



TOWN OF BLACK MOUNTAIN

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

Date: May 13, 2019 Time: 6:00 p.m. Regular Session Minutes

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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 townclerk@townofblackmountain.org
(828) 419-9300 / TDD (800) 735-2962*

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 6:00 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Ryan Stone – absent
Alderman Carlos Showers
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebbe, Assistant Town Manager/Finance Director
Angela Reece, Town Clerk
Ron Sneed, Town Attorney
Shawn Freeman, Police Chief
Scottie Harris, Fire Chief

Mayor Don Collins welcomed everyone and led the Pledge of Allegiance. Pastor Mary Katherine Robinson of Black Mountain Presbyterian Church gave the invocation.

Mayor Collins thanked everyone in attendance and expressed appreciation to all those who were attending for the first time and also the viewing audience. The re-broadcast of each regular meeting is shown throughout the month on Charter Cable's Buncombe County Channel 192 at 8:00 p.m. on Sundays. Meetings initially air the same week in which they occur and are shown weekly until the next regularly scheduled meeting. Citizens may also go to the Town website www.townofblackmountain.org at any time and view the most recent regular meeting of the Board.

Mayor Collins reminded citizens attending the meeting to remain quiet so as not to disturb others. In his announcements Mayor Collins recognized Fire Chief, Scottie Harris. Chief Harris presented Police Chief Shawn Freeman an American Flag depicted on a wooden frame from the

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Fired Department thanking and recognizing the Police Department in honor of National Police Week.

2. PROCLAMATION AND AWARD RECOGNITION

- A. Proclamation Honoring Student Athlete – Alderman Tim Raines presented a proclamation honoring Chesney Gardner for her outstanding academic and athletic accomplishments. Ms. Gardner has been awarded the Female Athlete of the Year receiving the Pat Best Memorial Trophy. The Mayor and Board of Aldermen are pleased and proud to honor this outstanding student-athlete for her commitment to sport and for being a fine example of American Youth.

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.

Judy Eubanks of Black Mountain Tennis Association addressed the Board of Aldermen requesting consideration for two new upper tennis courts at Lake Tomahawk. Ms. Eubanks stated an estimate is currently around \$120,000 and stated the price continues to increase annually.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

- A. Historic Preservation Commission Annual Report – *Jennifer Tipton, Zoning Administrator* presented the Annual Historic Preservation Commission to the Board of Aldermen. The Commission meets the third Wednesday of each month at Town Hall at 6:00 p.m.
- B. Rainbow Recycling Annual Flower Pot Recycling Event – *Marilyn Sobanski* presented the Annual Rainbow Recycling Flower Pot Recycling Event to the Board of Aldermen and public encouraging everyone to participate on Saturday May 18, 2019 from 9:00 a.m. through 3:00 p.m. in the rear parking lot of the Black Mountain Library.

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.

Town Manager, Josh Harrold presented the consent agenda to the Board of Aldermen.

- A. Adoption of Minutes

Motion: *To adopt the minutes of April 4, 2019 (Agenda Session), April 8, 2019 (Regular Session), and April 25, 2019 (Budget Workshop).*

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B. Call for Public Hearing for FY2019-20 Budget

#O-19-10

Motion: *To call for the Budget Public Hearing for the FY2019-20 Budget, to be held on Monday, June 10, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

C. Call for Public Hearing for Building Permit Ordinance Text Amendments

#O-19-11

Motion: *To call for a public hearing for building permit ordinance text amendments to be held on Monday, June 10, 2019 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

Manager Harrold stated this amendment adds language which will require proof of having a septic system or approval to connect to MSD sewer.

D. Black Mountain Center for the Arts Mural

Manager Harrold stated the Black Mountain Center for the Arts has requested consideration to add a mural to the side of the building. The building is owned by the Town and leased by the Center. Attorney Ron Sneed clarified that the Board is only considering whether or not they will permit a mural to be painted on a Town owned building if the request makes it through the other processes such as Historic Preservation Commission review to obtain a certificate of appropriateness.

Vice Mayor Maggie Tuttle moved to approve consent items A-D as presented.

The motion was approved by a vote of 4-0.

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.

Stephanie Sulzman of *Art in the Afternoon* addressed the Board of Aldermen requesting consideration of an additional school year before entering into a lease to continue utilizing town owned property (Carver Center). Ms. Sulzman stated when her program began in 2008 it served 6 students per day and said it now serves 30-38 students per day. Ms. Sulzman proposed signing a longer term lease in August to account for additional students and to allow her to continue paying a living wage to her staff. Ms. Sulzman stated in 2017 she paid \$7,000 to the Town for use of the space at the Carver Center and proposed paying \$12,000 per year with a lease.

