal interests of a private nature. Board members should not be denied, and should not deny to other board members, the opportunity to pursue private interests, except when one's private interests conflict with applicable laws or his/her official responsibility to the public. Information acquired by board members in their official capacity may not be used or disclosed in personal financial dealings or for any other purpose not related to his or her official public duties.
- B. Board members shall inform themselves of all applicable campaign finance and conflict of interest laws, adhere scrupulously to the provisions therein, refrain from financial and business dealings that may reflect adversely on the board or Town government or interfere with proper performance of official duties, and manage their personal financial interests to minimize the number of instances in which they must abstain from voting on matters coming before the Board.
- C. Board members shall, at the first regular meeting following municipal elections after having taken the oath and assumed office, and at least annually thereafter, file with the Town Clerk, a written, signed disclosure statement:
 - i. Describing any interest the member, or his/her spouse or domestic partner, has in real property situated in whole or in part in the Town of Black Mountain, and the general description and location of that property; *AND*
 - ii. Describing any legal, equitable, beneficial or contractual interest the member, or his/her spouse or domestic partner has in any business, firm or corporation, which is currently conducting business within the Town of Black Mountain pursuant to contracts awarded by the Town of Black Mountain, or is attempting, or has attempted within the past calendar year, to secure the award of a bid from the Town of Black Mountain.

Section C-7. A Board Member Should Refrain from Political Activity Inappropriate to His or Her Office

- A. Members of the Board of Aldermen have a civic responsibility to support good government by every available means, to inform and educate the citizenry about Town government, and to engage citizens so as to ascertain and respond to the needs of the community. To that end, board members may affiliate with civic organizations and political parties, attend political meetings, and advocate for principles, policies and legislation consistent with federal, state and local election laws.
- B. Candidates for the office of Alderman, including incumbents:
- i. Should inform themselves of all applicable election laws and disclosure requirements, adhere scrupulously to the provisions therein, maintain dignity appropriate to the office, and encourage family, friends and associates to adhere to the same ethics and standards of conduct that apply to board members;
 - ii. Should not make pledges or promises of conduct in office that they will not or cannot perform or that would be illegal if performed;
 - iii. Should not knowingly misrepresent their identity, qualifications, employment, policy positions, or other material fact, and should refrain from promising anything other than faithful and impartial performance of the duties of the office.

Section C-8. A Board Member Shall Participate in Ethics Education Training

- A. Board members shall comply with N.C.G.S. §160A-87 by participating in a minimum of two clock hours of ethics education within 12 months of each appointment, election, re-appointment or re-election to office, using curriculum offered by a recognized qualified source, including the North Carolina League of Municipalities, the University of North Carolina School of Government, or other qualified source of the Board's choosing.
- B. The Town Clerk shall maintain a record verifying completion of the ethics requirement by each member of the Board.

Section C-9. Disciplinary Action

- A. A violation of any provision of this Code of Ethics may subject a mayor or board member to disciplinary action, in the form of a resolution of censure, by majority vote of the Board of Aldermen. No such resolution of censure may be adopted until the member alleged to have committed the violation has been given notice of the alleged violation and been provided the opportunity to appear before the Board and be heard regarding the

allegation. Procedures for adopting a resolution of censure are included in the Board's rules of procedure.

- B.** Censure is a serious disciplinary measure, not to be undertaken lightly. Although a resolution of censure has no legal effect on the censured board member, such action may adversely impact board and public trust in a way that is detrimental to Town interests. Depending on the severity of violation, board members may determine to take a less formal approach to board discipline by verbally articulating disapproval, either publicly or privately, directly to the accused member over the perceived violation.
- C.** Any board member who has a question as to the applicability of this code to a particular situation may apply, orally or in writing, to the Town Attorney for advisory guidance. In no event will the Town Attorney's advisory guidance excuse a mayor or board member from complying with the Code of Ethics or other applicable law.

RULES OF PROCEDURE

The following rules of procedure are intended to guide the deliberations and actions of the Black Mountain Board of Aldermen, in support of the General Principles and standards of conduct outlined in the Code of Ethics above. The rules incorporate general principles of parliamentary procedure, applicable North Carolina laws, provisions of the Town's Charter, and specific procedural and behavioral standards to which members of the Board of Aldermen agree to abide. The rules have been developed based on the following guiding principles:

- 1) The Board must act as a body.
- 2) The Board should proceed in the most efficient manner possible.
- 3) The Board must act by at least a majority.
- 4) Every member must have an equal opportunity to participate in decision making.
- 5) The Board's rules of procedure must be followed consistently.
- 6) Action taken by the Board should be the result of a decision on the merits and not a manipulation of procedural rules.

Until such time that the Board of Aldermen determines to adopt additional rules of procedure, members shall defer to the provisions contained in the following publication and its successive editions: *Suggested Rules of Procedure for Small Local Government Boards, 2nd Edition*, by A. Fleming Bell, II (UNC School of Government, Chapel Hill, NC, 1998, 38pp), according to the sub-headings below.

Section R-1: Meetings

Section R-2: Communications & Notices

Section R-3: Agendas & Order of Business

Section R-4: Public Address to the Board

Section R-5: Presiding Officer

Section R-6: Motions

Section R-7: Quorum and Vote

Section R-8: Closed Sessions

Section R-9: Boards & Commissions/Appointments

Section R-10: Censure Procedures

If, by a majority vote of the board, the board has reasonable cause to believe that one or more of its members has violated a provision of this Code of Ethics or Rules of Procedure, it may at a regular meeting of the Board of Aldermen direct the Town Attorney to open an investigation into the matter. All information compiled, including the grounds for finding of probable cause, shall be shared with the member when it is received. All information pertaining to the case shall be subject to public inspection, reproduction and dissemination, pursuant to the North Carolina public records statutes. If, upon investigation, the board concludes that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney.

Should the board determine to proceed further with censure proceedings, it shall, by a majority vote, call for a hearing to be held at a regular meeting or at a special called meeting convened for that purpose. Notice of the hearing stating its time, place and purpose shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the jurisdiction. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Alternatively, the hearing shall be advertised on the jurisdiction's website for the same period of time, up to and including the date of the hearing. The notice shall state that a detailed list of the allegations against the member is available for public inspection and copying in the office of the Town Clerk.

The hearing shall be convened at the time and place specified. The hearing and any deliberations shall be conducted in open session in accordance with the North Carolina open meetings statutes.

The accused board member shall have the right to have counsel present, to present and cross-examine expert and other witnesses, and to offer evidence, including evidence of the bias of any other board member or the presiding officer. An audio or video and audio tape of the proceedings shall be prepared. Any and all votes during the hearing shall be taken and recorded in the board's minutes.

Once the hearing is concluded, it shall be closed by vote of the board. The presiding officer shall entertain a motion to adopt a nonbinding resolution censuring the member based on specified violations of the code of ethics. Any motion made must be an affirmative one in favor of adopting a nonbinding resolution of censure. If the motion or resolution does not state particular grounds for censure under the code of ethics, the presiding officer shall rule it out of order.

If a motion to adopt a nonbinding resolution of censure stating particular grounds under the code of ethics has been made, the board shall debate the motion. The accused member shall be allowed to participate in the debate [but shall not] [and shall also be allowed to] vote on the motion to adopt the resolution.

At the conclusion of the debate, the board shall vote on the resolution. If the motion to adopt the nonbinding resolution of censure is approved by a [majority][supermajority-four fifths] vote of those present and voting, a quorum being present, the motion passes and the nonbinding resolution of censure is adopted. The text of the nonbinding resolution of censure shall be made a part of the minutes of the board. Any recording of the board's proceedings shall be approved by the board as a permanent part of the minutes, and the proceedings shall then be considered concluded.

Section R-11: Amendment of Code of Ethics and Rules

This code of ethics and rules of procedure may be amended at any regular meeting or at any properly called special meeting convened for that purpose. Adoption of an amendment shall require an affirmative vote equal to a quorum.

READ, APPROVED AND ADOPTED this 20th day of December, 2010.

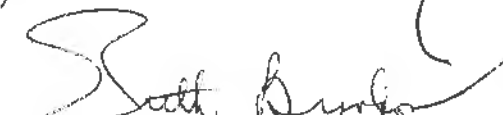
ATTEST:


Darlene Whisenant, Town Clerk

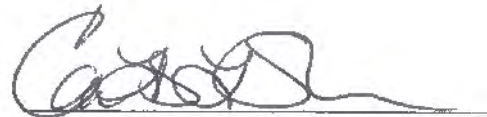

Marcia D. Onieal, Town Manager


Carl R. Bartlett, Mayor


Joan Brown, Mayor pro tem


Ruth Brandon, Alderman


Tim Rayburn, Alderman


Carlos Showers, Alderman


Michael Sobol, Alderman

ATTACHMENT "A"
APPLICABLE LAWS AND REGULATIONS

1. Avoid deriving a direct benefit from contracts in which you are involved in making or administering on behalf of the public agency. *NCGS §14-234(a)(1) criminal penalty*
2. Avoid attempting to influence others involved in making or administering a contract on behalf of the public agency, even if you aren't involved, if you will derive a direct benefit from the contract. *NCGS §14-234(a)(2) criminal penalty*
3. Avoid soliciting or receiving any gift or reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency you serve. *NCGS §14-234(a)(3) criminal penalty*
4. Consider the ethical and practical consequences of deriving a direct benefit from a contract authorized under any exception to the statute and weigh these considerations against the potential advantage to the public agency and to yourself. Follow reporting requirements to ensure transparency. *NCGS §14-234(b); (d1)*
5. Avoid participating in deliberations about or voting on a contract in which you have a direct benefit, when the contract is undertaken as allowed under any exception to the statute. *NCGS §14-234(b1) criminal penalty*
6. Avoid using your knowledge of contemplated action by you or your public agency, or information known to you in your official capacity and not made public, to acquire a financial interest in any property, transaction, or enterprise, or to gain a financial benefit that may be affected by the information or contemplated action. Avoid intentionally aiding another to do any of these things. *NCGS §14-234.1 criminal penalty*
7. Avoid receiving any gift or favor from a current, past, or potential contractor. *NCGS §133-32(a) criminal penalty*
8. Consider the ethical and practical consequences of accepting a gift or favor under any exception to the statutory prohibition, and follow reporting requirements to ensure transparency. *NCGS §133-32(d)*
9. Avoid voting on matters involving your own financial interest or official conduct. Identify and disclose these matters in advance so the board can determine whether you have a conflict allowing to be excused by the board from voting. When in doubt, obtain an opinion from the town attorney about whether you must vote or may be excused. *NCGS §160A-75*

10. Avoid voting on any zoning map or text amendment where the outcome of the vote is reasonably likely to have a direct, substantial, and readily identifiable financial impact on you. *NCGS §160A-381(d)*
11. Do not participate in or vote on any quasi-judicial matter, including matters that come before the board when the board is acting in a quasi-judicial capacity under *NCGS §160A-388*, if participation would violate affected persons' constitutional right to an impartial decision-maker. Impermissible conflicts under this statutory standard include "having a fixed opinion prior to hearing the matter that is not susceptible to change", "undisclosed ex parte communications" [communications between a board member and someone involved in the matter that occur outside the official quasi-judicial proceeding], "a close familial, business, or other associational relationship with an affected person", or "a financial interest in the outcome of the matter." *NCGS §160A-388(e1) violation invalidates entire vote.*
12. Fulfill your statutory obligation to vote on all matters that come before you even when there are appearances of conflict, and only refrain from voting when there is a legal basis for being, or requirement to be, excused from voting. *NCGS §160A-75*



PUBLIC NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

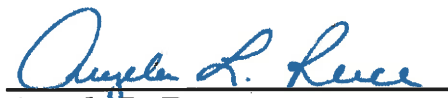
FY18-19 BUDGET PUBLIC HEARING

Monday, June 11, 2018 at 6:00 p.m.

The Town of Black Mountain's Budget and Five Year Capital Improvement Plan for FY18-19 has been submitted to the Board of Aldermen on Thursday April 11, 2018 and a copy was made available for public inspection in the office of the Town Clerk, 160 Midland Ave., Black Mountain, NC as required in NC G.S. 159-12.

The Board of Aldermen will hold a public hearing on the FY18-19 Budget and Five Year Capital Improvement Plan during their regularly scheduled meeting on **Monday, June 11, 2017 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC.

The meeting is open to the public.


Angela L. Reece
Town Clerk

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Angela Reece, Town Clerk at 419-9310 or by email at angela.reece@townofblackmountain.org

Please visit www.townofblackmountain.org to obtain agenda packets and other meeting information.

*Posted to the Town Bulletin Board 5/15/17
Published in the Black Mountain News 5/31/18, 6/7/17*

PUBLIC NOTICE BLACK MOUNTAIN BOARD OF ALDERMEN FY18-19 BUDGET PUBLIC HEARING

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Angela L. Reece
Town Clerk

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Posted to the Town Bulletin Board 5/15/17
5/31/18, 6/7/17
0002928062

Minutes Follow this Section