Erin Vannote of the *Swannanoa Valley Montessori School* addressed the Board of Aldermen stating she respected and appreciated the obligation the Town has toward leasing public property to a nonprofit entity (such as Montessori School) at fair market rate and stated she is requesting an amendment to the current lease which will be expiring in 2022 to allow for additional use of the office space at the Carver Center that was vacated when the Parks and Recreation Department

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vacated the building. Ms. Vannote stated the school is interested in acquiring the additional office space and would request the Town provide cost estimates for the upcoming school year. Ms. Vannote reminded the Board that her costs heavily depend on student enrollment and asked for consideration when deciding on an estimate for the use of the additional space if approved.

7. UNFINISHED BUSINESS

A. Hemphill Property

Attorney Ron Sneed reminded the Board of previous discussions regarding access to the Hemphill property. Attorney Sneed recalled prior discussions and the proposal of an offer of an easement in exchange for non-acceptance of a portion of the Hemphill property. Attorney Sneed stated Attorney Mike Begley has requested this exchange to construct homes on his adjoining property in exchange for an easement that would allow a secondary access to the park property onto Sunset Drive. Attorney Sneed reminded the Board that the only access to the park property is underneath the railroad through a box culvert and asked for direction from the Board regarding the proposal. Alderman Larry B. Harris stated he feels this decision is similar to considerations the Board gives to street closures with regard to access and growth of tax base and said he is in favor of the exchange. Mayor Don Collins recalled prior discussions regarding a future greenway easement through the property in question stating he would support the decision if an easement could be guaranteed.

Alderman Larry B. Harris moved to proceed with consideration of the offer for the June meeting. The motion was approved by a vote of 4-0.

8. NEW BUSINESS

Alderman Larry B. Harris moved to amend the agenda to ADD New Item 8I, Downtown Parking and Circulation Study contract to the agenda. The motion was approved by a vote of 4-0.

A. Compensation of Mayor and Board of Aldermen

#O-19-13

Attorney Sneed recalled the passage of an ordinance in 2017 (O-17-11) eliminating compensation of the Board of Aldermen and reminded the Board that the intent of that ordinance was to utilize those funds to support another position within the Public Works department. Attorney Sneed stated the Town Charter prohibits changes to Board compensation during the term of any current member and reminded everyone that O-17-11 would not take place until each member's current seat was up for re-election which is scheduled in 2019. Attorney Sneed stated, if passed, Senate Bill 138 will change the election cycle to even year elections and will affect the prior ordinance changing the effective date to 2020. Attorney Sneed stated there was nothing prohibiting the Board from receiving compensation currently other than it being budgeted within the budget ordinance. Attorney Sneed stated the Board may choose to enact a new ordinance (O-19-13) to restore compensation but said the same principal applies and the compensation may not be altered during the current term of any member according to his interpretation of the Town Charter. Attorney Sneed stated the new ordinance could take effect in 2021 (if Senate Bill 138 is

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not passed) or will take effect in 2022 with the passage of Senate Bill 138. Attorney Sneed advised the Board that Senator Edwards has added an amendment to Senate Bill 138 adding the Town of Biltmore Forrest to the even year election cycle which has caused the bill to stall in the General Assembly. Alderman Larry B. Harris stated he felt it was important that governing boards be compensated for the amount of work they do and said compensation also attracts qualified candidates to be interested in serving. Alderman Harris stated he did not regret the past decision and said he does support a new ordinance to restore compensation. Alderman Harris stated a board member is always free to decline compensation if they so choose or delegate the funding toward a charitable cause.

Alderman Larry B. Harris moved to reinstate compensation for the Board of Aldermen and Mayor as previously existed prior to the passage of O-17-11. The motion was approved by a vote of 4-0.

B. Tax Collection Agreement-Buncombe County

Town Manager Harrold stated Buncombe County currently collects taxes for the Town of Black Mountain and said the agreement is due for renewal. Manager Harrold stated the cost is approximately \$70,000 to \$80,000 annually for this service with a collection rate of over 99%.

Alderman Larry B. Harris moved to approve the tax collection agreement with Buncombe County as presented. The motion was approved by a vote of 4-0.

C. Sidewalk Contract Approval

- Dogwood Lane to Cheshire Phase II (\$18,000 survey/design)
- Cheshire to Lakey Gap Road Phase III (\$35,000 survey/design)
- Black Mountain Avenue (\$25,500 survey/design)

Town Manager Harrold presented three sidewalk contracts to the Board of Aldermen for consideration. Manager Harrold recalled interest by the Board to seek federal funding toward the projects and advised the application process is released in January 2020 and if approved the funding would not be available until 2022. Manager Harrold stated this type of funding has become very competitive. Alderman Larry B. Harris clarified proceeding with the survey/design work does not preclude the Town from applying for the funding when available. Manager Harrold stated the Black Mountain Avenue sidewalk would be essentially an even cost versus having a greenway spur in that area and said a sidewalk will fit in nicely with existing infrastructure into the downtown area.

Alderman Larry B. Harris moved to approve three sidewalk contracts; Dogwood Lane to Cheshire Phase II (\$18,000 survey/design); Cheshire to Lakey Gap Road Phase III (\$35,000 survey/design); and Black Mountain Avenue (\$25,000 survey/design) as presented. The motion was approved by a vote of 4-0.

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D. Lake Tomahawk Dam Repair Design Contract Approval

Town Manager Harrold stated seepage issues at Lake Tomahawk Dam was brought to his attention in March 2019 and said staff reached out to NC Dam Safety requesting an assessment. Manager Harrold stated S&ME Engineering came out to conduct an assessment and presented a contract in the amount of \$24,850 to complete engineering and design services for Tomahawk Dam repairs. Manager Harrold stated much of the work is Dam maintenance that is needed such as installing toe drains. Alderman Harris recalled prior work on the Dam to remove trees and vegetation which was required by the State several years ago and inquired regarding possible workmanship issues. Manager Harrold stated the engineering firm would prepare an extensive report.

Vice Mayor Maggie Tuttle moved to approve Lake Tomahawk Dam Repair Design Contract with S&ME Engineering in the amount of \$24,850 as presented. The motion was approved by a vote of 4-0.

Attorney Ron Sneed discussed leasing options with the Board recalling the Montessori School having a current lease which outlines the space being used and price per square foot. The Montessori School is requesting to utilize additional space left vacant by the Parks and Recreation Department when they moved out. Attorney Sneed stated Art in the Afternoon has been operating under an MOU (Memorandum of Understanding) since their establishment at the Carver Center at a per student rate. Attorney Sneed stated over time the program has grown and is using exclusive space at the Carver Center. Attorney Sneed stated the Montessori School is currently paying \$3,200.00 per month and said the additional space being requested is an additional 840 sq. feet which would increase the monthly rent to \$4,060.00. Attorney Sneed stated if you applied the same math to Art in the Afternoon for the space they occupy their monthly rent would be \$2,087 which is beyond the program means to pay. Attorney Sneed stated if the Board chooses to allow the Montessori School to expand into the additional space without increasing their price per square foot and you apply the math to the space for Art in the Afternoon the monthly rent comes out to be \$1,695.00. Attorney Sneed recalled previous conversations regarding leasing public space at “market rate” and stated this situation is unique in that it would be vacant if not leased. Attorney Sneed inquired regarding the utility bill and major maintenance and stated if the Board passed this cost along to both programs then it would add approximately \$1,200.00 per month to the rent which would not be feasible for either program to continue operations. Attorney Sneed stated the Board would need to consider the value of having a tenant occupying the building. Attorney Sneed stated the Board would also need to consider the perception of giving an advantage to a business stating the Town could operate a program like Arts in the Afternoon and is free to contract services similar to those out but said it was prohibited from operating a school which could be considered an advantage to one business over another. Attorney Sneed stated he is not aware of any other school in town seeking to occupy the space. Attorney Sneed stated a short term lease (under one year) may be approved by the Board and a longer term lease considered at a later date for Art in the Afternoon. Board members conceded the provision for termination of the lease for use by the

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Town would need to be included in the Art in the Afternoon lease. Alderman Larry B. Harris stated if an issue arises regarding unfair competition the Board would have the option to terminate the leases.

E. Art in the Afternoon Lease Approval

The Board directed Attorney Ron Sneed to draft a lease for Art in the Afternoon through August 2019 in the amount of \$1,000 per month to present at the next regularly scheduled meeting.

F. Montessori School Lease Approval

The Board directed Attorney Ron Sneed to prepare an amendment to the Montessori School Lease to include additional space at no additional cost to present at the next regularly scheduled meeting.

G. Golf Course Snack Shop Lease Approval

Town Manager Harrold stated this lease is a renewal and is \$333.33 per month for the Golf Course Snack Shop. Attorney Sneed stated this property has been historically difficult to occupy. Alderman Showers stated he felt an increase to \$400.00 per month is in order due to the nature of this being a business. Vice Mayor Maggie Tuttle stated she is in favor of leaving the lease as-is through the 2019 season but said she is interested in advertising and pursuing alternate options in 2020. Alderman Larry B. Harris stated he agreed with Vice Mayor Tuttle. Alderman Showers stated he has concerns that the lease period is well underway. Alderman Tim Raines stated he also agreed with Vice Mayor Tuttle.

Vice Mayor Maggie Tuttle moved to approve the Golf Course Snack Shop Lease as presented. The motion passed by a vote of 4-0.

H. Ordinance to Amend Section 20-287 Powers, Duties and Responsibilities of the Urban Forestry Commission **#O-19-12**

Town Manager Harrold stated the Urban Forestry Commission submitted a proposal to amend their powers and duties to focus more on educational. Alderman Larry B. Harris inquired regarding procedures of measuring distances along curbing for street trees etc. Planning Director Trotman stated NC State University has excellent guidelines in place for street trees and stated the Public Works Director also weighs in on these types of decisions.

Alderman Larry B. Harris moved to adopt Ordinance #O-19-12 as presented. The motion was passed by a vote of 4-0.

I. Downtown Parking and Circulation Study Contract – NCDOT

Town Manager Harrold recalled prior discussions regarding downtown circulation and parking and reminded everyone the Town received grant funding for this project. The total project cost is \$35,000 and the Town's match is \$7,000. Manager Harrold stated addressing parking on Cherry Street would be first priority if the contract is approved.

Vice Mayor Maggie Tuttle moved to approve the Downtown Parking and Circulation Study Contract as presented. The motion was approved by a vote of 4-0.

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 to temporarily close State Street for the annual Christmas Parade

#O-19-07

*Alderman Carlos Showers moved to open the public hearing.
The motion was approved by a vote of 4-0.*

Planning Director Jessica Trotman stated NC General Assembly gives power to municipalities to close state maintained streets in certain circumstances through adoption of local ordinances. Director Trotman stated this ordinance allows the Town to temporarily close State Street for the annual Christmas Parade.

There were no citizen comments.

*Vice Mayor Maggie Tuttle moved to close the public hearing.
The motion was approved by a vote of 4-0*

*Alderman Larry B. Harris moved to approve Resolution #O-19-07 for the temporary street closure for the annual Christmas Parade.
The motion was approved by a vote of 4-0*

B. Public Hearing to temporarily close State Street for the annual Veterans Day Parade

#O-19-08

*Alderman Larry B. Harris moved to open the public hearing.
The motion was approved by a vote of 4-0.*

Planning Director Jessica Trotman stated this ordinance allows the Town to temporarily close State Street for the annual Veterans Day Parade.

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There were no citizen comments.

*Vice Mayor Maggie Tuttle moved to close the public hearing.
The motion was approved by a vote of 4-0*

*Vice Mayor Maggie Tuttle moved to approve Resolution #O-19-08 for the
temporary street closure for the annual Veterans Day Parade.
The motion was approved by a vote of 4-0*

10. COMMUNICATION FROM STAFF

- A. Town Attorney – Attorney Sneed – none at this time
- B. Josh Harrold - Manager Harrold reminded citizens that town offices would be closed on Monday May 27, 2019 for Memorial Day. Manager Harrold advised projects would be accepted for the state SPOT in August and encouraged the Board to begin thinking of what types of projects they may wish to include. Manager Harrold reminded citizens to apply for Town Boards and Commissions and encouraged them to visit the website for further information and to obtain an application.

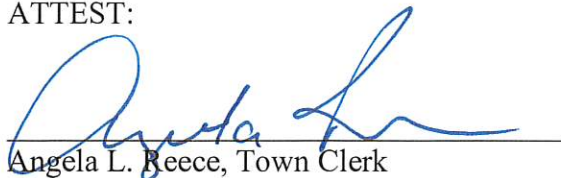
11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Alderman Larry B. Harris discussed the condition of North Fork Road and stated he would like to see more attention given to this road and suggested contacting NCDOT to come out and assess it. Alderman Harris stated he would like to see this included in the SPOT if eligible.

12. ADJOURNMENT

There being no further business, on a motion made by Vice Mayor Maggie Tuttle and with a vote of 4-0, Mayor Don Collins adjourned the meeting at 7:26 p.m.

ATTEST:


Angela L. Reece, Town Clerk


Don Collins, Mayor